

Im use
1/1

c.3

LEGISLATIVE REFERENCE LIBRARY
P. O. BOX 12488 - CAPITOL STATION
AUSTIN, TEXAS 78711

JAN 76

EXAMINERS' EXHIBITS, ADMITTED VOLUME ONE

PAGES 1 TO 560

1	IN THE MATTER OF	IN THE DISTRICT COURT
2	PROCEEDING OF STATE JUDICIAL	OF DUVAL COUNTY, TEXAS
3	QUALIFICATIONS COMMISSION NO. 5	229th JUDICIAL DISTRICT

DEPOSITION OF O. P. CARRILLO

7 taken on the 21st day of October, 1975, beginning at
8 ten o'clock a.m. in the County Law Library, Duval County
9 Annex Building, San Diego, Texas, before Ilse F. Galvan,
10 a Notary Public in and for Duval County, Texas, pursuant
11 to Order of the 229th Judicial District Court, a copy of
12 which is attached hereto, and the following proceedings
13 were reported by Hickman Reporting Service, 504 Travis
14 Building, Austin, Texas 78701.



HICKMAN REPORTING SERVICE

THE QUALITY REPORTERS
Austin, Texas 476-5363

E # 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

00002

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE COMMISSION:

MESSRS. JOHN ODAM and MAX FLUSCHE, Assistant
Attorneys General, Hearing Examiners, Supreme Court
Building, Austin, Texas 78701

FOR THE RESPONDENT, O. P. CARRILLO:

MR. ARTHUR MITCHELL, Mitchell, George and Belt,
1122 Colorado, Austin, Texas 78701

EXHIBITS

<u>COM</u>		<u>Ident.</u>
1	The letter addressed to Maurice S. Pipkin by O. P. Carrillo	54
2	Subpoena	57

1 THE REPORTER: Is it agreeable that I
2 swear the witness with the same force and effect as if I
3 were a notary public in Duval County, Texas?

4 JUDGE CARRILLO: No, sir.

5 MR. MITCHELL: No.

6 THE REPORTER: Do we have a notary public
7 who can swear the witness?

8
9 JUDGE O. P. CARRILLO

10 was called as a witness by the Commission and, being
1 first duly sworn by Ilse F. Galvan, a Notary Public in
2 and for Duval County, Texas, testified as follows:

3 MR. ODAM: Thank you very much. What is
4 your name?

5 THE NOTARY PUBLIC: Ilse F Galvan. I
6 am a Notary Public in and for Duval County, Texas.

MR. ODAM: You are the secretary for the
county attorney?

THE NOTARY PUBLIC: Yes, I am.

MR. ODAM: Thank you very much.

DIRECT EXAMINATION

BY MR. ODAM

Q Judge Carrillo, my name is John Odam. I am an
Examiner in this case, and here with me today is Mr. Max

1 Flusche, who is also an Examiner in the case. Both of us
2 are Assistant Attorneys General.

3 As you know, there was an Order signed by the
4 Honorable Judge Hester for the 229th District Court. The
5 Order was signed last week and, as you know, Ranger Gene
6 Powell served you with a copy of the subpoena pursuant
7 thereto, and I take it that might be the reason you are
8 here, as set forth in the Order that you were requested to
9 appear, and to bring with you—and a subpoena issued
10 compelling—that you produce all books of accounts, records,
11 papers and cancelled checks pertaining to your business
12 relationship with the Benavides Implement and Hardware
13 Company, as you were requested and ordered by Judge Hester
14 in this subpoena, to testify in the matter of the Pro-
15 ceeding of the Judicial Qualifications Commission No. 5.
16 You should know the purpose of taking this deposition is
17 in connection with this Proceeding.

18 A First of all, I might say that Ranger Gene
19 Powell did not serve me.

20 Q Who did, I might ask?

21 A It was a deputy sheriff that served me last
22 Sunday.

23 Q A deputy sheriff. Okay.

24 MR. MITCHELL: May I, at this point, inter-
25 pose, John?

First of all, I am going to move to quash, to strike the subpoena on the following grounds:

One, the same is constitutionally vague, indefinite and overly broad. It violates the search and seizure provisions of the United States and State Constitution, along with the constitutional rights of due course of law and due process.

In addition, the motion to quash and to strike the subpoena is based on the grounds that the same is void, having been served on Sunday.

In addition, the motion to quash and/or strike the subpoena is based upon the fact that there is no power existant to issue the same in that the Order underlying the issuance of the subpoena is improperly issued, vague, indefinite, and violates the rules governing the same.

In addition, the procedure is void and the Order and subpoena emitting from the procedure is void in that the procedure violates the rules promulgated as to the Amended Notice of Formal Hearing as to the right of the judicial official here, Judge O. P. Carrillo, not to be subpoenaed and not to be required to testify against himself, as well as the fact that the deposition is taken before appearance day violates the rules of notice as provided in the rules governing the taking of the same

00006
1 and the rules of procedure, as well as this official
2 retains his right to stand upon his motions in limine
3 and motions to disqualify to be filed on appearance date
4 herein.

5 I think it is proper that I make of record our
6 position as regards the subpoena and the Order and, Judge
7 Carrillo, in line with that, I will instruct you not to
8 answer any questions other than your name and your occu-
9 pation. I will permit, of course, Mr. Odam to put the
10 questions to you and you will answer the questions
11 specifically only as to claiming your right of self-
12 incrimination along with the three other rights, and I
13 will follow in behind each answer with my statement. Do
14 you understand that?

15 THE WITNESS: Yes, sir.

16 MR. MITCHELL: You are not, for the record,
17 appearing here voluntarily for any purposes.

18 THE WITNESS: I am not.

19 MR. MITCHELL: You may continue, Mr. Odam,
20 if you would like.
21
22
23
24
25

DIRECT EXAMINATION

BY MR. ODAM

Q Would you please state your name for the record?

A O. P. Carrillo.

Q What is your present employment?

A I am Judge of the 229th Judicial District of the State of Texas.

Q And on what date did you take office as Judge of the 229th?

A On this last—the first time, January the 2nd, 1971. The second time, January the 2nd, I believe also, 1975.

Q And do you know upon what date the election was held that you were elected the first time you referred to, for January 1971?

A I respectfully decline and refuse to answer the question put to me by the Commission on the grounds that the answer might tend to incriminate me. I claim this right under the provisions of the Fifth Amendment, the Constitution of the United States, and Article I, Section 10, Constitution of Texas.

MR. MITCHELL: And, John, may I add to that, I am instructing the witness not to answer the question on the grounds it is immaterial and irrelevant and beyond the legitimate scope of the rules governing the taking of

00008

1 the deposition, and it goes beyond the scope of the formal
2 notification.

3 I am instructing my client not to answer on the
4 grounds there is no lawful right to depose him as to the
5 time of taking the deposition; that is, the same being
6 taken as it is prior to the appearance date, there not
7 being ample notice as required by the statute of the
8 taking, there being no power to issue the subpoena and/or
9 the Order for the taking. There is no right in the
10 Attorney General to act as the Examiner, and the same
11 should be taken only in any event subject to all of the
12 pleas in abatement, special exceptions, motions in limine
13 to be filed by the attorney representing Judge Carrillo
14 on appearance date.

15 May I go off the record.

16 (Discussion off the record)

17 BY MR. ODAM

18 Q Judge Carrillo, do you recall on what dates you
19 were elected to the office of Judge for the 229th for the
20 term that you are now serving?

21 A I respectfully decline and—

22 MR. MITCHELL: That's all right.

23 A Would you repeat the question, please?

24 Q Yes, sir. The date on which you were elected.
25 The certificate of election, I believe, is dated

1 November 22nd, 1974. Am I correct?

2 A I didn't understand the question. That's why
3 I asked.

4 Q Yes, sir. On what date were you elected to
5 this term of office? What was the date of the election?

6 A It was the general election held in November
7 of 1974, whatever date that was.

8 MR. MITCHELL: And may I ask, Counsel, I
9 have probably authenticated copies, as well as you do.
10 We can agree on the election as to this term and this date,
11 and we would stipulate that date subject only to all of
12 our objections that we have previously interposed and
13 without the intent to waive any objection whatsoever, but
14 only to establish his standing as a judge presently to
15 make the claims that he is making.

16 Q Is it my understanding, then, you have continu-
17 ally served as Judge from January 1, 1970, until the pres-
18 ent date? The Judge of the 229th.

19 A Yes.

20 MR. MITCHELL: That's all right.

21 A Yes.

22 MR. FLUSCHE: Did you say '70 or '71?

23 MR. MITCHELL: No, no. John, you meant
24 January '75.

25 MR. ODAM: I meant from January, 1971.

1 MR. MITCHELL: No, I didn't understand it
2 that way.

3 MR. ODAM: Let me repeat the question.

4 BY MR. ODAM

5 Q Is it my understanding, in light of the previous
6 testimony, you have continued to serve as Judge from
7 January 1, or 2, 1971, until the present time?

8 A I respectfully decline and refuse to answer the
9 question put to me by the Commission on the grounds that
10 the answer might tend to incriminate me. I claim this
11 right under the provisions of the Fifth Amendment, the
12 Constitution of the United States, and Article I, Section
13 10, Constitution of Texas.

14 MR. MITCHELL: I am instructing the witness
15 not to answer the question on the grounds it is immaterial
16 and irrelevant and beyond the legitimate scope of the
17 rules governing the taking of the deposition, and it goes
18 beyond the scope of the formal notification

19 I am instructing my client not to answer on the
20 grounds there is no lawful right to depose him as to the
21 time of taking the deposition; that is, the same being
22 taken as it is prior to the appearance date, there not
23 being ample notice as required by the statute of the
24 taking, there being no power to issue the subpoena and/or
25 the Order for the taking. There is no right in the

1 Attorney General to act as the Examiner, and the same
2 should be taken only in any event subject to all of the
3 pleas in abatement, special exceptions, motions in limine
4 to be filed by the attorney representing Judge Carrillo
5 on appearance date.

6 Q Judge Carrillo, would you state whether or not
7 you have ever obtained groceries for your own personal
8 use and benefit from The Cash Store, Benavides, Texas,
9 during the period as set forth in the pleadings, that
10 period being from January, 1971, until May of 1975?

11 A I respectfully decline and refuse to answer the
12 question put to me by the Commission on the grounds that
13 the answer might tend to incriminate me. I claim this
14 right under the provisions of the Fifth Amendment, the
15 Constitution of the United States, and Article I, Section
16 10, Constitution of Texas.

17 MR. MITCHELL: I am instructing the witness
18 not to answer the question on the grounds it is immaterial
19 and irrelevant and beyond the legitimate scope of the
20 rules governing the taking of the deposition, and it goes
21 beyond the scope of the formal notification.

22 I am instructing my client not to answer on the
23 grounds there is no lawful right to depose him as to the
24 time of taking the deposition; that is, the same being
25 taken as it is prior to the appearance date, there not

00012

1 being ample notice as required by the statute of the
2 taking, there being no power to issue the subpoena and/or
3 the Order for the taking. There is no right in the
4 Attorney General to act as the Examiner, and the same
5 should be taken only in any event subject to all of the
6 pleas in abatement, special exceptions, motions in limine
7 to be filed by the attorney representing Judge Carrillo
8 on appearance date.

9 Q Did you charge groceries to your personal
10 account at The Cash Store between January 1, 1971, and
11 May 1975?

12 A I respectfully decline and refuse to answer the
13 question put to me by the Commission on the grounds that
14 the answer might tend to incriminate me. I claim this
15 right under the provisions of the Fifth Amendment, the
16 Constitution of the United States, and Article I, Section
17 10, Constitution of Texas.

18 MR. MITCHELL: I am instructing the witness
19 not to answer the question on the grounds it is immaterial
20 and irrelevant and beyond the legitimate scope of the
21 rules governing the taking of the deposition, and it goes
22 beyond the scope of the formal notification.

23 I am instructing my client not to answer on the
24 grounds there is no lawful right to depose him as to the
25 time of taking the deposition; that is, the same being

1 taken as it is prior to the appearance date, there not
2 being ample notice as required by the statute of the
3 taking, there being no power to issue the subpoena and/or
4 the Order for the taking. There is no right in the
5 Attorney General to act as the Examiner, and the same
6 should be taken only in any event subject to all of the
7 pleas in abatement, special exceptions, motions in limine
8 to be filed by the attorney representing Judge Carrillo
9 on appearance date.

10 Q On occasions, from January 1, 1971, to May of
11 1975, did you instruct Patricio Garza or Tomas Elizondo
12 or Roberto Elizondo to pick up groceries at The Cash Store
13 for your personal use and benefit and to charge such
14 groceries to your personal account at The Cash Store?

15 A I respectfully decline and refuse to answer the
16 question put to me by the Commission on the grounds that
17 the answer might tend to incriminate me. I claim this
18 right under the provisions of the Fifth Amendment, the
19 Constitution of the United States, and Article I, Section
20 10, Constitution of Texas.

21 MR. MITCHELL: I am instructing the witness
22 not to answer the question on the grounds it is immaterial
23 and irrelevant and beyond the legitimate scope of the
24 rules governing the taking of the deposition, and it goes
25 beyond the scope of the formal notification.

1 I am instructing my client not to answer on the
2 grounds there is no lawful right to depose him as to the
3 time of taking the deposition; that is, the same being
4 taken as it is prior to the appearance date, there not
5 being ample notice as required by the statute of the
6 taking, there being no power to issue the subpoena and/or
7 the Order for the taking. There is no right in the
8 Attorney General to act as the Examiner, and the same
9 should be taken only in any event subject to all of the
10 pleas in abatement, special exceptions, motions in limine
11 to be filed by the attorney representing Judge Carrillo
12 on appearance date.

13 Q Are you the owner—if I can say this correctly—
14 of the Borjas Ranch located in Duval County, Texas?

15 A I respectfully decline and refuse to answer the
16 question put to me by the Commission on the grounds that
17 the answer might tend to incriminate me. I claim this
18 right under the provisions of the Fifth Amendment, the
19 Constitution of the United States, and Article I, Section
20 10, Constitution of Texas.

21 MR. MITCHELL: I am instructing the witness
22 not to answer the question on the grounds it is immaterial
23 and irrelevant and beyond the legitimate scope of the
24 rules governing the taking of the deposition, and it goes
25 beyond the scope of the formal notification.

1 I am instructing my client not to answer on the
2 grounds there is no lawful right to depose him as to the
3 time of taking the deposition; that is, the same being
4 taken as it is prior to the appearance date, there not
5 being ample notice as required by the statute of the
6 taking, there being no power to issue the subpoena and/or
7 the Order for the taking. There is no right in the
8 Attorney General to act as the Examiner, and the same
9 should be taken only in any event subject to all of the
10 pleas in abatement, special exceptions, motions in limine
11 to be filed by the attorney representing Judge Carrillo
12 on appearance date.

13 Q Judge Carrillo, on occasions of the dates from
14 January 1, 1971, and May of 1975, did you ever have
15 occasion to furnish food for consumption at the Borjas
16 Ranch for persons who were working on your ranch?

17 A I respectfully decline and refuse to answer the
18 question put to me by the Commission on the grounds that
19 the answer might tend to incriminate me. I claim this
20 right under the provisions of the Fifth Amendment, the
21 Constitution of the United States, and Article I, Section
22 10, Constitution of Texas.

23 MR. MITCHELL: I am instructing the witness
24 not to answer the question on the grounds it is immaterial
25 and irrelevant and beyond the legitimate scope of the

00016

1 rules governing the taking of the deposition, and it goes
2 beyond the scope of the formal notification.

3 I am instructing my client not to answer on the
4 grounds there is no lawful right to depose him as to the
5 time of taking the deposition; that is, the same being
6 taken as it is prior to the appearance date, there not
7 being ample notice as required by the statute of the
8 taking, there being no power to issue the subpoens and/or
9 the Order for the taking. There is no right in the
10 Attorney General to act as the Examiner, and the same
11 should be taken only in any event subject to all of the
12 pleas in abatement, special exceptions, motions in limine
13 to be filed by the attorney representing Judge Carrillo
14 on appearance date.

15 Q At the time you assumed the duties as Judge of
16 the 229th District Court, was there pending on the docket
17 of that court certain lawsuits styled "Clinton Manges vs.
18 M. A. Guerra, et al," Cause No. 3953?

19 A I respectfully decline and refuse to answer the
20 question put to me by the Commission on the grounds that
21 the answer might tend to incriminate me. I claim this
22 right under the provisions of the Fifth Amendment, the
23 Constitution of the United States, and Article I, Section
24 10, Constitution of Texas.

25 MR. MITCHELL: I am instructing the witness

1 not to answer the question on the grounds it is immaterial
2 and irrelevant and beyond the legitimate scope of the
3 rules governing the taking of the deposition, and it goes
4 beyond the scope of the formal notification.

5 I am instructing my client not to answer on the
6 grounds there is no lawful right to depose him as to the
7 time of taking the deposition; that is, the same being
8 taken as it is prior to the appearance date, there not
9 being ample notice as required by the statute of the
10 taking, there being no power to issue the subpoena and/or
11 the Order for the taking. There is no right in the
12 Attorney General to act as the Examiner, and the same
13 should be taken only in any event subject to all of the
14 pleas in abatement, special exceptions, motions in limine
15 to be filed by the attorney representing Judge Carrillo
16 on appearance date.

17 Q Do you know whether or not the lawsuit, Manges
18 vs. Guerra, Cause No. 3953, had been pending on the docket
19 of the 229th District Court prior to the time that you
20 assumed duties of District Judge of the 229th District
21 Court, and whether or not it had been pending at the
22 time that you were elected to such office in the general
23 election held November 3, 1975?

24 A I respectfully decline and refuse to answer the
25 question put to me by the Commission on the grounds that

00018

1 the answer might tend to incriminate me. I claim this
2 right under the provisions of the Fifth Amendment, the
3 Constitution of the United States, and Article I, Section
4 10, Constitution of Texas.

5 MR. MITCHELL: I am instructing the witness
6 not to answer the question on the grounds it is immaterial
7 and irrelevant and beyond the legitimate scope of the
8 rules governing the taking of the deposition, and it goes
9 beyond the scope of the formal notification.

10 I am instructing my client not to answer on the
11 grounds there is no lawful right to depose him as to the
12 time of taking the deposition; that is, the same being
13 taken as it is prior to the appearance date, there not
14 being ample notice as required by the statute of the
15 taking, there being no power to issue the subpoena and/or
16 the Order for the taking. There is no right in the
17 Attorney General to act as the Examiner, and the same
18 should be taken only in any event subject to all of the
19 pleas in abatement, special exceptions, motions in limine
20 to be filed by the attorney representing Judge Carrillo
21 on appearance date.

22 Q On or about December 10, 1970, did you receive
23 from the plaintiff in Manges vs. Guerra, et al, Mr. Clinton
24 Manges, ten shares of stock in the First State Bank and
25 Trust Company of Rio Grande City, Texas?

1 A I respectfully decline and refuse to answer the
2 question put to me by the Commission on the grounds that
3 the answer might tend to incriminate me. I claim this
4 right under the provisions of the Fifth Amendment, the
5 Constitution of the United States, and Article I, Section
6 10, Constitution of Texas.

7 MR. MITCHELL: I am instructing the witness
8 not to answer the question on the grounds it is immaterial
9 and irrelevant and beyond the legitimate scope of the
10 rules governing the taking of the deposition, and it goes
11 beyond the scope of the formal notification.

12 I am instructing my client not to answer on the
13 grounds there is no lawful right to depose him as to the
14 time of taking the deposition; that is, the same being
15 taken as it is prior to the appearance date, there not
16 being ample notice as required by the statute of the
17 taking, there being no power to issue the subpoena and/or
18 the Order for the taking. There is no right in the
19 Attorney General to act as the Examiner, and the same
20 should be taken only in any event subject to all of the
21 pleas in abatement, special exceptions, motions in limine
22 to be filed by the attorney representing Judge Carrillo
23 on appearance date.

24 Q To your own personal knowledge, do you know
25 whether the plaintiff in Manges vs. Guerra, Mr. Clinton

1 Manges, issued a check on his bank account at the First
2 State Bank dated January 27, 1971, in the amount of
3 \$6,915.55 payable to the order of Riata Cadillac Company
4 in San Antonio, Texas?

5 A I respectfully decline and refuse to answer the
6 question put to me by the Commission on the grounds that
7 the answer might tend to incriminate me. I claim this
8 right under the provisions of the Fifth Amendment, the
9 Constitution of the United States, and Article I, Section
10 10, Constitution of Texas.

11 MR. MITCHELL: I am instructing the witness
12 not to answer the question on the grounds it is immaterial
13 and irrelevant and beyond the legitimate scope of the
14 rules governing the taking of the deposition, and it goes
15 beyond the scope of the formal notification.

16 I am instructing my client not to answer on the
17 grounds there is no lawful right to depose him as to the
18 time of taking the deposition; that is, the same being
19 taken as it is prior to the appearance date, there not
20 being ample notice as required by the statute of the
21 taking, there being no power to issue the subpoena and/or
22 the Order for the taking. There is no right in the
23 Attorney General to act as the Examiner, and the same
24 should be taken only in any event subject to all of the
25 pleas in abatement, special exceptions, motions in limine

1 to be filed by the attorney representing Judge Carrillo
2 on appearance date.

3 Q Do you know whether or not the money that I
4 just referred to, i.e., the \$6,915.55, was to be applied
5 to the purchase price of a 1971 Cadillac which you ordered
6 from Riata Cadillac?

7 A I respectfully decline and refuse to answer the
8 question put to me by the Commission on the grounds that
9 the answer might tend to incriminate me. I claim this
10 right under the provisions of the Fifth Amendment, the
11 Constitution of the United States, and Article I, Section
12 10, Constitution of Texas.

13 MR. MITCHELL: I am instructing the witness
14 not to answer the question on the grounds it is immaterial
15 and irrelevant and beyond the legitimate scope of the
16 rules governing the taking of the deposition, and it goes
17 beyond the scope of the formal notification.

18 I am instructing my client not to answer on the
19 grounds there is no lawful right to depose him as to the
20 time of taking the deposition; that is, the same being
21 taken as it is prior to the appearance date, there not
22 being ample notice as required by the statute of the
23 taking, there being no power to issue the subpoena and/or
24 the Order for the taking. There is no right in the
25 Attorney General to act as the Examiner, and the same

1 should be taken only in any event subject to all of the
2 pleas in abatement, special exceptions, motions in limine
3 to be filed by the attorney representing Judge Carrillo
4 on appearance date.

5 Q Do you know whether or not such sum of money
6 referred to in the last question was credited to your
7 benefit by Riata Cadillac Company on the payment of said
8 Cadillac referred to?

9 A I respectfully decline and refuse to answer the
10 question put to me by the Commission on the grounds that
11 the answer might tend to incriminate me. I claim this
12 right under the provisions of the Fifth Amendment, the
13 Constitution of the United States, and Article I, Section
14 10, Constitution of Texas.

15 MR. MITCHELL: I am instructing the witness
16 not to answer the question on the grounds it is immaterial
17 and irrelevant and beyond the legitimate scope of the
18 rules governing the taking of the deposition, and it goes
19 beyond the scope of the formal notification.

20 I am instructing my client not to answer on the
21 grounds there is no lawful right to depose him as to the
22 time of taking the deposition; that is, the same being
23 taken as it is prior to the appearance date, there not
24 being ample notice as required by the statute of the
25 taking, there being no power to issue the subpoena and/or

1 the Order for the taking. There is no right in the
2 Attorney General to act as the Examiner, and the same
3 should be taken only in any event subject to all of the
4 pleas in abatement, special exceptions, motions in limine
5 to be filed by the attorney representing Judge Carrillo
6 on appearance date.

7 Q In the summer of 1970, did you order from Rista
8 Cadillac Company a 1971 Cadillac?

9 A I respectfully decline and refuse to answer the
10 question put to me by the Commission on the grounds that
11 the answer might tend to incriminate me. I claim this
12 right under the provisions of the Fifth Amendment, the
13 Constitution of the United States, and Article I, Section
14 10, Constitution of Texas.

15 MR. MITCHELL: I am instructing the witness
16 not to answer the question on the grounds it is immaterial
17 and irrelevant and beyond the legitimate scope of the
18 rules governing the taking of the deposition, and it goes
19 beyond the scope of the formal notification.

20 I am instructing my client not to answer on the
21 grounds there is no lawful right to depose him as to the
22 time of taking the deposition; that is, the same being
23 taken as it is prior to the appearance date, there not
24 being ample notice as required by the statute of the
25 taking, there being no power to issue the subpoena and/or

1 the Order for the taking. There is no right in the
2 Attorney General to act as the Examiner, and the same
3 should be taken only in any event subject to all of the
4 pleas in abatement, special exceptions, motions in limine
5 to be filed by the attorney representing Judge Carrillo
6 on appearance date.

7 Q After allowance was made for the trade-in, was
8 the balance due on the purchase price of the 1971 Cadillac
9 paid by Clinton Manges?

10 A I respectfully decline and refuse to answer the
11 question put to me by the Commission on the grounds that
12 the answer might tend to incriminate me. I claim this
13 right under the provisions of the Fifth Amendment, the
14 Constitution of the United States, and Article I, Section
15 10, Constitution of Texas.

16 MR. MITCHELL: I am instructing the witness
17 not to answer the question on the grounds it is immaterial
18 and irrelevant and beyond the legitimate scope of the
19 rules governing the taking of the deposition, and it goes
20 beyond the scope of the formal notification.

21 I am instructing my client not to answer on the
22 grounds there is no lawful right to depose him as to the
23 time of taking the deposition; that is, the same being
24 taken as it is prior to the appearance date, there not
25 being ample notice as required by the statute of the

1 taking, there being no power to issue the subpoena and/or
2 the Order for the taking. There is no right in the
3 Attorney General to act as the Examiner, and the same
4 should be taken only in any event subject to all of the
5 pleas in abatement, special exceptions, motions in limine
6 to be filed by the attorney representing Judge Carrillo
7 on appearance date.

8 Q During the summer of 1971, after you had as-
9 sumed—I assume you had assumed—the duties of the District
10 Judge of the 229th, in light of your previous statements,
11 did you enter into an open-end grazing lease, as reflected
12 in Manges vs. Guerra, for grazing rights for approximately
13 1,200 to 1,500 acres?

14 A I respectfully decline and refuse to answer the
15 question put to me by the Commission on the grounds that
16 the answer might tend to incriminate me. I claim this
17 right under the provisions of the Fifth Amendment, the
18 Constitution of the United States, and Article I, Section
19 10, Constitution of Texas.

20 MR. MITCHELL: I am instructing the witness
21 not to answer the question on the grounds it is immaterial
22 and irrelevant and beyond the legitimate scope of the
23 rules governing the taking of the deposition, and it goes
24 beyond the scope of the formal notification.

25 I am instructing my client not to answer on the

1 grounds there is no lawful right to depose him as to the
2 time of taking the deposition; that is, the same being
3 taken as it is prior to the appearance date, there not
4 being ample notice as required by the statute of the
5 taking, there being no power to issue the subpoena and/or
6 the Order for the taking. There is no right in the
7 Attorney General to act as the Examiner, and the same
8 should be taken only in any event subject to all of the
9 pleas in abatement, special exceptions, motions in limine
10 to be filed by the attorney representing Judge Carrillo
11 on appearance date.

12 Q Assuming for the purpose of the question that
13 there was a grazing lease entered into, the question is,
14 was that land covered in that open lease agreement in-
15 cluded as part of the realty involved in the receivership
16 suit in which Mr. Manges was a party?

17 A I respectfully decline and refuse to answer the
18 question put to me by the Commission on the grounds that
19 the answer might tend to incriminate me. I claim this
20 right under the provisions of the Fifth Amendment, the
21 Constitution of the United States, and Article I, Section
22 10, Constitution of Texas.

23 MR. MITCHELL: I am instructing the witness
24 not to answer the question on the grounds it is immaterial
25 and irrelevant and beyond the legitimate scope of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rules governing the taking of the deposition, and it goes beyond the scope of the formal notification.

I am instructing my client not to answer on the grounds there is no lawful right to depose him as to the time of taking the deposition; that is, the same being taken as it is prior to the appearance date, there not being ample notice as required by the statute of the taking, there being no power to issue the subpoena and/or the Order for the taking. There is no right in the Attorney General to act as the Examiner, and the same should be taken only in any event subject to all of the pleas in abatement, special exceptions, motions in limine to be filed by the attorney representing Judge Carrillo on appearance date.

Q Assuming, again for the purpose of the question, there was a lease agreement entered into between yourself and Mr. Manges, did you also enter into an oral agreement with Mr. Manges, the plaintiff in Manges vs. Guerra, under the terms by which you would acquire grazing rights on an additional 5,000 to 6,000 acres of land, which land was included in the property which was the subject of the dispute in that Manges vs. Guerra suit?

A I respectfully decline and refuse to answer the question put to me by the Commission on the grounds that the answer might tend to incriminate me. I claim this

00028

1 right under the provisions of the Fifth Amendment, the
2 Constitution of the United States, and Article I, Section
3 10, Constitution of Texas.

4 MR. MITCHELL: I am instructing the witness
5 not to answer the question on the grounds it is immaterial
6 and irrelevant and beyond the legitimate scope of the
7 rules governing the taking of the deposition, and it goes
8 beyond the scope of the formal notification.

9 I am instructing my client not to answer on the
10 grounds there is no lawful right to depose him as to the
11 time of taking the deposition; that is, the same being
12 taken as it is prior to the appearance date, there not
13 being ample notice as required by the statute of the
14 taking, there being no power to issue the subpoena and/or
15 the Order for the taking. There is no right in the
16 Attorney General to act as the Examiner, and the same
17 should be taken only in any event subject to all of the
18 pleas in abatement, special exceptions, motions in limine
19 to be filed by the attorney representing Judge Carrillo
20 on appearance date.

21 Q Assuming for the purpose of the question that
22 there was a lease entered into as previously referred to,
23 was the term of that lease for a period of three years?

24 A I respectfully decline and refuse to answer the
25 question put to me by the Commission on the grounds that

00029

1 the answer might tend to incriminate me. I claim this
2 right under the provisions of the Fifth Amendment, the
3 Constitution of the United States, and Article I, Section
4 10, Constitution of Texas.

5 MR. MITCHELL: I am instructing the witness
6 not to answer the question on the grounds it is immaterial
7 and irrelevant and beyond the legitimate scope of the
8 rules governing the taking of the deposition, and it goes
9 beyond the scope of the formal notification.

10 I am instructing my client not to answer on the
11 grounds there is no lawful right to depose him as to the
12 time of taking the deposition; that is, the same being
13 taken as it is prior to the appearance date, there not
14 being ample notice as required by the statute of the
15 taking, there being no power to issue the subpoena and/or
16 the Order for the taking. There is no right in the
17 Attorney General to act as the Examiner, and the same
18 should be taken only in any event subject to all of the
19 pleas in abatement, special exceptions, motions in limine
20 to be filed by the attorney representing Judge Carrillo
21 on appearance date.

22 May we go off the record, John?

23 MR. ODAM: Yes.

24 (Discussion off the record)

25 Q Assuming for the purpose of the question there

1 was a lease agreement entered into between you and Mr.
2 Manges, was one of the terms or conditions of the lease
3 that you were to pay the plaintiff as consideration for
4 the lease the sum of one dollar per acre per year?

5 A I respectfully decline and refuse to answer the
6 question put to me by the Commission on the grounds that
7 the answer might tend to incriminate me. I claim this
8 right under the provisions of the Fifth Amendment, the
9 Constitution of the United States, and Article I, Section
10 10, Constitution of Texas.

11 MR. MITCHELL: I am instructing the witness
12 not to answer the question on the grounds it is immaterial
13 and irrelevant and beyond the legitimate scope of the
14 rules governing the taking of the deposition, and it goes
15 beyond the scope of the formal notification.

16 I am instructing my client not to answer on the
17 grounds there is no lawful right to depose him as to the
18 time of taking the deposition; that is, the same being
19 taken as it is prior to the appearance date, there not
20 being ample notice as required by the statute of the
21 taking, there being no power to issue the subpoena and/or
22 the Order for the taking. There is no right in the
23 Attorney General to act as the Examiner, and the same
24 should be taken only in any event subject to all of the
25 pleas in abatement, special exceptions, motions in limine

1 to be filed by the attorney representing Judge Carrillo
2 on appearance date.

3 Q Assuming that a lease was entered into, was
4 the consideration to be paid as previously indicated, the
5 amount of one dollar per acre, was that to be paid at the
6 end of the three-year term?

7 A I respectfully decline and refuse to answer the
8 question put to me by the Commission on the grounds that
9 the answer might tend to incriminate me. I claim this
10 right under the provisions of the Fifth Amendment, the
11 Constitution of the United States, and Article I, Section
12 10, Constitution of Texas.

13 MR. MITCHELL: I am instructing the witness
14 not to answer the question on the grounds it is immaterial
15 and irrelevant and beyond the legitimate scope of the
16 rules governing the taking of the deposition, and it goes
17 beyond the scope of the formal notification.

18 I am instructing my client not to answer on the
19 grounds there is no lawful right to depose him as to the
20 time of taking the deposition; that is, the same being
21 taken as it is prior to the appearance date, there not
22 being ample notice as required by the statute of the
23 taking, there being no power to issue the subpoena and/or
24 the Order for the taking. There is no right in the
25 Attorney General to act as the Examiner, and the same

1 should be taken only in any event subject to all of the
2 pleas in abatement, special exceptions, motions in limine
3 to be filed by the attorney representing Judge Carrillo
4 on appearance date.

5 Q Assuming for the purpose of the question there
6 was an open-end lease agreement entered into as previously
7 referred to, was that lease agreement ever reduced to
8 writing?

9 A I respectfully decline and refuse to answer the
10 question put to me by the Commission on the grounds that
11 the answer might tend to incriminate me. I claim this
12 right under the provisions of the Fifth Amendment, the
13 Constitution of the United States, and Article I, Section
14 10, Constitution of Texas.

15 MR. MITCHELL: I am instructing the witness
16 not to answer the question on the grounds it is immaterial
17 and irrelevant and beyond the legitimate scope of the
18 rules governing the taking of the deposition, and it goes
19 beyond the scope of the formal notification.

20 I am instructing my client not to answer on the
21 grounds there is no lawful right to depose him as to the
22 time of taking the deposition; that is, the same being
23 taken as it is prior to the appearance date, there not
24 being ample notice as required by the statute of the
25 taking, there being no power to issue the subpoena and/or

1 the Order for the taking. There is no right in the
2 Attorney General to act as the Examiner, and the same
3 should be taken only in any event subject to all of the
4 pleas in abatement, special exceptions, motions in limine
5 to be filed by the attorney representing Judge Carrillo
6 on appearance date.

7 Q Judge Carrillo, have you ever been appointed
8 "director" of the First State Bank and Trust of Rio Grande
9 City?

10 A I respectfully decline and refuse to answer the
11 question put to me by the Commission on the grounds that
12 the answer might tend to incriminate me. I claim this
13 right under the provisions of the Fifth Amendment, the
14 Constitution of the United States, and Article I, Section
15 10, Constitution of Texas.

16 MR. MITCHELL: I am instructing the witness
17 not to answer the question on the grounds it is immaterial
18 and irrelevant and beyond the legitimate scope of the rules
19 governing the taking of the deposition, and it goes beyond
20 the scope of the formal notification.

21 I am instructing my client not to answer on the
22 grounds there is no lawful right to depose him as to the
23 time of taking the deposition; that is, the same being
24 taken as it is prior to the appearance date, there not
25 being ample notice as required by the statute of the

00034

1 taking, there being no power to issue the subpoena and/or
2 the Order for the taking. There is no right in the
3 Attorney General to act as the Examiner, and the same
4 should be taken only in any event subject to all of the
5 pleas in abatement, special exceptions, motions in limine
6 to be filed by the attorney representing Judge Carrillo
7 on appearance date.

8 Q Do you know whether or not you were appointed
9 director of the First State Bank and Trust of Rio Grande
10 City on December 10, 1970?

11 A I respectfully decline and refuse to answer the
12 question put to me by the Commission on the grounds that
13 the answer might tend to incriminate me. I claim this
14 right under the provisions of the Fifth Amendment, the
15 Constitution of the United States, and Article I, Section
16 10, Constitution of Texas.

17 MR. MITCHELL: I am instructing the witness
18 not to answer the question on the grounds it is immaterial
19 and irrelevant and beyond the legitimate scope of the
20 rules governing the taking of the deposition, and it goes
21 beyond the scope of the formal notification.

22 I am instructing my client not to answer on the
23 grounds there is no lawful right to depose him as to the
24 time of taking the deposition; that is, the same being
25 taken as it is prior to the appearance date, there not

00035

1 being ample notice as required by the statute of the
2 taking, there being no power to issue the subpoena and/or
3 the Order for the taking. There is no right in the
4 Attorney General to act as the Examiner, and the same
5 should be taken only in any event subject to all of the
6 pleas in abatement, special exceptions, motions in limine
7 to be filed by the attorney representing Judge Carrillo
8 on appearance date.

9 Q Do you know whether or not you were elected
10 director of the First State Bank and Trust upon a motion
11 made by Mr. Clinton Manges at the First State Bank and
12 Trust Annual Stockholder's Meeting held January 14, 1971?

13 A I respectfully decline and refuse to answer the
14 question put to me by the Commission on the grounds that
15 the answer might tend to incriminate me. I claim this
16 right under the provisions of the Fifth Amendment, the
17 Constitution of the United States, and Article I, Section
18 10, Constitution of Texas.

19 MR. MITCHELL: I am instructing the witness
20 not to answer the question on the grounds it is immaterial
21 and irrelevant and beyond the legitimate scope of the
22 rules governing the taking of the deposition, and it goes
23 beyond the scope of the formal notification.

24 I am instructing my client not to answer on the
25 grounds there is no lawful right to depose him as to the

1 time of taking the deposition; that is, the same being
2 taken as it is prior to the appearance date, there not
3 being ample notice as required by the statute of the
4 taking, there being no power to issue the subpoena and/or
5 the Order for the taking. There is no right in the
6 Attorney General to act as the Examiner, and the same
7 should be taken only in any event subject to all of the
8 pleas in abatement, special exceptions, motions in limine
9 to be filed by the attorney representing Judge Carrillo
10 on appearance date.

11 Q On January 11, 1973, at the Annual Stockholder's
12 Meeting of First State Bank and Trust, do you know whether
13 or not you were elected director of the bank at that time?

14 A I respectfully decline and refuse to answer the
15 question put to me by the Commission on the grounds that
16 the answer might tend to incriminate me. I claim this
17 right under the provisions of the Fifth Amendment, the
18 Constitution of the United States, and Article I, Section
19 10, Constitution of Texas.

20 MR. MITCHELL: I am instructing the witness
21 not to answer the question on the grounds it is immaterial
22 and irrelevant and beyond the legitimate scope of the
23 rules governing the taking of the deposition, and it goes
24 beyond the scope of the formal notification.

25 I am instructing my client not to answer on the

1 grounds there is no lawful right to depose him as to the
2 time of taking the deposition; that is, the same being
3 taken as it is prior to the appearance date, there not
4 being ample notice as required by the statute of the
5 taking, there being no power to issue the subpoena and/or
6 the Order for the taking. There is no right in the
7 Attorney General to act as the Examiner, and the same
8 should be taken only in any event subject to all of the
9 pleas in abatement, special exceptions, motions in limine
10 to be filed by the attorney representing Judge Carrillo
11 on appearance date.

12 Q Will you state whether or not ten shares of
13 capital stock in the First State Bank and Trust was ever
14 transferred from Mr. Clinton Manges to you?

15 A I respectfully decline and refuse to answer the
16 question put to me by the Commission on the grounds that
17 the answer might tend to incriminate me. I claim this
18 right under the provisions of the Fifth Amendment, the
19 Constitution of the United States, and Article I, Section
20 10, Constitution of Texas.

21 MR. MITCHELL: I am instructing the witness
22 not to answer the question on the grounds it is immaterial
23 and irrelevant and beyond the legitimate scope of the rules
24 governing the taking of the deposition, and it goes beyond
25 the scope of the formal notification.

1 I am instructing my client not to answer on the
2 grounds there is no lawful right to depose him as to the
3 time of taking the deposition; that is, the same being
4 taken as it is prior to the appearance date, there not
5 being ample notice as required by the statute of the
6 taking, there being no power to issue the subpoena and/or
7 the Order for the taking. There is no right in the
8 Attorney General to act as the Examiner, and the same
9 should be taken only in any event subject to all of the
10 pleas in abatement, special exceptions, motions in limine
11 to be filed by the attorney representing Judge Carrillo
12 on appearance date.

13 Q Assuming that ten shares of stock were trans-
14 ferred, do you know whether or not ten shares of stock
15 were transferred on or about December 10, 1970, from
16 Mr. Clinton Manges, the plaintiff in Manges vs. Guerra,
17 to you?

18 A I respectfully decline and refuse to answer the
19 question put to me by the Commission on the grounds that
20 the answer might tend to incriminate me. I claim this
21 right under the provisions of the Fifth Amendment, the
22 Constitution of the United States, and Article I, Section
23 10, Constitution of Texas.

24 MR. MITCHELL: I am instructing the witness
25 not to answer the question on the grounds it is immaterial

00039

1 and irrelevant and beyond the legitimate scope of the
2 rules governing the taking of the deposition, and it goes
3 beyond the scope of the formal notification.

4 I am instructing my client not to answer on the
5 grounds there is no lawful right to depose him as to the
6 time of taking the deposition; that is, the same being
7 taken as it is prior to the appearance date, there not
8 being ample notice as required by the statute of the
9 taking, there being no power to issue the subpoena and/or
10 the Order for the taking. There is no right in the
11 Attorney General to act as the Examiner, and the same
12 should be taken only in any event subject to all of the
13 pleas in abatement, special exceptions, motions in limine
14 to be filed by the attorney representing Judge Carrillo
15 on appearance date.

16 Did you say "1970," Mr. Odam?

17 MR. ODAM: I intended to say "December 10,
18 1970."

19 A I respectfully decline and refuse to answer the
20 question put to me by the Commission on the grounds that
21 the answer might tend to incriminate me. I claim this
22 right under the provisions of the Fifth Amendment, the
23 Constitution of the United States, and Article I, Section
24 10, Constitution of Texas.

25 MR. MITCHELL: I am instructing the witness

1 not to answer the question on the grounds it is immaterial
2 and irrelevant and beyond the legitimate scope of the
3 rules governing the taking of the deposition, and it goes
4 beyond the scope of the formal notification.

5 I am instructing my client not to answer on the
6 grounds there is no lawful right to depose him as to the
7 time of taking the deposition; that is, the same being
8 taken as it is prior to the appearance date, there not
9 being ample notice as required by the statute of the
10 taking, there being no power to issue the subpoena and/or
11 the Order for the taking. There is no right in the
12 Attorney General to act as the Examiner, and the same
13 should be taken only in any event subject to all of the
14 pleas in abatement, special exceptions, motions in limine
15 to be filed by the attorney representing Judge Carrillo
16 on appearance date.

17 Q Do you know whether or not Mr. Clinton Manges,
18 plaintiff in Manges vs. Guerra, in December 1971-1972,
19 owned a majority of the stock in the First State Bank and
20 Trust?

21 A I respectfully decline and refuse to answer the
22 question put to me by the Commission on the grounds that
23 the answer might tend to incriminate me. I claim this
24 right under the provisions of the Fifth Amendment, the
25 Constitution of the United States, and Article I, Section

1 10, Constitution of Texas.

2 MR. MITCHELL: I am instructing the witness
3 not to answer the question on the grounds it is immaterial
4 and irrelevant and beyond the legitimate scope of the
5 rules governing the taking of the deposition, and it goes
6 beyond the scope of the formal notification.

7 I am instructing my client not to answer on the
8 grounds there is no lawful right to depose him as to the
9 time of taking the deposition; that is, the same being
10 taken as it is prior to the appearance date, there not
11 being ample notice as required by the statute of the
12 taking, there being no power to issue the subpoena and/or
13 the Order for the taking. There is no right in the
14 Attorney General to act as the Examiner, and the same
15 should be taken only in any event subject to all of the
16 pleas in abatement, special exceptions, motions in limine
17 to be filed by the attorney representing Judge Carrillo
18 on appearance date.

19 Q Rather than voluntarily recusing yourself from
20 Manges vs. Guerra, did you cause the matter of your
21 qualifications to be submitted to a hearing before a
22 disinterested party?

23 A I respectfully decline and refuse to answer the
24 question put to me by the Commission on the grounds that
25 the answer might tend to incriminate me. I claim this

1 right under the provisions of the Fifth Amendment, the
2 Constitution of the United States, and Article I, Section
3 10, Constitution of Texas.

4 MR. MITCHELL: I am instructing the witness
5 not to answer the question on the grounds it is immaterial
6 and irrelevant and beyond the legitimate scope of the
7 rules governing the taking of the deposition, and it goes
8 beyond the scope of the formal notification.

9 I am instructing my client not to answer on the
10 grounds there is no lawful right to depose him as to the
11 time of taking the deposition; that is, the same being
12 taken as it is prior to the appearance date, there not
13 being ample notice as required by the statute of the
14 taking, there being no power to issue the subpoena and/or
15 the Order for the taking. There is no right in the
16 Attorney General to act as the Examiner, and the same
17 should be taken only in any event subject to all of the
18 pleas in abatement, special exceptions, motions in limine
19 to be filed by the attorney representing Judge Carrillo
20 on appearance date.

21 Q During the period from January 1 of 1971 until
22 July of 1974, was Francisco Ruiz employed as a welder for
23 the County of Duval of your own personal knowledge?

24 A I respectfully decline and refuse to answer the
25 question put to me by the Commission on the grounds that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the answer might tend to incriminate me. I claim this right under the provisions of the Fifth Amendment, the Constitution of the United States, and Article I, Section 10, Constitution of Texas.

MR. MITCHELL: I am instructing the witness not to answer the question on the grounds it is immaterial and irrelevant and beyond the legitimate scope of the rules governing the taking of the deposition, and it goes beyond the scope of the formal notification.

I am instructing my client not to answer on the grounds there is no lawful right to depose him as to the time of taking the deposition; that is, the same being taken as it is prior to the appearance date, there not being ample notice as required by the statute of the taking, there being no power to issue the subpoena and/or the Order for the taking. There is no right in the Attorney General to act as the Examiner, and the same should be taken only in any event subject to all of the pleas in abatement, special exceptions, motions in limine to be filed by the attorney representing Judge Carrillo on appearance date.

Q During the period from January 1 of 1971 until July of 1974, to your own personal knowledge, did Francisco Ruiz receive a salary from the County of Duval in the amount of \$375 per month?

1 A I respectfully decline and refuse to answer the
2 question put to me by the Commission on the grounds that
3 the answer might tend to incriminate me. I claim this
4 right under the provisions of the Fifth Amendment, the
5 Constitution of the United States, and Article I, Section
6 10, Constitution of Texas.

7 MR. MITCHELL: I am instructing the witness
8 not to answer the question on the grounds it is immaterial
9 and irrelevant and beyond the legitimate scope of the
10 rules governing the taking of the deposition, and it goes
11 beyond the scope of the formal notification.

12 I am instructing my client not to answer on the
13 grounds there is no lawful right to depose him as to the
14 time of taking the deposition; that is, the same being
15 taken as it is prior to the appearance date, there not
16 being ample notice as required by the statute of the
17 taking, there being no power to issue the subpoena and/or
18 the Order for the taking. There is no right in the
19 Attorney General to act as the Examiner, and the same
20 should be taken only in any event subject to all of the
21 pleas in abatement, special exceptions, motions in limine
22 to be filed by the attorney representing Judge Carrillo
23 on appearance date.

24 Q During the period from January 1, 1971, until
25 July, 1974, did Francisco Ruiz receive any kind of

1 compensation whatsoever from you personally?

2 A I respectfully decline and refuse to answer the
3 question put to me by the Commission on the grounds that
4 the answer might tend to incriminate me. I claim this
5 right under the provisions of the Fifth Amendment, the
6 Constitution of the United States, and Article I, Section
7 10, Constitution of Texas.

8 MR. MITCHELL: I am instructing the witness
9 not to answer the question on the grounds it is immaterial
10 and irrelevant and beyond the legitimate scope of the rules
11 governing the taking of the deposition, and it goes beyond
12 the scope of the formal notification.

13 I am instructing my client not to answer on the
14 grounds there is no lawful right to depose him as to the
15 time of taking the deposition; that is, the same being
16 taken as it is prior to the appearance date, there not
17 being ample notice as required by the statute of the
18 taking, there being no power to issue the subpoena and/or
19 the Order for the taking. There is no right in the
20 Attorney General to act as the Examiner, and the same
21 should be taken only in any event subject to all of the
22 pleas in abatement, special exceptions, motions in limine
23 to be filed by the attorney representing Judge Carrillo
24 on appearance date.

25 Q During the year 1971, do you know whether or not

1 Oscar Sanchez was employed as an employee of the County
2 of Duval?

3 A I respectfully decline and refuse to answer the
4 question put to me by the Commission on the grounds that
5 the answer might tend to incriminate me. I claim this
6 right under the provisions of the Fifth Amendment, the
7 Constitution of the United States, and Article I, Section
8 10, Constitution of Texas.

9 MR. MITCHELL: I am instructing the witness
10 not to answer the question on the grounds it is immaterial
11 and irrelevant and beyond the legitimate scope of the
12 rules governing the taking of the deposition, and it goes
13 beyond the scope of the formal notification.

14 I am instructing my client not to answer on the
15 grounds there is no lawful right to depose him as to the
16 time of taking the deposition; that is, the same being
17 taken as it is prior to the appearance date, there not
18 being ample notice as required by the statute of the
19 taking, there being no power to issue the subpoena and/or
20 the Order for the taking. There is no right in the
21 Attorney General to act as the Examiner, and the same
22 should be taken only in any event subject to all of the
23 pleas in abatement, special exceptions, motions in limine
24 to be filed by the attorney representing Judge Carrillo
25 on appearance date.

1 Q During the year 1971, was Oscar Sanchez, to
2 your own knowledge, paid a salary of \$275 per month as an
3 employee of the County of Duval?

4 A I respectfully decline and refuse to answer the
5 question put to me by the Commission on the grounds that
6 the answer might tend to incriminate me. I claim this
7 right under the provisions of the Fifth Amendment, the
8 Constitution of the United States, and Article I, Section
9 10, Constitution of Texas.

10 MR. MITCHELL: I am instructing the witness
11 not to answer the question on the grounds it is immaterial
12 and irrelevant and beyond the legitimate scope of the
13 rules governing the taking of the deposition, and it goes
14 beyond the scope of the formal notification.

15 I am instructing my client not to answer on the
16 grounds there is no lawful right to depose him as to the
17 time of taking the deposition; that is, the same being
18 taken as it is prior to the appearance date, there not
19 being ample notice as required by the statute of the
20 taking, there being no power to issue the subpoena and/or
21 the Order for the taking. There is no right in the
22 Attorney General to act as the Examiner, and the same
23 should be taken only in any event subject to all of the
24 pleas in abatement, special exceptions, motions in limine
25 to be filed by the attorney representing Judge Carrillo

1 on appearance date.

2 Q During the year of 1971, did you ever pay com-
3 pensation of any kind whatsoever to Oscar Sanchez?

4 A I respectfully decline and refuse to answer the
5 question put to me by the Commission on the grounds that
6 the answer might tend to incriminate me. I claim this
7 right under the provisions of the Fifth Amendment, the
8 Constitution of the United States, and Article I, Section
9 10, Constitution of Texas.

10 MR. MITCHELL: I am instructing the witness
11 not to answer the question on the grounds it is immaterial
12 and irrelevant and beyond the legitimate scope of the
13 rules governing the taking of the deposition, and it goes
14 beyond the scope of the formal notification.

15 I am instructing my client not to answer on the
16 grounds there is no lawful right to depose him as to the
17 time of taking the deposition; that is, the same being
18 taken as it is prior to the appearance date, there not
19 being ample notice as required by the statute of the
20 taking, there being no power to issue the subpoena and/or
21 the Order for the taking. There is no right in the
22 Attorney General to act as the Examiner, and the same
23 should be taken only in any event subject to all of the
24 pleas in abatement, special exceptions, motions in limine
25 to be filed by the attorney representing Judge Carrillo

00049

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

on appearance date.

Q During the month of November, 1973, was Tomas Elizondo the bailiff in the 229th District Court?

A I respectfully decline and refuse to answer the question put to me by the Commission on the grounds that the answer might tend to incriminate me. I claim this right under the provisions of the Fifth Amendment, the Constitution of the United States, and Article I, Section 10, Constitution of Texas.

MR. MITCHELL: I am instructing the witness not to answer the question on the grounds it is immaterial and irrelevant and beyond the legitimate scope of the rules governing the taking of the deposition, and it goes beyond the scope of the formal notification.

I am instructing my client not to answer on the grounds there is no lawful right to depose him as to the time of taking the deposition; that is, the same being taken as it is prior to the appearance date, there not being ample notice as required by the statute of the taking, there being no power to issue the subpoena and/or the Order for the taking. There is no right in the Attorney General to act as the Examiner, and the same should be taken only in any event subject to all of the ples in abatement, special exceptions, motions in limine to be filed by the attorney representing Judge Carrillo

00050

1 on appearance date.

2 Q As you may be aware, in the Amended Notice of
3 Proceedings, there is reference made to a "backhoe" that
4 was allegedly used. Do you know whether or not the back-
5 hoe allegedly used at the time of the occasion in question,
6 as set out in the pleadings in this proceeding, was then
7 and there the property of Duval County Proclamation and
8 Reclamation District?

9 A I respectfully decline and refuse to answer the
10 question put to me by the Commission on the grounds that
11 the answer might tend to incriminate me. I claim this
12 right under the provisions of the Fifth Amendment, the
13 Constitution of the United States, and Article I, Section
14 10, Constitution of Texas.

15 MR. MITCHELL: I am instructing the witness
16 not to answer the question on the grounds it is immaterial
17 and irrelevant and beyond the legitimate scope of the
18 rules governing the taking of the deposition, and it goes
19 beyond the scope of the formal notification.

20 I am instructing my client not to answer on the
21 grounds there is no lawful right to depose him as to the
22 time of taking the deposition; that is, the same being
23 taken as it is prior to the appearance date, there not
24 being ample notice as required by the statute of the
25 taking, there being no power to issue the subpoena and/or

00051

1 the Order for the taking. There is no right in the
2 Attorney General to act as the Examiner, and the same
3 should be taken only in any event subject to all of the
4 pleas in abatement, special exceptions, motions in limine
5 to be filed by the attorney representing Judge Carrillo
6 on appearance date.

7 Q During the period from January 1 of 1972 until
8 September, 1973, do you know whether or not Roberto
9 Elizondo was paid the sum of \$225 per month from the
10 Road and Bridge Fund of the treasury of the County of
11 Duval, Texas?

12 A I respectfully decline and refuse to answer the
13 question put to me by the Commission on the grounds that
14 the answer might tend to incriminate me. I claim this
15 right under the provisions of the Fifth Amendment, the
16 Constitution of the United States, and Article I, Section
17 10, Constitution of Texas.

18 MR. MITCHELL: I am instructing the witness
19 not to answer the question on the grounds it is immaterial
20 and irrelevant and beyond the legitimate scope of the
21 rules governing the taking of the deposition, and it goes
22 beyond the scope of the formal notification.

23 I am instructing my client not to answer on the
24 grounds there is no lawful right to depose him as to the
25 time of taking the deposition; that is, the same being

1 taken as it is prior to the appearance date, there not
2 being ample notice as required by the statute of the
3 taking, there being no power to issue the subpoena and/or
4 the Order for the taking. There is no right in the
5 Attorney General to act as the Examiner, and the same
6 should be taken only in any event subject to all of the
7 pleas in abatement, special exceptions, motions in limine
8 to be filed by the attorney representing Judge Carrillo
9 on appearance date.

10 Q During the period from January 1, 1972, through
11 September, 1973, do you know whether or not Roberto
12 Elizondo was attending classes at McMahon Court Reporting
13 School in Houston, Harris County, Texas?

14 A I respectfully decline and refuse to answer the
15 question put to me by the Commission on the grounds that
16 the answer might tend to incriminate me. I claim this
17 right under the provisions of the Fifth Amendment, the
18 Constitution of the United States, and Article I, Section
19 10, Constitution of Texas.

20 MR. MITCHELL: I am instructing the witness
21 not to answer the question on the grounds it is immaterial
22 and irrelevant and beyond the legitimate scope of the
23 rules governing the taking of the deposition, and it goes
24 beyond the scope of the formal notification.

25 I am instructing my client not to answer on the

1 grounds there is no lawful right to depose him as to the
2 time of taking the deposition; that is, the same being
3 taken as it is prior to the appearance date, there not
4 being ample notice as required by the statute of the
5 taking, there being no power to issue the subpoena and/or
6 the Order for the taking. There is no right in the
7 Attorney General to act as the Examiner, and the same
8 should be taken only in any event subject to all of the
9 pleas in abatement, special exceptions, motions in limine
10 to be filed by the attorney representing Judge Carrillo
11 on appearance date.

12 MR. ODAM: Mr. Hickman, would you mark
13 that as an exhibit?

14 (The document referred to
15 was marked "COM-1" for
16 identification, and appears
17 as follows.)
18
19
20
21
22
23
24
25

00054

RECEIVED
MAY 13 1975
RD. QUAL. COMM.

Hon. Maurice S. Pipkin
Executive Director
State Judicial Qualifications Commission
P. O. Box 12265, Capitol Station
Austin, Texas 78711

Dear Mr. Pipkin:

Thank you for your letter of May 2, 1975 giving me an opportunity to answer on the charge of alleged misconduct you described.

As you will recall, you and I, at your request, met during 1973 at the Americana Restaurant in Alice and discussed these same charges. I then gave you full information about them and was informed by you that you would pass it on to the members of your commission for action if they desired to take any action. Since then I have had no further word from you or any of the other members of the commission. I assured you that I was going to continue to recuse myself in cases involving Clinton Manges (he being the litigant referred to in your letter) and I have done so and will continue to do so.

As to the first charge: I deny this charge. I have not accepted a gift, expensive or otherwise, from any litigant in any law suit pending, or that has ever been pending, in any court in which I have sat as Judge. I assume that the charge has reference to a Cadillac delivered to me in March of 1971 after I became Judge. This car was ordered by me in the summer of 1970 from Riata Cadillac Company in San Antonio long before I became Judge and delivery was delayed due to a strike at General Motors. After allowance was made for my trade in the balance owed on the car was \$6700 and this was paid by Mr. Manges. He made this payment pursuant to a trade entered into between him and me shortly before October 12, 1970. Under such trade he received a lot and house in Benavides owned by me and having a value of about \$15,000; and under such trade I received his agreement to pay the balance on the Cadillac upon its delivery and to deliver to me 10 shares of stock of the bank in Rio Grande City, such stock having a value of about \$750 a share.

As to the second charge: I assume that the bank stock referred to in this charge consists of the 10 shares delivered to me on December 10, 1970 pursuant to the aforementioned trade I made with Clinton Manges. At the time I received this stock I was not Judge of any court and there was not then pending in any court of the district I later became Judge of, any suit involving Clinton Manges. As a matter of fact, the litigation that is the basis of the charges made against me was, at the time of the aforementioned trade, pending solely and only in the federal court in Brownsville.

As to the third charge: It is true that sometime in the summer of 1971, after I became Judge, I did enter into an open-end grazing lease with Clinton Manges. The land covered by this lease included part of the realty involved in a receivership suit in which Mr. Manges was a party. Before this lease was executed all the parties to this suit had entered into a written settlement agreement fixing absolutely the amount of interest each of the parties owned in such realty. In my opinion these facts did not disqualify me; however, when my qualification was challenged I immediately and voluntarily recused myself and caused the Administrative Judge to assign the the disqualification motion for hearing before another court. I respectfully submit that in proceeding in this manner I acted in accordance with the best traditions of the judiciary. I might add

5/14/75
COM-1
10-21-75 WNH

00055

that I was surprised when my qualification was challenged because throughout the receivership suit prior to such challenge all parties had indicated approval of my actions, to such extent that each and every order entered by me in such suit was an agreed order approved by all counsel and all litigants.

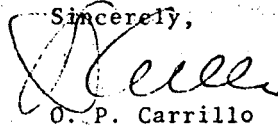
As to the fourth charge: I deny this charge. The property I conveyed to Mr. Manges was owned by me and the conveyance was part of the aforementioned trade. The second conveyance mentioned in this charge was not fraudulent or in any manner improper, being solely and only a correction deed and so showing on its face. This property has been in my possession since 1947 when it was given to me by my father. Since acquiring this property I have caused it to be kept in repair and during most of the time since 1947 it has been occupied by a tenant who has paid rent to me, the last of such tenants being Juan Rivera, well known football coach for the Benavides High School. The rent payments on this property were made to me by check and were reported by me as income to the Internal Revenue Service. This can all be verified if you are interested and it conclusively gives the lie to any suggestion I was not the owner or to any suggestion that Mr. Manges did not get title.

As you know, the aforementioned charges were involved in the hearing conducted by Judge Magus Smith and I assume you have available the transcript of the testimony and evidence presented to him. Since that hearing there has come to light one new item of evidence which I believe you will be interested in considering. In this connection, attention is called to the attached copy of letter dated May 25, 1973 from the clerk of the federal court in Brownsville. As you will see from such letter, the receivership suit, which is the basis of the charges against me, was not dismissed by the federal court until January 6, 1971. Now the reason this is important is that those attacking me have claimed, and continue to claim, that the order of dismissal entered by the federal court was entered on December 6, 1971, four days before the delivery to me of the aforementioned bank stock, it being their contention that when you compare the date of dismissal (claimed by them to be December 6, 1971) with the date of delivery of the stock you can infer that Mr. Manges was by the delivery of the stock attempting to influence my future decision upon my thereafter becoming Judge. The fallacy in this type of reasoning becomes apparent when it is realized that nobody,-- either at the time of delivery of such stock or at the time the aforementioned trade was made,--had any way of knowing when, if ever, the federal court would dismiss the receivership suit; and, as the aforementioned letter shows, it was not until January 6, 1971, and after application of all parties, that the federal court did dismiss such suit.

I stand ready and willing to cooperate with you and the other members of the Commission in every way possible. Please let me know if there is any further answer or information I can furnish; and if the Commission desires my appearance to give testimony I will be glad to come upon being given notice.

With best personal regards, I am

Sincerely,



O. P. Carrillo

8822
2
COM-1
10-21-75
WTH

1 Q Mr. Carrillo, I show you what the Court Reporter
2 has marked as Commission's Exhibit No. 1 and ask if you
3 have ever seen this exhibit before?

4 A I respectfully decline and refuse to answer the
5 question put to me by the Commission on the grounds that
6 the answer might tend to incriminate me. I claim this
7 right under the provisions of the Fifth Amendment, the
8 Constitution of the United States, and Article I, Section
9 10, Constitution of Texas.

10 MR. MITCHELL: I am instructing the witness
11 not to answer the question on the grounds it is immaterial
12 and irrelevant and beyond the legitimate scope of the
13 rules governing the taking of the deposition, and it goes
14 beyond the scope of the formal notification.

15 I am instructing my client not to answer on the
16 grounds there is no lawful right to depose him as to the
17 time of taking the deposition; that is, the same being
18 taken as it is prior to the appearance date, there not
19 being ample notice as required by the statute of the
20 taking, there being no power to issue the subpoena and/or
21 the Order for the taking. There is no right in the
22 Attorney General to act as the Examiner, and the same
23 should be taken only in any event subject to all of the
24 pleas in abatement, special exceptions, motions in limine
25 to be filed by the attorney representing Judge Carrillo

00057

1 on appearance date.

2 Mr. Carrillo, in order to preserve the technical
3 integrity of the record, I am going to ask you again to
4 state it.

5 A I respectfully decline and refuse to answer the
6 question put to me by the Commission on the grounds that
7 the answer might tend to incriminate me. I claim this
8 right under the provisions of the Fifth Amendment, the
9 Constitution of the United States, and Article I, Section
10 10, Constitution of Texas.

11 MR. MITCHELL: I am instructing the witness
12 not to answer the question on the grounds it is immaterial
13 and irrelevant and beyond the legitimate scope of the
14 rules governing the taking of the deposition, and it goes
15 beyond the scope of the formal notification.

16 I am instructing my client not to answer on the
17 grounds there is no lawful right to depose him as to the
18 time of taking the deposition; that is, the same being
19 taken as it is prior to the appearance date, there not
20 being ample notice as required by the statute of the
21 taking, there being no power to issue the subpoena and/or
22 the Order for the taking. There is no right in the
23 Attorney General to act as the Examiner, and the same
24 should be taken only in any event subject to all of the
25 pleas in abatement, special exceptions, motions in limine

1 to be filed by the attorney representing Judge Carrillo
2 on appearance date.

3 MR. ODAM: For the purpose of identifying
4 the document referred to in Commission's Exhibit No. 1,
5 it is my understanding this is a letter signed by Judge
6 Carrillo, addressed to Mr. Maurice Pipkin. It starts off,

7 "Thank you for your letter of May 2, 1975
8 giving me an opportunity to answer on the charge
9 of alleged misconduct you described."

10 If it is all right with Mr. Mitchell, I will
11 retain this in the Commission's files and have Mr. Hickman
12 mark as Commission's Exhibit No. 1 a Xerox copy of this
13 letter for this deposition.

14 MR. MITCHELL: Yes, sir. That is all right.

15 MR. ODAM: Do you have any other questions?

16 MR. FLUSCHE: No.

17 MR. ODAM: I have no further questions of
18 the witness.

19 MR. MITCHELL: May we go off the record?

20 MR. ODAM: Yes.

21 (Discussion off the record.)

22 MR. ODAM: Mr. Hickman, would you mark
23 this subpoena as Commission Exhibit No. 2?

24 (The subpoena referred to was
25 marked "COM-2" for identification
and is attached hereto.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ODAM: I have no further questions of
the witness.

(Whereupon, at 10:45 a.m., the deposition was
concluded.)

O. P. CARRILLO

SUBSCRIBED AND SWORN TO before the undersigned
authority this ____ day of _____, 1975.

Notary Public in and for
Duval County, Texas

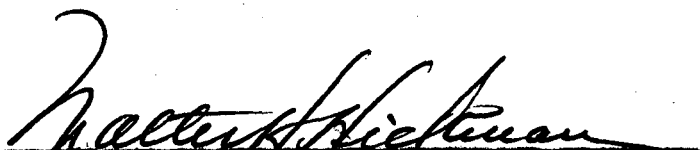
00060

CERTIFICATE

1
2
3 THE STATE OF TEXAS §
4 COUNTY OF TRAVIS §

5
6 I, Walter H. Hickman, a Notary Public in and
7 for Travis County, Texas, do certify that the witness,
8 JUDGE O. P. CARRILLO, appeared at the time and place
9 above stated and was duly sworn by the Notary Public,
10 Ilse F. Galvan of Duval County, Texas, and was examined
11 by the parties in accordance with the Order issued, that
12 said testimony was taken by me and transcribed under my
13 supervision and direction, and that the foregoing 58 pages
14 constitute a full, true and correct transcription of my
15 Stenographic notes.

16 GIVEN under my hand and seal of office this 24th
17 day of October, 1975.

18
19 
20 Walter H. Hickman, Notary Public
21 in and for Travis County, Texas
22
23
24
25

THE STATE OF TEXAS 00061

TO ANY SHERIFF OR ANY CONSTABLE OF THE STATE OF TEXAS, GREETING:

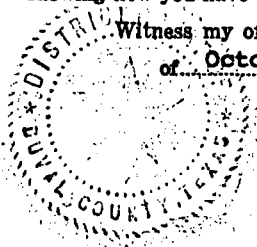
You are hereby Commanded that you Summon HON. O. P. Carrillo, Benavides,
Texas

of _____ in Duval County, Texas, and who is represented to reside within one hundred miles of the Courthouse of Duval County, Texas, in which this suit is pending or who may be found within such distance at the time of trial, to be and appear before ~~Walter Hickman~~ his designated employees, a duly Notary Public in and for Travis County ~~County, Texas~~ to be held at the County Courthouse ~~Annex in San Diego~~ in said County } *forthwith, day of October, A. D. 1975, at 9:00 o'clock A. M., then and there to testify as a witness, in a certain cause now pending in said Court, styled In the Matter of the Proceedings of State, ~~State~~ Judicial Qualifications Commission No. 5, ~~defendant~~ vs., No. 9270 on the docket of said Court, and that he bring with him and produce in said Court, at said time and place, the below described books, papers, and cancelled checks

desired before the Court in said cause, to-wit:
All books of account, records, papers, and cancelled checks pertaining to his business relationship with Benavides Implement and Hardware Company.

and there attend the Court from day to day, and from term to term, until lawfully discharged.
Issued this 17th day of October, 1975, and at the instance of State Judicial Qualifications Commission in said suit.

Herein Fall Not, but have you then and there before said Court this writ, with your return thereon, showing how you have executed the same.



Witness my official signature, at San Diego, on this the 17th day of October, A. D. 1975.

A. Salinas Clerk
229th Judicial District Court
Duval County
By H. G. Gonzalez Deputy
H. G. Gonzalez

COM-2
10-21-75 COM-2

*Strike out to show forthwith or a specified date.

OFFICER'S RETURN

Came to hand the 17th day of October, A. D., 1975, at 3:45 o'clock P.M., and executed by delivering a copy of this Subpoena in person to the within named witness at the following time and place, to-wit:

NAME	TIME					PLACE, AND COURSE AND DISTANCE FROM COURT HOUSE	MILEAGE	
	Month	Day	Year	Hour	Min.		M.	Dolla.
<u>John P. Smith</u>	<u>10</u>	<u>17</u>	<u>75</u>	<u>3</u>	<u>45</u>	<u>P.</u>		

Not executed as to the witness named in this Subpoena for the following reasons:.....

I actually and necessarily traveled.....miles in the service of this Subpoena, in addition to any other mileage I may have traveled in the service of other process in this cause during the same trip.

FEES—Summoning Witness \$..... Raul Lima } Constable
 } Sheriff

Mileage \$..... Deval County, Texas.

Total \$..... By [Signature] Deputy

ACCEPTANCE OF SERVICE

The undersigned witness named in the Subpoena on the opposite side hereof acknowledges receipt of a copy thereof and hereby accepts and waives service of such Subpoena.

(Signature of Witness and Date)

E-415

No. 9270

SUBPOENA DUCES TECUM
(CIVIL)

In The Matter of Proceedings

of State Judicial Qualifications
Commission No. 5

Issued October 17th, 1975

A. Salinas Clerk
By [Signature] Deputy
H.G. Gonzalez

PUB. SALE BY STAFFORD-LONDON CO. FORT WORTH

Rule 176 and 178 require clerk to issue original, together with a copy, for each witness, and service by delivery of copy to witness. Any witness may accept service by signing memorandum to that effect attached to Subpoena.

Rule 177a authorizes a Subpoena Duces Tecum for the production of "books, papers, documents or tangible things designated therein." These should be listed and identified or described with reasonable certainty.

STATE JUDICIAL QUALIFICATIONS COMMISSION
P. O. BOX 12265, CAPITOL STATION
AUSTIN, TEXAS 78711

HOMER E. STEPHENSON, CHAIRMAN
HOWARD C. DAVISON, VICE-CHAIRMAN
ROBERT C. MCGINNIS, SECRETARY
VERNON BUTLER
E. CARL DILLARD
DONALD EASTLAND
F. RAY MCCORMICK
PHIL PEDEEN
R. C. VAUGHAN

May 2, 1975

MAURICE S. PIPKIN
EXECUTIVE DIRECTOR

0063

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable O. P. Carrillo, Judge
229th Judicial District Court
County Courthouse
San Diego, Texas 78384

Dear Judge Carrillo:

This is to advise you that at a meeting of the State Judicial Qualifications Commission, held in Austin, Texas, March 15, 1975, the Commission, by resolution, instructed this office to enter into a preliminary investigation of the following alleged misconduct on your part:

1. That you accepted an expensive gift from a person who was a litigant in a law suit pending in your court.
2. That you accepted bank stock to the extent of ten shares which would qualify you to be a Director of the Rio Grande City State Bank, which bank was, and is, controlled by the same litigant referred to in the foregoing paragraph.
3. That you entered into an open-end lease of grazing land with the same litigant, and which land was the subject of the litigation referred to in paragraph one.
4. Following disclosure of the acceptance by you of the benefits recited in the foregoing third paragraph, you attempted to conceal and justify your misconduct in accepting these benefits by entering into a fraudulent conveyance which purported to convey an interest in real estate in exchange for the benefits received in the foregoing three paragraphs at a time when you did not then own any interest in such real estate.

Such acts of misconduct on your part clearly constitute willful and persistent conduct, which is clearly inconsistent with the proper performance of your duties and casts public discredit upon the judiciary and the administration of justice.

For your information we are enclosing a copy of the RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES, Adopted and Promulgated

5/18 CAR-56
5-15-75 [unclear]

Exhibit "E"

E-7
~~E~~

R-4#1

EX. J-1

00064

Honorable O. P. Carrillo
Page two.

by the Supreme Court of Texas.

If you should care to comment on these matters in writing,
you should file such answer within fifteen days of receipt of
this letter.

Sincerely,

Maurice S. Pipkin
Maurice S. Pipkin
Executive Director

MSP:ap
Enc.

CAR-56
2 WTH

00065

Hon. Maurice S. Pipkin
Executive Director
State Judicial Qualifications Commission
P. O. Box 12265, Capitol Station
Austin, Texas 78711

Dear Mr. Pipkin:

Thank you for your letter of May 2, 1975 giving me an opportunity to answer on the charge of alleged misconduct you described.

As you will recall, you and I, at your request, met during 1973 at the Americana Restaurant in Alice and discussed these same charges. I then gave you full information about them and was informed by you that you would pass it on to the members of your commission for action if they desired to take any action. Since then I have had no further word from you or any of the other members of the commission. I assured you that I was going to continue to refuse myself in cases involving Clinton Manges (he being the litigant referred to in your letter) and I have done so and will continue to do so.

As to the first charge: I deny this charge. I have not accepted a gift, expensive or otherwise, from any litigant in any law suit pending, or that has ever been pending, in any court in which I have sat as Judge. I assume that the charge has reference to a Cadillac delivered to me in March of 1971 after I became Judge. This car was ordered by me in the summer of 1970 from Riata Cadillac Company in San Antonio long before I became Judge and delivery was delayed due to a strike at General Motors. After allowance was made for my trade in the balance owed on the car was \$6700 and this was paid by Mr. Manges. He made this payment pursuant to a trade entered into between him and me shortly before October 12, 1970. Under such trade he received a lot and house in Benavides owned by me and having a value of about \$15,000; and under such trade I received his agreement to pay the balance on the Cadillac upon its delivery and to deliver to me 10 shares of stock of the bank in Rio Grande City, such stock having a value of about \$750 a share.

As to the second charge: I assume that the bank stock referred to in this charge consists of the 10 shares delivered to me on December 10, 1970 pursuant to the aforementioned trade I made with Clinton Manges. At the time I received this stock I was not Judge of any court and there was not then pending in any court of the district I later became Judge of any suit involving Clinton Manges. As a matter of fact, the litigation that is the basis of the charges made against me was, at the time of the aforementioned trade, pending solely and only in the federal court in Brownsville.

As to the third charge: It is true that sometime in the summer of 1971, after I became Judge, I did enter into an open-end grazing lease with Clinton Manges. The land covered by this lease included part of the realty involved in a receivership suit in which Mr. Manges was a party. Before this lease was executed all the parties to this suit had entered into a written settlement agreement fixing absolutely the amount of interest each of the parties owned in such realty. In my opinion these facts did not disqualify me; however, when my qualification was challenged I immediately and voluntarily recused myself and caused the Administrative Judge to assign the the disqualification motion for hearing before another court. I respectfully submit that in proceeding in this manner I acted in accordance with the best traditions of the judiciary. I might add

Exhibit "F-1"

E-3

CAR-36
1b Wint

R-Ex 2

EX. J-2

C0066

that I was surprised when my qualification was challenged because throughout the receivership suit prior to such challenge all parties had indicated approval of my actions, to such extent that each and every order entered by me in such suit was an agreed order approved by all counsel and all litigants.

As to the fourth charge: I deny this charge. The property I conveyed to Mr. Manges was owned by me and the conveyance was part of the aforementioned trade. The second conveyance mentioned in this charge was not fraudulent or in any manner improper, being solely and only a correction deed and so showing on its face. This property has been in my possession since 1947 when it was given to me by my father. Since acquiring this property I have caused it to be kept in repair and during most of the time since 1947 it has been occupied by a tenant who has paid rent to me, the last of such tenants being Juan Rivera, well known football coach for the Benavides High School. The rent payments on this property were made to me by check and were reported by me as income to the Internal Revenue Service. This can all be verified if you are interested and it conclusively gives the lie to any suggestion I was not the owner or to any suggestion that Mr. Manges did not get title.

As you know, the aforementioned charges were involved in the hearing conducted by Judge Magus Smith and I assume you have available the transcript of the testimony and evidence presented to him. Since that hearing there has come to light one new item of evidence which I believe you will be interested in considering. In this connection, attention is called to the attached copy of letter dated May 25, 1973 from the clerk of the federal court in Brownsville. As you will see from such letter, the receivership suit, which is the basis of the charges against me, was not dismissed by the federal court until January 6, 1971. Now the reason this is important is that those attacking me have claimed, and continue to claim, that the order of dismissal entered by the federal court was entered on December 6, 1971, four days before the delivery to me of the aforementioned bank stock, it being their contention that when you compare the date of dismissal (claimed by them to be December 6, 1971) with the date of delivery of the stock you can infer that Mr. Manges was by the delivery of the stock attempting to influence my future decision upon my thereafter becoming Judge. The fallacy in this type of reasoning becomes apparent when it is realized that nobody,-- either at the time of delivery of such stock or at the time the aforementioned trade was made,--had any way of knowing when, if ever, the federal court would dismiss the receivership suit; and, as the aforementioned letter shows, it was not until January 6, 1971, and after application of all parties, that the federal court did dismiss such suit.

I stand ready and willing to cooperate with you and the other members of the Commission in every way possible. Please let me know if there is any further answer or information I can furnish; and if the Commission desires my appearance to give testimony I will be glad to come upon being given notice.

With best personal regards, I am

Sincerely,

CAR-56
17 WSH

O. P. Carrillo

00067

BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

ANSWER TO NOTICE OF FORMAL PROCEEDINGS

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION OF THE
STATE OF TEXAS:

Comes now the Hon. O.P. Carrillo, District Judge of the
229th Judicial District of Texas, and makes this his Answer To
Notice Of Formal Proceedings for removal pursuant to the provisions
of Rule 4, Rules for the Removal and Retirement of Judges, as
adopted and promulgated by the Supreme Court of Texas, and would
respectfully show said Honorable Commission as follows:

I.

Formal proceedings before the State Judicial Qualifications
Commission now pending against the Hon. O.P. Carrillo should
be abated on the grounds that the charges on which such formal
proceedings are based arise from evidence and information presented
to and obtained from the unlawful and unconstitutional proceedings
against the Hon. O.P. Carrillo before the House Select Committee
on Impeachment of the House of Representatives of the State of Texas.
In that the evidence forming the basis of the present charges against
O.P. Carrillo arises out of the unlawful impeachment proceedings,
such evidence is unlawfully obtained; and the charges before the Judicial
Qualifications Commission, insofar as they are based on such evidence,
must therefore be dismissed.

E-4
RE 4/10
EX. J-10

II.

The Formal Proceedings against the Hon. O.P. Carrillo by the Judicial Qualifications Commission are unlawful in that, in instituting such proceedings, the Commission has failed to follow the procedures prescribed for such proceedings by the Rules For The Removal or Retirement of Judges promulgated and adopted by the Supreme Court of Texas pursuant to Article V, section 1-a(11) of the Constitution of the State of Texas, in the following particulars:

(1) Plaintiff was not given preliminary notice of the charges to be brought against him in the formal proceedings, in that the charges contained in the Notice of Formal Proceedings, with the exception of the charges contained in Paragraphs one through five of Section II of the Notice of Formal Proceedings, concern matters which were not included in the May 2, 1975, notice of the preliminary investigation by the Judicial Qualifications Commission as required by Rule 3(b) of the Supreme Court's Rules For The Removal Or Retirement Of Judges.

(2) The failure to inform the Hon. O.P. Carrillo of the charges against him in the notice of the preliminary investigation by the Commission resulted in the denial to the Hon. O.P. Carrillo of a reasonable opportunity to reply to such formal charges prior to the Commission's final determination that formal proceedings should be instituted, in violation of Rule 3(b) of the Rules For The Removal Or Retirement Of Judges.

(3) A time and a place for the hearing on the formal charges were selected by the Commission prior to service of Notice of Formal Proceedings and the Answer of the Hon. O.P. Carrillo to such notice, in violation of Rule 6(a) of the Rules For The Removal Or Retirement Of Judges.

(4) On the date of service of the Notice of Formal Proceedings on the Hon. O.P. Carrillo, July 18, 1975, the Hon. O.P. Carrillo was informed by the Executive Director of the Judicial Qualifications Commission that the hearing on the formal charges had been set for the following Tuesday, July 22, 1975, in the District Court in Edinburg, Hidalgo County, Texas. The setting of a hearing date which is prior to the expiration of twenty days subsequent to the mailing of notice to the Judge of the setting is in direct violation of the provisions of Rule 6(a) of the Rules For The Removal Or Retirement Of Judges.

(5) At the time of service of Notice of Formal Proceedings upon the Hon. O.P. Carrillo, the Executive Director of the Judicial Qualifications Commission informed the Hon. O.P. Carrillo that District Judge Jim Meyers had been chosen to preside as master at the hearing on the formal charges. The selection of a master prior to the filing of the Judge's Answer to the Notice violates the provisions of Rule 6(a) of the Rules For The Removal Or Retirement Of Judges.

(6) The selection of a master by the Commission or a member of the Commission violates the provisions of Rule 6(b) of the Rules For The Removal Or Retirement Of Judges, which states that the master is to be appointed by the Supreme Court after receipt of a written request from the Commission, which request is to be transmitted to the Court at the time the Commission sets a time and place for hearing.

(7) The Hon. O.P. Carrillo was informed by the Executive Director at the time of service of Notice of Formal Proceedings that the Executive Director had discussed the proceedings with Judge Meyers and that he, as master, had agreed to recess the hearing for a time after the procedural ground rules were established in order to allow the Hon. O.P. Carrillo to prepare his defense. Said conduct violates:

the spirit of the Rules For The Removal Or Retirement Of Judges, enacted to provide due process of law to those charges and proceeded against by the Judicial Qualifications Commission, and has the effect of rendering the Hon. O.P. Carrillo's right to an impartial master and a nonprejudicial hearing a nullity.

III.

The Hon. O.P. Carrillo denies each and every allegation in the charges against him contained in Sections I. through VI. of the Notice of Formal Proceedings of the Judicial Qualifications Commission.

IV.

Further, the Hon. O.P. Carrillo would show that, with the exception of the charges contained in Section I of the Notice Of Formal Proceedings, the charges presented in such Notice, even if based on fact, do not constitute grounds for his removal, in that the alleged acts occurred prior to the date of the Hon. O.P. Carrillo's election to office on November 5, 1974. Such alleged acts occurring before the date of the Judge's election to office, they may not be grounds for removal under the provisions of Article 5936, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."

V.

In the alternative, the Hon. O.P. Carrillo would show that the charges contained in Section I of the Notice Of Formal Proceedings do not constitute grounds for removal from office in that the conduct contained in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O.P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

VI.

Further, the Hon. O.P. Carrillo would show that the charges contained in Section II of the Notice do not constitute grounds for removal from office in that the conduct contained in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O.P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

VII.

Further, the Hon. O.P. Carrillo would show that the charges contained in Section III of the Notice do not constitute grounds for removal from office in that the conduct contained in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O.P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

VIII.

Further, the Hon. O.P. Carrillo would show that the charges contained in Section IV of the Notice do not constitute grounds for removal from office in that the conduct contained in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O.P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

IX.

Further, the Hon. O.P. Carrillo would show that the charges contained in Section V of the Notice do not constitute grounds for removal from office in that the conduct contained in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O.P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

X.

Further, the Hon. O.P. Carrillo would show that the charges contained in Section VI of the Notice do not constitute grounds for removal from office in that the conduct contained in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O.P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

XI.

WHEREFORE, PREMISES CONSIDERED, the Hon. O.P. Carrillo respectfully prays that the charges against him be dismissed and that the Formal Proceedings against the Hon. O.P. Carrillo before the Judicial Qualifications Commission be abated.

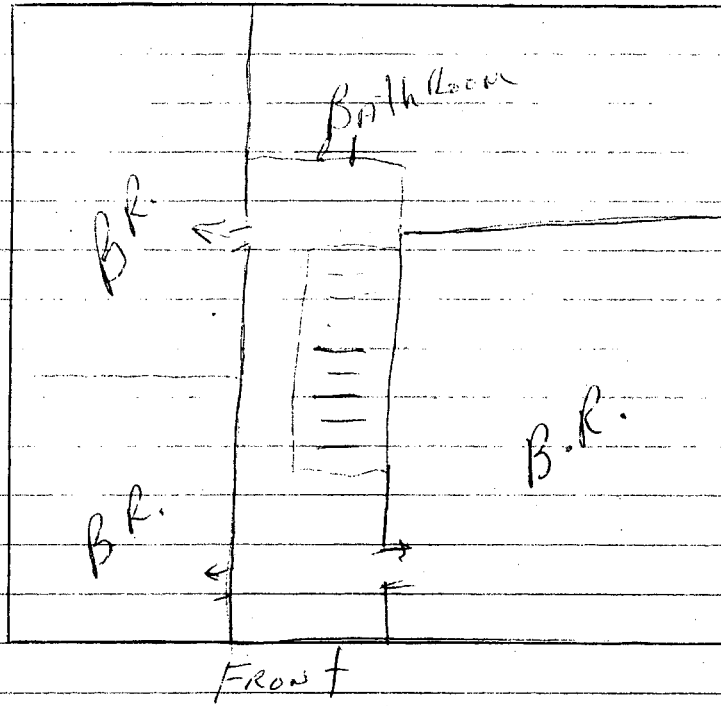
DATED: Aug. 4, 1975

Respectfully submitted,

Arthur Mitchell
315 Westgate Building
Austin, Texas 78701

Attorney for the Hon. O.P. Carrillo

00073



E-5

0074



E-6



E-7



E-8

00075

SMITH, McILHERAN, McKINNEY & YARBROUGH

207, 20

GARLAND F. SMITH
E. H. McILHERAN
MICHAEL B. McKINNEY
DAVID L. YARBROUGH

ATTORNEYS AT LAW
PROFESSIONAL BUILDING
FIFTH & MISSOURI AVENUE
WESLACO, TEXAS 78596

P. O. BOX 416
AREA CODE 512
WOODLAWN 8-2196

Law Day USA
May 1, 1973

Hon. Maurice S. Pipkin
Executive Director
State Judicial Qualification Commission
P. O. Box 12265
Capitol Station
Austin, Texas 78711

Re: Situation in the 229th Judicial District
(Duval, Starr and Jim Hogg Counties)

Dear Mr. Pipkin:

The combined pressures of Law Day USA; an assignment to make a Law Day speech extoling the virtues of: a "government of laws; not of men;" of "equal justice under law;" and of "separation of power between the legislative, executive and judicial departments to prevent tyranny;" and criticism in open court by the attorney for one of the litigants of my omission to take before a Grand Jury the matters herein discussed, impells me to submit this matter to your Commission. I do this not as a complaint against Judge O. P. Carrillo, but to completely remove this prior non-action on my part as an issue in Cause No. 3953 in the 229th District Court (Duval, Starr and Jim Hogg Counties) styled Clinton Manges vs. M. A. Guerra, et al, in which cause we have pending a motion that Judge Carrillo recuse or disqualify himself.

The motion to recuse or disqualify is based on transactions during pendency of the suit wherein one of the litigants conferred on the judge and the judge accepted certain favors, which we considered to be "things of value" as defined in Article 16, Section 41, of the Texas Constitution:

Any person who shall - - give - "any money or thing of value, testimonial, privilege or personal advantage, to any - - judicial officer - - to influence him in the performance of his public or orricial duties, shall be guilty of bribery,

The favors or gifts to the judge involve: (1) directorship in a bank controlled by Plaintiff, Manges; (2) A grazing lease on 1,200 to 1,500 acres for about three months, which the Plaintiff testified was given "as a courtesy," but the Judge testified he understood he was to pay \$1.00 per acre

6-9

per year therefor; (3) an oral grazing lease for 3 years covering 5,000 to 6,000 acres, with payment of \$5,000.00 per year to be made at the end of the term in cash or cattle; but with an option in Plaintiff to cancel at any time he decided to develop the land; (4) loans from Plaintiff's bank to the Judge, up to \$38,000.00 secured by the Judge's financial statement, and a loan of \$306,000.00 to assist the Judge in purchase of 3,000 acres of land; and (5) a transaction between the Judge and Plaintiff whereby the Plaintiff purchased for the Judge a 1971 Cadillac automobile, paying \$6,955.00 difference between the Judge's trade-in and the new Cadillac, and assigned to the Judge 10 shares of bank stock, receiving in exchange a deed to a house and lot in Benavides, Texas.

The motion complains further that the Plaintiff had made the brother of the Judge, as well as other officers of the court directors in said bank, including the Receiver, the Attorney for the Receiver, and a Special Attorney for the Receiver. These officers of the court being so closely connected with the decision making process, it seems that the court having condoned their transactions with Plaintiff, these dealings were also pertinent. Judge Carrillo declined to recuse or disqualify himself, and instead requested the Presiding Judge of the Fifth Administrative District appoint a Judge to hear the motion. Judge Magus F. Smith of the 93rd District Court of Hidalgo County was appointed and is hearing the motion.

This is a receivership which involves M. Guerra and Son, a partnership, whose principal assets were 404 shares of stock in the First State Bank and Trust Company of Rio Grande City, and 72,000 acres of ranch lands in Starr County, Texas. Of the seven parties to the suit (the Plaintiff and six partners in M. Guerra & Son) only the Plaintiff, Manges, is opposing the motion that Judge Carrillo recuse or disqualify himself. The plaintiff's original brief takes the position that only Article 5, Section 11 of the Texas Constitution applies, and that an "interest" to be disqualifying must be a "future interest," such that the Judge will be benefited or injured financially by the judgment he ultimately enters.

In rebuttal briefs we referred to Article 2, Section 4 of the U. S. Constitution; Article 15, Section 6 and Article 16, Section 41 of the Texas Constitution, and Articles 158 and 159 of the Texas Penal Code, all of which relate to bribery of public officials, including judicial officials, and include

removal from office as one of the penalties of the offending official. While the affirmative requirement of impartiality is firmly written into our law and confirmed by the Supreme Court:

On the other hand, the people residing in a judicial district are rightfully entitled to be relieved of the impositions of a judge who, though chosen by them, proves by his official conduct to be partial to some and oppressive to others, or unfit or incompetent to hold his office, or neglectful of its duties. (In re Langhlin, Sup. Ct., 1954, 265 S.W.2d at p. 808)

indicating that "partiality" alone is disqualifying, we can not understand how a Judge whose misconduct justifies removal (disqualification from trying any cases) is qualified, to try the particular case.

It was apparently to bolster his very narrow construction of the "interest" provisions of Article 5, Section 11 that the Plaintiff's attorney in oral argument contended that additional provisions of the constitution and law cited by us were not available to support a motion for disqualification, and that the correct action would be to take the matter before a Grand Jury; otherwise we were seeking to injure the Judge by "inuendo." The facts are adequate to require that the Judge recuse or disqualify himself, without benefit of "inuendo."

I have represented many plaintiffs in civil suits against defendants whom, I felt, had not only committed tort against the plaintiff, but had also violated the criminal law as well. I have never made it a practice to seek criminal indictments against the opposing party. This is the first time anyone has complained. I am only trying to get a Judge who is free of disqualifying involvement with the opposing litigant to try this one case in which I am employed. I do not consider it my duty to prosecute the plaintiff, the Judge, or any party involved, but as the plaintiff's attorney has stated, it may be my duty to call these matters to the attention of a proper authority, which I consider to be your commission. I do this to get the issue of my non-action completely out of the case, and to free myself from any further criticism from plaintiff's attorney about "inuendo." ✓

The record is being prepared by D. A. Van Dresser, Official Court Reporter for the 93rd District Court of Hidalgo County, Edinburg, Texas. Should your commission feel that the matter deserves their attention, they may order a copy of the record from the Court Reporter, and base any action they take on the evidence, free of any other influence.

Hon. Maurice Pipkin

-4-

May 1, 1973

Every effort (not inconsistent with the interest of my clients) has been made to avoid embarrassment to Judge Carrillo. At the outset, we had hard information of the transactions between the Plaintiff and Judge Carrillo. The original motion included only the allegation of acceptance of directorship in the bank from Plaintiff. It is no disgrace to be a director of a bank, but we submit for a judge to accept a directorship from a litigant in a pending case is disqualifying. Frankly, we thought the Judge would promptly recuse himself, and we would not be forced to probe into the remaining items. Instead, the judge declined, and Plaintiff Manges employed counsel to oppose the motion, making it necessary that we file supplemental motions raising the other issues here involved. I do not want to hear any more about inuendo. We did not make the facts; the Plaintiff Clinton Manges and Judge O. P. Carrillo made the facts.

There are mitigating circumstances as to Judge Carrillo. We submitted a motion that Judge Smith take judicial notice of the political machine that dominates the 3 counties of the 229th Judicial District and its effect on the judiciary which Judge Smith denied, and we submitted under a bill of exceptions evidence of the common knowledge of these facts. When Judge Carrillo's conduct is placed in its historical context, we must concede that the same maneuvers by knowledgeable attorneys to avoid trial in the District Court containing these three machine counties was not limited to the tenure of Judge Carrillo on the 229th. It goes back at least 20 years, and involves not only lawyers seeking to convict those prominent in the machine, but the attorneys in this very case during the tenure of Judge Carrillo's two predecessors on the bench.

Judge Carrillo has seen the members of the House of Representatives, the members of the Senate go along with the creating of a special judicial district to serve these machine counties and the Governor appoint a caretaker Judge. It is doubtful that there was a single legislator who voted to create this judicial district for these machine counties who did not know that it would result in a black out of a "government of laws," of "equal justice under law," and "equal protection of the law" in the three counties, by elimination of impartiality in the judiciary by combining executive, legislative and judicial power in the hands of the machine. What was a young man to think who had grown up in this political environment?

00079

Hon. Maurice Pipkin

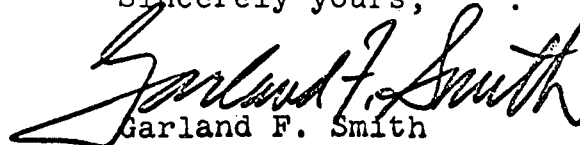
-5-

May 1, 1973

To observe the effect on the judiciary, we need only recall recent history of the District Judges who have presided in these three counties since 1950. First there was Judge Sam Reams, who displeased the machine, and was defeated for re-election in 1952, and moved from the Judicial District (then the 79th) under threats against his life. The succeeding judge was removed from office by the Supreme Court of Texas for misconduct, but with machine support, was re-elected, was sitting and appointed the receiver in this case, and continued to serve until the brother of Judge Carrillo, then a State Representative, introduced and caused the passage of H. B. 292, now Art. 199, Sub. 47, 79 and 229, giving the machine its dream judicial district composed only of Duval, Starr and Jim Hogg Counties, and changing the boundaries of the 49th and 79th Judicial Districts. It was common knowledge at that time that this Judicial District was being created for the benefit of Rep. Carrillo's brother, the now Judge O. P. Carrillo; and that in the interim a caretaker judge (who would not run for election) would be appointed by the Governor to serve until Judge Carrillo became eligible. It all worked out that way. Judge Luna, appointed by the Governor, did not run and O. P. Carrillo, no longer ineligible because of relation to his Legislator brother, ran without opposition, and was elected.

It is the system, and the willingness of Judge Carrillo to go along with it which is causing the trouble. We realize your commission can not keep the political machine from determining the person of the Judge. However, your commission is charged under Article V, Section 1a, of the Constitution and Article 5966a VATS with the responsibility of insuring fair and impartial judges throughout Texas. Duval, Starr and Jim Hogg Counties are in Texas. I believe the powers of your commission are adequate, if exhausted, to demonstrate that the ability of a machine to elect a judge, does not exclude the constitutional right of every litigant to a fair and impartial judge. A fair chance in the Appellate Courts is not a substitute for a fair trial at the district court level. ✓

Sincerely yours,


Garland F. Smith

GFS/ncl

Copies to:

Hon. O. P. Carrillo, Judge
229th District Court
San Diego, Texas 78384

00080

Hon. Maurice Pipkin

-6-

May 1, 1973

Hon. Magus F. Smith, Judge
93rd District Court
Edinburg, Texas 78539

Mr. William C. Church
Messrs. Kampmann, Church, Burns and Brennan
Milam Bldg.
San Antonio, Texas 78205

00081

218

APR 5 1973

SMITH, MCGILHERAN, MCKINNEY & YARBROUGH

JUD. QUAL. COMM.

GARLAND F. SMITH
E. H. MCGILHERAN
MICHAEL B. MCKINNEY
DAVID L. YARBROUGH

ATTORNEYS AT LAW
PROFESSIONAL BUILDING
FIFTH & MISSOURI AVENUE
WESLACO, TEXAS 78598

P. O. BOX 418
AREA CODE 512
WOODLAWN 8-2198

April 3, 1973

Mr. Maurice S. Pipkin
Texas Judicial Commission
120 Supreme Court Bldg.
Austin, Texas 78701

Re: No. 3953, Clinton Manges vs. M. A. Guerra, et al,
229th Judicial Court, Starr County, Texas

Dear Mr. Pipkin:

Mike McKinney related your request for a copy of the record in the above matter, if Judge Carrillo should testify at the hearing Friday, March 30, 1973. Judge Carrillo did testify and we have ordered a copy of the complete record on the Motion for Disqualification, which will include the proceedings of February 20 and March 30.

There are a number of significant items involved:

1. The Cadillac: Judge Carrillo's answer to request for admissions was that he traded to the Plaintiff a house and lot in Benavides for 10 shares of stock in the First State Bank and Trust Company of Rio Grande City, with the Plaintiff to pay the difference between the cost of a new cadillac and the Judge's trade in. The canceled check given by the Plaintiff to Riata Cadillac Company of San Antonio in the sum of \$6,915.55, marked in the stub "O. P. Carrillo 71 Cad" is in evidence. On March 30 Judge Carrillo testified that the bank's stock was worth \$743.00 per share (\$7,430.00 for his 10 shares) and with almost \$7,000.00 difference in automobiles would equal approximately \$14,600.00, the value of the property in Benavides. The deed was dated October 12, 1970 and recorded August 23, 1971 and covered Lot 9, Block 18 of the Original Townsite of Benavides which turned out to be a vacant lot on the tax records in the name of "Saenz" with taxes delinquent since 1939. The attorney for the Plaintiff then called the Judge back to the stand to testify that some mistake had been made. The hearing is in recess until this can be cleared up April 23.

2. Bank Stock: The Judge testified that the 10 shares had a value of \$743.00 per share, or \$7,430.00 for the 10 shares. The Banking Department required capital increase and it was decided to issue 6,000 shares additional

E-10

April 3, 1973

stock at \$100.00 per share to raise \$600,000.00. The \$743.00 per share was very close to the book value at that time, and to issue new shares at less than \$743.00 per share would have the affect of reducing the value of existing stock, or watering it down. The additional 6,000 shares at \$100.00 increased the total capital to \$1,343,000.00. With 7,000 shares outstanding the book value per share was reduced to \$191.85. The Judge did not exercise his option to buy the additional 60 shares he was entitled to by his holding of 10 shares, and he still owns only 10 shares. This means that he accepted a reduction in value of his 10 shares from \$7,430.00 to \$1,918.50. This does not make sense if they are engaged in any sort of arms length dealing.

3. Dealings with Property in Custodia Legis: M. Guerra and Son, the partnership in receivership, owned 404 shares of stock in the First State Bank of Rio Grande City at the time of the appointment of the Receiver on October 11, 1968, and all of the transactions concerning sale of the stock and transfers ultimately into Manges were performed thereafter without any order of the court approving such actions. It would seem that the Judge must enter a order confirming all of these transactions in order to clear title to his own 10 shares, aside from the other issues involved.

4. Grazing Lease: The Plaintiff testified at the February 20, hearing that he had permitted the Judge to graze his cattle on a tract understood to be between 1200-1400 acres for several months, (Judge estimated 3 months) "as a courtesy." The Judge testified on March 30 that he understood that he was to pay \$1.00 per acre per year for the lease for the 1200-1400 acres for the 3 month period; that thereafter when he took the larger lease for 5000-6000 acres he was to pay at the rate of \$5,000.00 per year for the agreed 3 year term of the oral lease.

Since the leased land comes out of receivership property, the judge must rule that he is qualified to validate his own lease, as otherwise the order permitting the transfer of this land to the Plaintiff is void. If the Judge cannot rule either way on the issue of his own qualifications without affecting the validity of his grazing lease, then he is too involved to sit in the case. The fact that the lease was oral leaves a lot to be desired: it can be described as what they want it to be from the hind site view; and it is unenforceable after the first year, leaving the Plaintiff free to terminate if the Judge does not rule correctly.

April 3, 1973

5. When you add to the above that the Plaintiff, as owner of the controlling interest in the First State Bank and Trust Company, has made the Receiver, the attorney for the Receiver, a special attorney for the Receiver, the Judge and a brother of the Judge, directors of the bank, you have one litigant conferring valuable favors on the Judge and every officer of the court connected with the decision making process in the receivership. Have they not become so obligated as a result of favors conferred by the Plaintiff and accepted by the Judge and officers of his court, that they are now encumbered with a conflict of interest inconsistent with impartial justice?

After looking over the way the litigant in this case has moved in on the court and its officers, and conferred favors on all of them, I was reminded of the remark of Daniel Webster reported in "The Devil and Daniel Webster." After the Devil had succeeded in stacking the jury against Webster with the 12 most disreputable men of the community, and they were seated in the jury box, Webster looked them over and said, "I note the strange absence of Benedict Arnold!"

It is not a professionally pleasant matter to file a motion to disqualify a judge under circumstances which raise such direct issues of judicial integrity of the judge and professional ethics of some of his officers. However, as attorney for clients who desire only a fair trial, before a fair judge, under fair trial procedures, my option is to sacrifice my client's interests, or pursue this motion. To pose this option, removes the option!

Sincerely yours,

SMITH, McILHERAN, McKINNEY & YARBROUGH

BY:

Garland F. Smith

GFS/ncl

PS- you can see from the attached brief that the Plaintiff's position is that bribery per se is not a disqualification. There are no appellate cases holding that it is!! I think the only reason is that never before has any litigant had the gall to make such a contention. Nevertheless, I would feel better if I saw a appellate decision so holding. I am

00084

RECEIVED

JUL 31 1973

SMITH, MCILHERAN, MCKINNEY & YARBROUGH

JUD. QUAL. COMM.
P. O. BOX 415
AREA CODE 812
WOODLAWN 8-2196

GARLAND F. SMITH
E. H. MCILHERAN
MICHAEL B. MCKINNEY
DAVID L. YARBROUGH

ATTORNEYS AT LAW
PROFESSIONAL BUILDING
FIFTH & MISSOURI AVENUE
WESLACO, TEXAS 78596

July 26, 1973

Hon. Maurice S. Pipkin
Executive Director
State Judicial Qualification Commission
P. O. Box 12265
Capitol Station
Austin, Texas 78711

Re: Situation in the 229th Judicial District
(Duval, Starr and Jim Hogg Counties)

Dear Mr. Pipkin:

As I stated when you were here early this week, we do not desire to file a formal complaint against O. P. Carrillo whose disqualification we brought about in Cause No. 3953, Manges vs. Guerra in the 229th District Court of Starr County. We had been employed by R. R. Guerra and M. A. Guerra to oppose the final accounting filed by the Receiver asking the Court to authorize sale to the Plaintiff for \$300,000.00 some 22,500 mineral acres which we considered worth not less than \$1,200,000.00 and probably not more than \$2,200,000.00, in which minerals R. R. and M. A. Guerra owned 36.32%. It was common knowledge in Starr County that the Judge was driving a Cadillac Automobile which was thought to have been a gift from the Plaintiff in the case. The Judge had also accepted directorship in the First State Bank and Trust Company of Rio Grande City at the hands of the Plaintiff, the Plaintiff having acquired controlling interest by a transfer to him by one of the partners of enough shares owned by M. Guerra and Son (the receivership estate) to give the Plaintiff control of the bank. That this transfer of bank stock was made while the stock was in custodia legis did not seem to bother the Plaintiff, Manges, the Receiver, Bates, nor the Judge. We felt directorship in the bank alone gave the Judge such an interest in the case that he was disqualified and our original motion included only this disqualifying item.

Our purpose in alleging only the membership on Board of Directors of the bank was that it was the least embarrassing item of disqualification which could be raised, and the easiest to prove, inasmuch as the banks financial

E-11

statements were readily available to show such fact. The Judge declined to disqualify himself and instead requested the presiding judge of the 5th District to appoint a judge to hear our motion and Judge Magus F. Smith was so appointed. The Plaintiff, Clinton Manges, then employed a San Antonio law firm to oppose the motion and this required that we take an adversary position as to the judge and put on our full evidence, including gathering evidence to support the other leads we had: (1) The transactions involving the Cadillac automobile; (2) Loans from the bank to the Judge; and (3) An investigation in Duval County of the transaction involving the alleged trade of a house and lot for the bank stock and the Cadillac automobile.

The Plaintiff, the Receiver, have forced our clients to do everything the hard way. It is very unpleasant for an attorney to be required, as a condition for securing for his client the very basic constitutional right of a fair trial before an impartial judge, to be forced to take an adversary position as to a Trial Judge and to fellow attorneys, as we have had to do in this case. Having been forced to go these lengths, probably creating animosity toward myself and the firm by the attorneys and judge involved, we are not inclined to back up one inch on the propriety of what we have done by any act which would tend to exonerate the Judge or attorneys involved under implications that we had acted harshly. Yet we do not desire to indulge in any vendetta with the Judge or attorneys involved. One thing I like about the legal profession is that most lawyers have won and lost enough to be good losers and modest in victory. I intend to live up to that tradition. We have neither won nor lost at this time, but only secured for our clients their constitutional right to a fair trial before an impartial judge.

Having made the above preliminary remarks I would point out that the situation in the 229th Judicial District did not originate with Judge O. P. Carrillo and will not be corrected by his removal. Judge Carrillo simply went along with a system which was in existence, and in this one case our clients decided to support an effort at impartial justice in one case in Starr County, Texas, as a last resort to preserve their property against the efforts of one of the litigants to use the court to take it away from them. I will, of course, cooperate with your commission and perform my full professional duty to help clear up this situation so that any citizen of Texas, although a minority one, residing in Duval, Starr or Jim Hogg County, can have his constitutional right to a fair trial before

an impartial judge. I do state that I completely revolt at the idea that a chance at reversal on appeal is a fair substitute for a fair trial at the District Court level. To long the bar and bench have tolerated this situation in Duval and Starr Counties. The bar, the bench and your commission do not have to put up with this type of conduct on the part of judges or lawyers.

I promised to give you a chronological development of this situation, which is as follows:

1. September 1, 1958: A limited partnership known as "M. Guerra and Son" was entered into by H. P. Guerra, H. P. Guerra, Jr., J. C. Guerra, M. A. Guerra, V. H. Guerra, R. R. Guerra and Virginia G. Jeffries, the last six partners being children of H. P. Guerra. All were general partners except Virginia G. Jeffries, who was a limited partner. H. P. Guerra died before these troubles came.

2. September 1958 to August 1968: The partnership had acquired some 72,000 acres of ranch lands, and 444 shares (out of 1,000 shares) of stock in the First State Bank and Trust Company of Rio Grande City, together with certain other assets not necessary to mention here.

3. August 30-31, 1968: J. C. Guerra and V. H. Guerra by separate deeds, joined by their wives, executed deeds conveying to Clinton Manges (the Plaintiff herein) a 1/6th interest in the ranch lands of M. Guerra and Son, but reserving their interest in an undivided one-half of the minerals under said land. These two conveyances were made without the two selling partners having offered the property to the remaining partners as required by the partnership contract.

4. October 11, 1968: This receiverships suit Cause No. 3953 was filed in the District Court of Starr County (then the 79th Judicial District presided over by Judge Woodrow Laughlin) styled Clinton Manges vs. M. A. Guerra, et al, the suit being for the appointment of a receiver.

5. October 28, 1968: M. A. Guerra and R. R. Guerra, two of the defendants in the suit filed by Manges for receivership, employed the law firm of Carter, Stiernberg, Skaggs & Koppel of Harlingen, Texas to represent them in Cause No. B-24674 in the 93rd District Court of Hidalgo County, Texas wherein said two defendants acting for the partnership, M. Guerra and Son, sued the Plaintiff in the

Hon. Maurice S. Pipkin

-4-

July 26, 1973

receivership suit, Clinton Manges for declaratory judgment to declare invalid the two deeds given by J. C. and V. H. Guerra on August 30 and 31, 1968.

6. November 18, 1968: Judge Woodrow Laughlin, as judge of the 79th District Court which then covered Starr County, granted the petition of Clinton Manges for receivership and placed all of the assets, both land and the 444 shares of bank stock, in receivership. These two defendants appealed, being represented in such appeal by attorney Jack Skaggs of Messrs. Carter, Stiernberg, Skaggs & Koppel, and while the case was on appeal the following transactions took place:

a. On March 31, 1969 J. C. Guerra and V. H. Guerra, propositing to act for the partnership of M. Guerra and Son, executed a deed to Clinton Manges propositing to convey to him the entire 72,000 acres of ranch lands.

b. May 22, 1969: The Court of Civil Appeals in Waco affirmed the judgment of Judge Laughlin in appointing a receiver.

c. June 10, 1969: H. P. Guerra, Jr., who had not participated in the appeal, nor in the suit filed in Hidalgo County, trying to act as a peace maker and induce the partners to make an agreed partition. However, H. P. Guerra, Jr., like M. A., R. R., and V. H. Guerra desired to retain their ranch lands (we include V. H. Guerra because it was the understanding of our clients that V. H. Guerra, who was in the ranching business and knew no other profession, had no intention of disposing of his ranch lands; that there was a secret understanding between V. H. Guerra and the Plaintiff, Manges, that through use of the deeds given by him they would force other partners to sell their interest, and in the end V. H. Guerra would receive his land back. This arrangement was carried out in the transactions recommended by the Receiver and approved by Judge Carrillo, which transactions have been now declared void because of the disqualification of the Judge). H. P. Guerra, Jr., therefore, employed Garland F. Smith of this firm to represent him and the decision was made to intervene in Cause No. B-24674 in Hidalgo County, Texas in an effort to have the deeds given by V. H. Guerra and J. C. Guerra as to 1/6th interest each, and the deed given by them propositing to act for M. Guerra and Son to the entire 72,000 acres, set aside, both on grounds of violation of the partnership agreement and on grounds of fraud against other partners; also to set aside sale of bank stock,

Hon. Maurice Pipkin

-5-

July 26, 1973

d. September 1, 1969: House Bill No. 292, introduced into the Legislature by Oscar Carrillo, brother of Judge O. P. Carrillo, creating the 229th Judicial District composed of Duval, Starr and Jim Hogg Counties became effective, taking Jim Hogg County from the 49th District Court in Laredo and taking Starr and Duval Counties from the 79th District Court. Because the brother of Judge Carrillo was the author of the bill creating the Court, the governor could not appoint O. P. Carrillo, but O. P. Carrillo could run for election at the next election.

e. October 1, 1969: The Supreme Court of Texas refused the application for writ of error filed by Mr. Skaggs for Carter, Stiernberg, Skaggs & Koppel on behalf of R. R. Guerra and M. A. Guerra, and a motion for rehearing was filed.

f. October 21, 1969: R. R. Guerra, M. A. Guerra and H. P. Guerra, Jr. filed in the United States District Court for the Southern District of Texas Civil Action 69-B-9 in re: M. Guerra and Son, presenting to the Federal Court a real estate arrangement in bankruptcy, under the terms of which all action in the receivership case, 3953 in Starr County, was stayed until final action by the Federal Court. In this action R. R. Guerra and M. A. Guerra were represented by Jack Skaggs of Carter, Stiernberg, Skaggs & Koppel and H. P. Guerra, Jr. was represented by Garland F. Smith of this firm; and all three applicants were represented by Sheinfeld, Maley and Kay of Houston, the latter being bankruptcy specialists.

g. February 27, 1970: R. R. Guerra, with the assistance of his attorney Jack Skaggs, made a settlement with the Plaintiff, Clinton Manges, under the terms of which R. R. Guerra was to withdraw from M. Guerra and Son his 18.66% interest in the ranch lands which was calculated to be 13,445.20 acres, and further that R. R. Guerra would preserve his percentage interest in the remaining one-half of the minerals owned by M. Guerra and Son, to which Manges made no claim under his deed of March 31, 1969. At this point in time, Mr. Skaggs advised M. A. Guerra that he could no longer represent him because he had made this settlement for R. R. Guerra and he felt that M. A. Guerra was so overdrawn in his accounts with the partnership, he would likely have nothing coming anyway. Mr. Skaggs had prior to this date accepted employment from the Plaintiff, Clinton Manges, to represent him in his effort to gain control of the Groos National Bank

in San Antonio, M. A. Guerra then, employed Garland F. Smith of this firm to represent him, whereupon this firm then filed in Federal Court an amended plan under the proceeding there on behalf of H. P. Guerra, Jr. and M. A. Guerra, Mr. Skaggs having dismissed as to R. R. Guerra.

h. December 1, 1970: H. P. Guerra, Jr. negotiated and signed directly with the Plaintiff, Clinton Manges, a settlement under the terms of which he was to withdraw from the partnership 72,068.34 acres of land and retain his interest in the one-half of the minerals reserved in the deed of March 31, 1969, with Manges to stand receivership costs and expenses in excess of \$50,000.00. H. P. Guerra, Jr., who is an attorney, then requested this firm on his behalf to dismiss the federal proceedings as for as he was concerned. This was done, leaving M. A. Guerra the only partner now in Federal Court contending for an arrangement in bankruptcy under chapter 12.

i. December 8, 1970: M. A. Guerra made a settlement with the Plaintiff Clinton Manges, under the terms of which he sold to Manges his interest in the M. A. Guerra and Son partnership for \$230,000.00 cash, with Manges to assume and pay any income tax asserted against him because of the profit in the sale of his interest, with Manges to assume M. A. Guerra's part of the internal debts to the partnership, and his part of external debts of the partnership, but to have M. A. Guerra's interest in assets of the partnership except for M. A. Guerra's interest in the undivided one-half of the minerals reserved in the deed of March 31, 1969, and town lots situated in Roma and Rio Grande City and certain land in Goliad County.

j. December 10, 1970: O. P. Carrillo, who had been elected judge of the 229th Judicial District in the general election of November 1970 received from the Plaintiff Clinton Manges qualifying stock in the First State Bank and Trust Company and was appointed to the Board of Directors thereof.

k. December 31, 1969-January 1, 1970: The term of R. F. Luna of San Diego, Texas as judge of the 229th Judicial District expired, he having been appointed by the Governor, and the elective term of O. P. Carrillo as Judge began. Judge Carrillo qualified promptly after January 1, 1971.

7. January 6, 1971: M. A. Guerra dismissed the proceeding in Federal Court for arrangement in bankruptcy

and promptly thereafter James S. Bates qualified as Receiver in this cause.

8. February 11, 1971: The Receiver filed an application to sell to the Plaintiff Clinton Manges certain lands (which we have calculated to be approximately 40,899 acres) free and clear of all liens and encumbrances of whatever nature, the consideration being that he had assumed certain debts of the corporation and was thereby the largest creditor of the corporation. The deed carrying this out was dated February 9, but the Receiver did not deliver the deed to Manges until the application was filed and approved by the court. The consideration was the debts assumed "and the further consideration of the sum heretofore agreed upon between the owners and Clinton Manges, as shall be shown in the report of sale and of the distribution to said Clinton Manges" etc. The application and deed which followed specifically reserved the undivided one-half of the minerals which is in controversy. The record is not clear as to the unpaid balance of cash owed by Manges to the partnership for the land conveyed to him, but apparently it is somewhere between \$94,477.51 and \$312,000.00. This is one of the transactions which is now void.

9. February 11 to August 20, 1971: While the testimony on the merits is not yet in, R. R. Guerra's understanding with Manges was that immediately upon the conveyance of the 40,899 acres to him, the Receiver would promptly convey to R. R. Guerra, H. P. Guerra, Jr. and V. H. Guerra the lands they were to receive under their settlements with Manges, the remaining undivided one-half of the minerals, town lots and Goliad County land partitioned between the original partners in M. Guerra and Son, R. R. Guerra's interest being 18.66% and M. A. Guerra's interest being 17.66% of said minerals, town lots and Goliad County land. But this was not done. Manges and the Receiver required that the other partners pay into the partnership the sums of money required to pay their pro-rata part of internal and external debts of the partnership before receiving deeds to their lands, and Manges made certain additional requirements of R. R. Guerra, one being that he concede an additional 500 acres of land. R. R. Guerra acceded to all of these demands and when the settlement was made on August 20, 1971 (this being the third settlement R. R. Guerra had made with Manges) he fully expected that now Manges would live up to his contract and the Receiver would convey the interest to the former partners for their reserved one-half of minerals, town lots and Goliad County land, and close the receivership.

1970

10. August 21/to November 17, 1972: During this period of time R. R. Guerra was represented by attorney Jack Skaggs and R. R. Guerra and Jack Skaggs repeatedly requested the Receiver to execute a deed to R. R. Guerra for his 18.66% interest in the reserved one-half of the minerals and town lots and Goliad County lands, all of which the Receiver refused to do. M. A. Guerra, in the interim, had not participated further in the affairs of the partnership, depending upon Manges who was under contract to represent his interest in the partnership affairs and to see that his 17.66% interest in reserved minerals, town lots and Goliad County land was ultimately conveyed to him by the Receiver. M. A. Guerra had no apprehension concerning this matter until the Receiver on November 17, 1972 filed his "accounting and report on condition of Receivership, application for sale of properties, and requests for dissolution of receivership and partnership of M. Guerra and Son", under the terms of which he proposed to sell to the Plaintiff, Clinton Manges the undivided one-half of the minerals, town lots and other assets of the partnership for \$300,000.00. This involved the sale of the minerals which constituted a consideration for the settlement as between R. R. Guerra and Manges and M. A. Guerra and Manges. Whereupon M. A. Guerra called upon Garland F. Smith of this firm to again intervene on his behalf to protect his 17.66% interest in the minerals, town lots and Goliad County land; and R. R. Guerra, concluded that because of attorney Skaggs' employment by Manges in the Groos National Bank matter, and Skaggs inability to induce Manges and the Receiver to carry out the settlement agreements made that he should employ other counsel and did arrange for the replacement of Mr. Skaggs in representing him in the matter by Garland F. Smith of this firm. Thereafter M. A. and R. R. Guerra were both represented by this firm.

October 12, 1970 to February 1, 1971:

11. During the interim between October 12, 1970 and February 1, 1971 the following transactions had taken place between Judge Carrillo and the Plaintiff, Clinton Manges:

a. December 10, 1970: The Plaintiff Manges, now in control of the First State Bank and Trust Company of Rio Grande City, sold Judge Carrillo 10 shares of stock in the bank and made him a director. (We note that the Judge was elected but not qualified and sitting as Judge at this time, but that the bank stock and Manges ability to appoint him to the board was derived from the stock of M. Guerra and Son conveyed to Manges while it was in custodia legis)

b. October 1970-February 11, 1971: During this period, and the date is uncertain, Manges allowed Judge Carrillo to graze his cattle on some 12-1500 acres of land "as a courtesy" but Judge Carrillo has testified that in spite of Manges understanding that it was "as a courtesy" that he intended to pay \$1.00 per acre per year for such lease, which was a reasonable price therefor.

c. At sometime during this period Manges and Judge Carrillo entered into a oral agreement under which Manges was to lease to him 5000-6000 acres of ranchlands for \$1.00 per acre per year, nothing down, but with payment to be made at the end of the three year term with cattle or money as Manges might elect; subject to the right of Manges to cancel the lease at any time. These lands, as well as those above, were out of the M. Guerra and Son ranchlands involved in the receivership.

d. January 1971, January 1972 and January 1973: Judge Carrillo was re-elected to the Board of Directors of the First State Bank and Trust Company of Rio Grande City.

e. January 29, 1971: Plaintiff, Clinton Manges, gave his check to Riato Cadillac Company in San Antonio for \$6,955.00, stubbed "for O. P. Carrillo 71 Cad". The testimony of Judge Carrillo was that he had traded the Plaintiff a house and lot in Benavides, Duval County for the 10 shares of stock in the bank, with Manges to pay the difference in price between a trade in automobile and a new Cadillac. Judge presented in support of this contention a deed from himself to Manges dated October 12, 1970, filed for record August 23, 1971 and recorded in Volume 164, page 371 of the Deed Records of Duval County, Texas. We checked this lot out and found that it was grown up in brush, was a vacant lot, and that taxes were not paid on it since 1939 and that title stood in the name of another party, not the Judge. When this evidence was produced, Judge Carrillo testified that a mistake had been made that he had intended to convey a lot across the driveway from his own home in Benavides, and that a correction deed would be given. A correction deed dated April 9, 1973 was given by O. P. Carrillo to Clinton Manges and wife, Helen Ruth Manges which was filed for record on April 9, 1973 and is recorded in volume 175, page 482 of the Deed Records of Duval County.

Manges had testified that the reason for this purchase was that he intended to move his family to Benavides and live in the house. Upon examination of the house we found that it was a two story house, in a bad state of repair, with the door open and that it had been standing vacant for many months. I believe the testimony was that it was vacant when the Judge claimed to have conveyed it on October 12, 1970, and this would indicate that it had been vacant almost two years. We checked the title to this property and found that it did not stand in the name of O. P. Carrillo on October 12, 1970 when the original transaction is supposed to have taken place, but in the name of Celia Carrillo Ramirez, the sister of the Judge who on April 9, 1973 conveyed the lot to O. P. Carrillo thereby making his deed of the same date to Clinton Manges good. It is noteworthy that the Receiver's attorney had testified that he had checked title to the property conveyed to Manges, representing Manges in the matter, and that the title was good and the taxes paid. This would not be true as to either of the lots, and the property which Carrillo and Manges claim was intended to be conveyed certainly does not fit the requirements of Mr. Manges' life style, nor does it standing vacant for two years fit his business practices of keeping his property working.

f. October 12, 1970- March 1973: During this period the First State Bank and Trust Company of which Manges held about 70% of the stock loaned Judge Carrillo \$306,000.00 secured by land and \$38,000.00 secured by a financial statement.

g. During this same period, and in addition to favors conferred on the Judge the Plaintiff had attempted to have the Receiver James S. Bates, appointed a director of the Groos National Bank of San Antonio, and was prevented from doing so because the U. S. Comptroller restrained the Plaintiff from exercising any rights of ownership of his stock because the Plaintiff had been convicted of a felony; and that the Plaintiff had succeeded in having the two attorneys for the Receiver (Dennis Hendricks and Randall Nye) appointed Directors of the First State Bank and Trust Company. The stock to give Manges controlling interest was acquired from the assets of the receivership estate while in custody of the Court, without consent of the Judge.

12. January 8, 1973: M. A. and R. R. Guerra answered the Receivers Report and filed their cross-actions.

13. January 9, 1973: R. R. and M. A. Guerra transmitted to the clerk their original "Motion for Disqualifi-

cation or Recusation" of Judge O. P. Carrillo, based on his accepting from one of the litigants, the Plaintiff, Manges, directorship in the First State Bank and Trust Company, Plaintiff's control of which bank required judicial approval of stock transferred to Manges while such stock was in custodia legis.

14. January 15, 1973: Hearing on motion of Disqualification held before Judge O. P. Carrillo, the presiding Judge of the 229th Judicial District. Hearing recessed to February 20, 1973.

15. January 25, 1973: Attorney Harvey L. Hardy of San Antonio for V. H. Guerra, and on January 29 answer for J. C. Guerra. Mr. Hardy did not, on behalf of his clients, oppose the disqualification motion.

16. January 23, 1973: Request for Admission submitted to Judge Carrillo under Rule 169. These were answered by Judge Carrillo admitting directorship in the bank; asserting the Cadillac had been acquired from Manges by trading a house and lot for the Cadillac and bank stock; and admitting a three year grazing lease from Manges, to be paid at the end of the term.

17. February 5, 1973: Judge Carrillo requested Judge Alamia to have another judge hear the Motion of Disqualification.

18. February 7, 1973: Hon. J. R. Alamia, Presiding Judge, Fifth Administrative Judicial District appointed Hon. Magus F. Smith, Judge of the 93rd District Court of Hidalgo County, Texas to hear the Motion to Disqualify.

19. February 20, 1973: Hearing held by Judge Magus F. Smith on Motion of Disqualification; recessed to March 30, 1973 to hear additional evidence.

20. February 21, 1973: Supplemental Motion of Disqualification filed, alleging the additional grounds of the grazing lease on a substantial acreage free, and the lease on 5000 acres with consideration to be paid at the end; and alleging also the house and lot trade for bank stock and the Cadillac.

21. March 1, 1973: Motion of R. R. and M. A. Guerra that Judge take judicial notice of certain proceedings, and that Starr and Duval counties were controlled by a political machine, and that such control did affect the judiciary. Judge Smith denied the latter request, but

presumably went along with taking judicial notice of the pleadings. A bill of exceptions was taken on his refusal to take notice of the political machine, and data submitted.

22. March 2, 1973: Answer of R. R. Guerra to cross-action of Receiver mailed. Receiver alleged R. R. Guerra had misled him because a bill assumed by Guerra to a Houston law firm was not yet paid.

23. March 30, 1973: At this hearing on the Motion the Second Supplemental Motion for Disqualification or Recusation was filed, alleging the rights to trial before a fair and impartial judge as contained in the 14th and 5th amendments to the U. S. Constitution, and their right to equal protection of the laws under the 14th Amendment. The hearing was recessed to April 23, 1973 to permit Judge Carrillo and Manges to explain circumstance that the deed given Manges was to a vacant lot, not owned by Judge Carrillo, rather than to a lot with two story house.

24. April 23, 1973: Hearing held on Motion of Disqualification; hearing closed and parties ordered to submit final briefs to Judge Magus F. Smith.

25. May 11, 1973: Receiver filed motion to reopen evidence on the receivership. Set for hearing May 18.

26. May 14, 1973: We transmitted by mail to the District Clerk the answer of R. R. and M. A. Guerra to the Motion of Receiver to reopen evidence on the qualification matter.

27. May 18, 1973: Motion to reopen heard and granted. At the close of evidence Judge Magus F. Smith ruled that Judge Carrillo was disqualified.

28. May 21, 1973: Judge Magus F. Smith signed the order holding Judge O. P. Carrillo disqualified as of February 1, 1973.

29. June 4, 1973: Judge Vernon D. Harville, who had been appointed by Hon. Joe R. Alamia, Presiding Judge of the 5th District to hear the case on the merits, ruled that all transactions after February 1, 1971 were void.

CONCLUSION

The above chronology of events will be supported by

Hon. Maurice S. Pipkin

-13-

July 26, 1973

the record in this case, which can be provided to you by Mr. D. A. VanDresser, Official Court Reporter, Hidalgo County Courthouse, Edinburg, Texas 78539. In addition to the record he has prepared for Judge Harville and the parties, you should also secure a xerox copy of the exhibit we placed in the record entitled "Data to Support Motion that Judge take Judicial Notice". Part of this data applied only to pleadings, which would otherwise be in the record, and as to which Judge Smith took judicial notice. However, a large part of it also applies to the part of the motion requesting Judge Smith to take judicial notice of the fact that Starr and Duval Counties are controlled by a political machine and that such machine does influence the judiciary. This reviews the judicial history since the tenure of Judge Sam Reams to the present time. I do not know what is required to prove common knowledge, but it does seem that newspaper reports, the conduct of lawyers with respect to the court, and the other types of information attached to such data would be adequate, together with the fact that it IS common knowledge. While this information was presented under a bill of exceptions, and is no longer necessary from our standpoint since our purpose to secure another judge has been accomplished, it may be of interest to your commission.

As we stated in the beginning, the evil is in the system, and that Judge Carrillo went along with the system. Our constitutions, State and Federal, seek to preserve freedom by separation of legislative, executive and judicial power. When a political machine gathers into its on hands legislative, executive and judicial power, then the protections of the constitutions are removed, and a tyranny exists in the local area where this condition prevails. The evils of such a situation are apparent from the facts in this case, and we invite your attention to the following:

1. The law firm of Carter, Stiernberg, Skaggs and Koppel is one of the oldest and most sophisticated law firms in the Rio Grande Valley and possibly in the State of Texas. The decision of this distinguished firm to file their case seeking to set aside the deeds given by J. C. and V. H. Guerra to Manges in Hidalgo County (rather than Starr County where the land transaction took place) on the rather weak ground that Manges was dealing with Vannie Cook in connection with the purchase, is

evidence of the considered opinion of this firm that they could not get a fair trial in Starr County. This was given as the reason for the Hidalgo County suit at the time we were employed by H. P. Guerra, and we intervened in the Hidalgo County suit for the same reason.

2. While Messrs. Carter, Stiernberg, Skaggs and Koppel were handling the appeal of the appointment of the Receiver by the Starr County Court on behalf of M. A. and R. R. Guerra, the petition for an arrangement in bankruptcy was filed in Federal Court for the same reason: to avoid trying the case in Starr County, Texas, where both firms realized their clients could not get a fair trial.

3. As the time for decision approached by the Appellate Courts, in each instance, rumors were circulated among our clients that the Plaintiff had "bought" judges on the Appellate benches. In each case there was circulated among our clients a day or two before each Appellate Court announced its decision reports as to what the decision would be, which reports came to our clients attributed to Manges. These reports proved to be accurate.

4. The obvious and correct procedure to have followed would have been for the offended partners in M. Guerra and Son to have met the petition for receivership head on and sought in the Starr County proceeding to have had the deeds set aside because of the reasons alleged in the suit which was filed in Hidalgo County. The decision not to go forward in this manner had been made by Carter, Stiernberg, Skaggs and Koppel before we intervened in the case on behalf of H. P. Guerra, Jr., and we felt that at that point it was best that we join in their effort to keep the case out of Starr County. Had it been our original decision, we may have decided to try the case in Starr County with the fore knowledge that it would be lost there, but with the hope that we could build a record which would entitle us to reversal on appeal. From the hindsight, we do not contend that we would have made this decision, but from both hindsight and foresight, it is obvious that litigants who are denied a fair trial at the District Court level are not receiving equal protection of the law simply because they may be able to reverse the decision on appeal. This is a poor substitute for justice in the first instance.

5. The affect of tolerating a corrupt situation in a Judicial District is only partially revealed by the fact that competent lawyers have sought through the case in Hidalgo County and federal proceeding to stay out of the Starr County Court, but the encumbrance of the dockets of the Courts by these efforts is an evil which justifies

the attention of your commission. It has delayed justice which is at least a partial denial of justice.

6. Within two weeks after Manges received his title to 40,899 acres in February 1971 at the price of \$54.30 per acre, he sold 22,000 acres thereof, reserving all minerals to Vannie Cook for \$2,500,000.00, being over \$100.00 per acre for surface only. Consequently those partners who agreed to sell Manges all or part of their land under the duress of the judicial situation in this district sacrificed \$45.30 per acre at least. Because M. A. Guerra's settlement was on a different basis, his exact loss cannot be calculated until his overdrafts in the partnership are known. However we believe it was in excess of \$500,000.00. R. R. Guerra in his settlement sacrificed about one-half of the value of his interest in the bank stock, since they were sold to Manges for book value when stock which participates in control normally sells for at least double book value. Bear in mind the parties in this case were represented by knowledgeable attorneys and the hazards of the judicial proceeding in Starr County were absolutely real in their minds.

7. Looking at the attorneys on the other side, the Receiver, a former State Senator, the attorney for the Receiver, a competent young lawyer, and the special attorney for the Receiver, who received appointments as directors of the bank at the hands of the Plaintiff, I submit, would not have accepted such appointments under these conditions except in the 229th Judicial District and because of the political situation in Starr and Duval Counties.

8. Nor can the judiciary escape the damage of this situation when litigants circulate rumors of having purchased judges, and including judges of the Appellate Courts, and after adversary proceedings as took place in this case turn up evidence of the sort of transactions here in involved between the judge and one of the litigants in this case.

RECOMMENDATION

While we are declining to file a formal complaint against Judge Carrillo, we do this because we do not consider it our responsibility, but the responsibility of your commission to do so. We have reported the facts to your commission and cited the record which contains proof thereof, which we conceive to be a performance of our professional duty in full both to the court and to the bar. I will further appear before your commission upon request as a witness to any facts which may be within my knowledge, but I consider it to be against the

Hon. Maurice S. Pipkin

-16-

July 26, 1973

interest of my client to go further than that. R. R. Guerra with his ranch must continue to live in Starr County subject to the persecution of the political machine involved with his only protection being the judge the machine places on the bench of the 229th District Court.

Our recommendation is that your commission review the record in this case, including the data submitted in connection with our bill of exceptions, and if in their objective judgment further action should be taken, then I think the record already makes out in sworn testimony as much as could be accomplished by further investigation. In my opinion it is adequate.

In the Laughlin case, the Supreme Court gratuitously stated that the removed judge could run for re-election. For that reason, it would be idle for your commission to remove the Judge and authorize him to run for re-election at the next election. Should removal be the conclusion your commission should arrive at, then it would be our suggestion that you simply recommend impeachment to the Legislature which, if successful, would bar the impeached official from holding further public office.

On the other hand, Judge Carrillo is a very likable man, who treated me with every courtesy, professional and otherwise, throughout these proceedings against him. It would be difficult to dislike Judge Carrillo, and I have no animosity toward him. The record in this case indicates that the same fear existed as to the two preceding judges; only with respect to Judge Carrillo, the evidence was developed. It is not Judge Carrillo so much as the machine which must be disciplined. When you see the Federal Government seeking income tax indictments against the operators of the machine because of unreported income derives from invasion of public funds, with no corresponding action by the local authorities to prosecute those who have pilfered public funds you can see a complete break down of law enforcement at the local level. It may be the only solution is for the Governor to declare martial law in the area and continue it for a period of ten, fifteen or twenty years until the power of the machine is broken. To say the least, the time has come for authorities at the state level to quit playing footsie with the operators of this machine.

Respectfully submitted,

Garland F. Smith
Garland F. Smith

Sub No. 6
D.N.C.

00100

NO. 3953

CLINTON MANGES	⋮	IN THE DISTRICT COURT
VS.	⋮	79TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	⋮	STARR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes CLINTON MANGES of San Antonio, Bexar County, Texas, Plaintiff, and complains of the following persons as Defendant:

- (1) M. A. GUERRA, of Starr County, Texas;
- (2) ESTATE OF H. P. GUERRA, Deceased; service may be had on said Estate by serving the Independent Executor, M. A. GUERRA, of Starr County, Texas;
- (3) ESTATE OF CATALINA N. GUERRA, Deceased; service may be had on said Estate by serving the Independent Executor, M. A. GUERRA, of Starr County, Texas;
- (4) H. P. GUERRA, JR. and wife, REBECA H. GUERRA, of Starr County, Texas;
- (5) M. GUERRA & SON, a Limited Partnership; service may be had on said Partnership by serving the General Partner, H. P. GUERRA, JR., of Starr County, Texas;
- (6) R. R. GUERRA and wife, MAXINE G. GUERRA, of Starr County, Texas;
- (7) J. C. GUERRA and wife, CORINNE W. GUERRA, of Starr County, Texas;
- (8) VIRGINIA G. JEFFERIES and husband, JAMES A. JEFFERIES, of Starr County, Texas;

E-13

M X-1

- (9) VIRGIL H. GUERRA and wife, LYDIA S. GUERRA, of Starr County, Texas; and,
- (10) SOUTHWESTERN LIFE INSURANCE COMPANY, having its principal office in Dallas, Dallas County, Texas.

1.

Plaintiff would represent to the Court that it has jurisdiction of all the parties since all of the Defendants are residents of Starr County, Texas, with the exception of the SOUTHWESTERN LIFE INSURANCE COMPANY, which has its principal office in Dallas County, Texas. Plaintiff is a resident of San Antonio, Bexar County, Texas.

2.

That on or about August, 1968, Plaintiff acquired from J. C. GUERRA and VIRGIL H. GUERRA an undivided 2/6ths interest in the lands and minerals of M. GUERRA & SON. This conveyance covered an undivided interest in substantially all of the real property owned by M. GUERRA & SON, with the exception of the town lots. Attached to this Petition is Exhibit "A" which sets forth the lands owned by said partnership, and said Exhibit "A" is made a part hereof for all purposes.

3.

The Plaintiff, together with the above Defendants, are the joint owners in fee simple of the lands and mineral interests owned by M. GUERRA & SON, a Partnership. The operation and the use of said lands have been conducted by M. GUERRA & SON as well as by several of the individual Defendants. Said operations of the lands have been for the individual use and benefit of the Defendants, and there are due certain monies and

rents for the use of these lands by various individual Defendants, and these Defendants have not accounted to Plaintiff or Plaintiff's predecessor-in-title, VIRGIL H. GUERRA and J. C. GUERRA, for any of such rents or revenues that might be due them as owners in said lands and minerals. The Plaintiff, as owner of an undivided 2/6ths interest in the properties of the M. GUERRA & SON Partnership, is entitled to an accounting for all of the rents and revenues due from the use and occupancy of said lands.

4.

At the present time, SOUTHWESTERN LIFE INSURANCE COMPANY has a mortgage on the Partnership lands, and there are certain other indebtedness due by the Partnership to the National Bank of Commerce of San Antonio, and others, which is past due and delinquent. This Plaintiff's interests in the Partnership lands and minerals are in jeopardy by reason of the delinquent status of the indebtedness.

5.

At the time of the filing of this suit, several of the Defendants have exclusive use and possession by virtue of locked gates to certain portions of this property. Said Defendants have refused Plaintiff his rights as a co-tenant to the joint possession of this property. In addition, the Defendants have been and are using portions of the lands for pasturing of cattle and other livestock without the payment of rents for the use therefor. This Plaintiff alleges that he is entitled to the fair market value for the use of the property by the Defendants in their cattle operations.

6.

This Plaintiff further alleges that there are various sums due on account of oil and gas leases, royalty interests, grazing leases and other revenues connected with the use and occupancy of the lands of the partnership, and that these funds are in danger of being wasted or lost. It is necessary that this Court impound the funds in order to protect this Plaintiff's interest in said revenues and monies and that a Receiver be appointed to operate the properties until the same can be partitioned.

7.

Plaintiff further alleges that by reason of the facts herein stated and in protection of the interest of Plaintiff in the property, a Receiver is necessary to take charge of the property and the books and records relating to the same and to make an accurate accounting and to operate said property under the direction of the Court, pending a final hearing for partition in this cause.

8.

Plaintiff further alleges that the lands and mineral interests involved herein are of an estimated value in excess of \$500,000.00 and that the surface of the land is capable of being partitioned.

WHEREFORE, Plaintiff prays that pending a final hearing in this cause and after due notice to the Defendants and a hearing thereon, that a Receiver be appointed to take charge of the lands and property described in Exhibit "A" for the purpose of continuing the operations of the same for the benefit of all of

the owners, and to take charge of all of the books, records, checks and invoices relating thereto for the purpose of requiring a just and legal accounting between the Limited Partnership of M. GUERRA & SON and the Defendants, individually, in order that any amounts due by reason of the use and occupancy of the property or arising out of rents and royalties of said property may be accurately determined and collected by said Receiver, and Plaintiff prays that all of the Defendants be cited to appear and answer and that this Plaintiff have judgment partitioning his undivided 2/6ths interest in the surface of the lands and that Plaintiff have judgment vesting in him, his undivided 2/6ths interest of the minerals under said land; and that Plaintiff be vested with all proprietary rights regarding the leasing or developing of the same.

Plaintiff would further pray that Defendants pay all costs of suit and for such other and further relief to which he may be justly entitled.

Respectfully submitted,

KAMPMANN, KAMPMANN, CHURCH & BURNS

By:


George A. Kampmann

612 Milam Building
San Antonio, Texas 78205
ATTORNEYS FOR PLAINTIFF,
CLINTON MANGES

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTIES OF STARR,
JIM HOGG AND GOLIAD

That for the consideration hereinafter recited, I, HORACE P. GUERRA (also known as H. P. Guerra), of Roma, Starr County, Texas, sometimes hereinafter referred to as "Grantor", owning and occupying as my homestead other lands in the City of Roma, Starr County, Texas, have granted, sold and conveyed, and by these presents do grant, sell and convey, to M. GUERRA & SON, a general partnership organized and operating under the laws of the State of Texas, of Starr County, Texas, those properties lying and being situated in Starr, Jim Hogg and Goliad Counties, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

The consideration for the execution and delivery of this deed is to establish of record the legal and beneficial ownership of the foregoing properties, which, in fact, are and have been properties of the said M. Guerra & Son, and this deed, therefore, does not evidence a present grant but, rather, the giving effect in writing of the true and actual ownership of the properties as it has existed heretofore.

This conveyance is made subject to the terms and provisions of any and all conveyances of record of oil, gas and other minerals or royalties of oil, gas and other minerals heretofore made by Grantor in and from any of the lands hereinabove described. It is also made subject to any and all valid and subsisting oil, gas and mineral leases of record but covers and includes any and all annual delay rentals and royalties payable thereunder.

The grant of this conveyance covers and includes any and all improvements of whatsoever character or nature now erected, built and existing upon the lands, tracts, shares and lots hereinabove described.

It is the intention of the Grantor to convey, and he does hereby convey, any and all right, title or interest, divided or undivided, to which he now holds title or claim in any of the hereinabove described lands and in and to any and all lands, tracts of land, shares, lots and mineral and royalty interests therein which he now holds or claims in the Counties of Starr and Jim Hogg, State of Texas, whether the same be specifically described and enumerated herein or not, SAVE AND EXCEPT (1) any and all lots in the City of Rio Grande City and in the City of Roma, both Starr County, Texas, not specifically described hereinabove, together with the improvements thereon, and (2) any right, title and interest in any lands or interests therein in such counties acquired by the Grantor through inheritance. The Grantor covenants and agrees with the said M. Guerra & Son, its successors and assigns, and he specifically binds himself hereby, to convey and to execute, acknowledge and deliver any additional deed or deeds covering any lands, tracts, shares, lots, mineral or royalty interests, or any of them, which have not been included specifically in this description through inadvertence when so requested by the said M. Guerra & Son, its successors or assigns, it being the intention of the Grantor to grant and convey hereby to M. Guerra & Son all of his right, title and interest in and to all of the lands and properties particularly described hereinabove and to such real property owned and claimed by him as aforesaid but not specifically described herein.

For the same consideration the Grantor hereby transfers, assigns and conveys unto the said M. Guerra & Son, its successors and assigns forever, all of his right, title and interest in and to all merchandise, furniture, fixtures, accounts receivable, cattle, horses, machinery and equipment, cotton gins and other personal property the title to which is in his name, SAVE AND EXCEPT therefrom his personal belongings, automobiles, household goods, furniture and fixtures and effects used and kept in and for the use of his home and household.

TO HAVE AND TO HOLD the above described properties, together with all and singular the rights and appurtenances thereunto in any wise belonging, unto the said M. Guerra & Son, its successors and assigns forever, and for the same consideration I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said properties unto the said M. Guerra & Son, its successors and assigns forever, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 13th day of December, 1956.

Horace P. Guerra
Horace P. Guerra

STATE OF TEXAS |
COUNTY OF STARR |

BEFORE ME, the undersigned authority, on this day personally appeared HORACE P. GUERRA, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 13th day of DECEMBER, 1956.



Cesar Salinas
Notary Public in and for Starr
County, Texas

No revenue stamps required -
Transfer of beneficial interest.

EXHIBIT "A" TO DEED FROM HORACE P. GUERRA
TO M. GUERRA & SON

✓ 4782.73 acres of land, being all of Porcion No. 55, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, said 4782.73 acres being the remainder of the acreage contained in said Porcion No. 55 after deducting 1000.87 acres taken by condemnation by the U.S. of America in Civil Action No. 575, in the U. S. District Court Brownsville Division, for the Southern District of Texas, said Porcion having contained 5783.60 acres of land prior to said taking; subject to the rights of the United States of America and the State of Texas in the portion of these 4782.73 acres which is traversed by the re-located U. S. Highway 83.

✓ 4394.47 acres of land, being all of Porcion No. 56, of the former Jurisdiction of Mier, Mexico, now situated, in Starr County, Texas, said 4394.47 acres being the remainder of the acreage contained in said Porcion No. 56 after deducting 1343.53 acres taken by condemnation by the U. S. of America in Civil Action No. 575, in the U. S. District Court, Brownsville Division, for the Southern District of Texas; said Porcion having contained 5737.00 acres of land prior to said taking; subject to the rights of the United States of America and the State of Texas, in the portion of these 4394.47 acres which is traversed by the re-located U. S. Highway 83.

✓ All of Share No. 19 containing 2418.00 acres of land, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, subject to the reservation contained in Deed from J. Elmer Thomas to M. Guerra & Son, dated December 19, 1934, recorded in Volume 81, at page 220 et seq. of the Deed Records of Starr County, Texas; subject to the rights of the United States of America and the State of Texas in the portion of these 2418.00 acres which is traversed by the re-located U. S. Highway 83.

✓ All of Share No. 18, containing 31.25 acres of land, of the partition of Porcion No. 59, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

✓ All of Share No. 17, containing 31.25 acres of land, of the partition of Porcion 59, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

✓ 52.72 acres of land out of Share No. 31, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas; the said 52.72 acres out of said Share 31 being the same described in Judgment of Exclusion entered in Civil Action No. 575, in the U. S. District Court Brownsville Division, for the Southern District of Texas, which judgment is recorded in the Deed Records of Starr County, Texas, in Vol. 208 at Page 532 et seq., to which judgment reference is here made for a better description of said 52.72 acres.

✓ All of Share No. 39-A, containing 52.44 acres of land, together with all accretion to said 52.44 acres, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

✓ All of Share No. 28, containing 77.84 acres of land, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

All of Share No. 39-B, containing 11.59 acres of land, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

✓ 137.56 acres of land, together with all accretion to said 137.56 acres, out of Share No. 37, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, the said 137.56 acres being the same described in Judgment of Exclusion entered in Civil Action No. 575, in the U. S. District Court Brownsville, Division for the Southern District of Texas, which said Judgment describes the same as Tract R 13 and the accretion thereto as Tract R 14, said Judgment being recorded in Vol. _____ at page _____ of the Deed Records of Starr County, Texas, to which reference is here made for a better description of said 137.56 acres and the accretion thereto.

yellow
 An undivided 26.96 acres of land in and out of Share No. 27, containing a total of 377.32 acres, of the partition of Porcion No. 57, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, save and except, grantor's undivided 3/14 interest in the following described two tracts of land, to-wit:

X A tract of land heretofore conveyed to Southwestern Bell Telephone Company, by deed dated May 21, 1955, recorded in Volume 203 at pages 382 to 384 of the Deed Records of Starr County, Texas, to which deed reference is here made for a more particular description of said tract of land.

X A tract of land containing 0.2125 acres of land, heretofore conveyed to M. A. Guerra and Rupaco T. Gonzalez, by deed dated March 28, 1956, recorded in Volume 218 at pages 72-74 of the Deed Records of Starr County, Texas, to which deed reference is here made for a more particular description of said tract.

(X) 4707.97 acres of land, being and forming a divided and segregated, part and portion of Porciones 57 and 58, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, said 4707.97 acres being and constituting the tract of land originally known as the "Rosendo Martinez Sandia Ranch Pasture", and being more particularly described in one tract by metes and bounds as follows:

BEGINNING at a point on the dividing line between Porciones 58 and 59, which point is distant S. 54° 15' W. 681 feet from the upper West corner of Share No. 36 Parcel "B" of Porcion 59, and which point is the original South corner of the Sandia Ranch Pasture;

THENCE following fence as follows: N. 33° 40' W. 299.0 feet; N. 24° 58' W. 1600.0 feet; N. 24° 27' W. 1211.0 feet to corner of fence for a corner of this survey;

THENCE following fence as follows: N. 06° 58' E. 1487.0 feet; N. 07° 27' E. 2500.0 feet; N. 07° 54' E. 1746.0 feet to corner of fence for the West corner of this survey;

THENCE following fence N. 54° 15' E. 24774.0 feet to corner of fence for the North corner of this survey;

THENCE following fence S. 64° 21' E. 3617.4 feet to corner of fence for a corner of this survey;

THENCE following fence as follows: S. 11° 02' W. 657.0 feet; S. 10° 45' W. 1122.0 feet to a bend in fence for a corner of this survey;

THENCE following fence as follows: S. 19° 04' E. 267 feet; S. 27° 26' E. 1261.0 feet; S. 30° 40' E. 384 feet; S. 32° 10' E. 951 feet to corner of fence for the East corner of this survey;

THENCE following S. 54° 15' W. 29338.0 feet to the Place of BEGINNING and containing 4707.97 acres of land, being 2283.05 acres out of Porcion 57 and 2424.92 acres out of Porcion 58.

subject to the rights of the United States of America and the State of Texas, in the portion of these 4707.97 acres which is traversed by the re-located U. S. Highway 83.

(X) 859.57 acres of land, lying in, being and forming a divided and segregated part and portion of Porcion 58, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, said 859.57 acres being described by metes and bounds as follows:

BEGINNING at corner of fence, on the dividing line between Porciones 58 and 59, being also the N. W. line of Share 38 Parcel "B" of said Porcion No. 59, and which corner of fence is the East corner of the pasture originally known as the "Rosendo Martinez Sandia Ranch Pasture" for the South corner of this survey;

THENCE following fence as follows: N. 32° 10' W. 951.0 feet; N. 30° 40' W. 384.0 feet; N. 27° 26' W. 1261.0 feet; N. 19° 04' W. 267.0 feet to a bend in fence for a corner of this survey;

THENCE following fence N. 10° 45' E. 1122.0 feet to a point under fence on the dividing line between Porciones 57 and 58 for the West corner of this survey;

THENCE N. 54° 15' W. with the dividing line of said Porciones 57 and 58, 9531.2 feet to a point under fence for the North corner of this survey;

THENCE following fence as follows: S. 34° 06' E. 2311.0 feet; S. 34° 04' E. 1300.0 feet to corner of fence, for the East corner of this survey;

THENCE S. 54° 20' W. 10593.0 feet to the Place of BEGINNING, and containing 859.77 acres of land out of Porcion No. 58.

(X) 272.69 acres of land, more or less, undivided, in and out of Porcion 58, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

The following described Shares of the partition of ~~Porcion 59~~, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit:

- ✓ Share No. 77, containing 368.76 acres;
- ✓ Share No. 78, containing 286.68 acres;
- ✓ Share No. 79, containing 16.36 acres;
- ✓ Share No. 25, containing 8.01 acres;
- ✓ Share No. 24, containing 8.01 acres;
- ✓ Share No. 23, containing 8.01 acres;
- ✓ Share No. 22, containing 16.02 acres;
- ✓ Share No. 21, containing 51.16 acres;
- ✓ Share No. 20, containing 4.71 acres;
- ✓ Share No. 18, containing 7.66 acres;
- ✓ Share No. 16, containing 78.52 acres;
- ✓ Share No. 15, containing 78.52 acres;
- ✓ Share No. 14, containing 16.36 acres;
- ✓ Share No. 13, containing 24.66 acres;
- ✓ Share No. 11, containing 16.58 acres;
- ✓ Share No. 9, containing 37.39 acres;

(X) 55.58 acres of land in and out of Share No. 36, Parcel A, of the partition of Porcion 59, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas, described by metes and bounds in that certain Quit Claim Deed, from Paula Chapa de Escamilla dated October 12, 1954, recorded in Volume 199 at pages 24 to 25, of the Deed Records of Starr County, Texas, to which deed and the record thereof reference is here made for a more particular description of said 55.58 acres, save and except 11.54 acres of land out of said 55.58 acres,

55.58
11.54
44.04

00111

being the same heretofore conveyed to Central Power and Light Company by deed dated October 21, 1954, recorded in Volume 199, at pages 1 to 3, of the Deed Records of Starr County, Texas, said 11.54 acres being described by metes and bounds in such deed to which reference is here made for a more particular description of the same, but conveying hereby and herein the oil and gas and other minerals in and under said 11.54 acres which were reserved to grantor in said deed.

263.41 acres of land, in and out of Share No. 36-Parcel B, of the partition of Porcion 59, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas, described by metes and bounds in Quit Claim Deed from Paula Chapa de Escamilla to H. P. Guerra, dated March 30, 1955, recorded in Volume 202 at pages 415-416 of the Deed Records of Starr County, Texas, to which deed and the record thereof reference is here made for a more particular description of said 263.41 acres.

(X) All of the right, title and interest in Porcion 60, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, acquired by grantor herein in and by that certain Warranty Deed dated July 16th, 1932, recorded in Volume 71 at page 196-199 of the Deed Records of Starr County, Texas, from Ercilia Canales de Martinez, and husband Cleofas Martinez Francisco Martinez Benavidez, Rafael Martinez, Juana Canales de Rodriguez, Cresencio Canales, Maria Reyes Canales de Arsamendi and Jose Martinez Benavidez.

yellow 60, An undivided 54.81 acres of land, more or less, in and out of Porcion 60, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

(X) 1247.93 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas, and of Section No. 591, described by metes and bounds as follows:

BEGINNING at the N.W. corner of Porcion No. 69 being an inner corner of this survey;

THENCE following fence S. 09* 42' W. 1600.0 feet to corner of fence for a corner of this survey;

THENCE following fence N. 62* 46' W. 4616.0 feet to corner of fence for a corner of this survey;

THENCE N. 54* 28' E. 15567.0 feet to a point under fence for a corner of this survey;

THENCE S. 84* 11' E. 1489.0 feet to corner of fence for a corner of this survey;

THENCE following fence as follows: S. 21* 39' E. 1000.0 feet; S. 21* 56' E. 1000.0 feet; S. 21* 34' E. 606.0 feet to corner of fence for the East corner of this survey;

THENCE following fence between the "Bartolina" and R. E. Margo Pastures as follows: S. 54* 23' W. 6200.0 feet; S. 54* 40' W. 1400.0 feet; S. 54* 11' W. 3300.0 feet; S. 54* 41' W. 1334.0 feet to corner of fence for a corner of this survey;

THENCE following fence N. 80* 08' W. 833.0 feet to the Place of BEGINNING, and containing 1247.93 acres of land, being about 1240.93 acres in Porcion No. 60, and about 7 acres in Section 951.

431.44 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former Jurisdiction of Mier,

Mexico, now in Starr County, Texas, described by metes and bounds as follows:

BEGINNING at a corner of fence, in Porcion No. 60, which corner is the North corner of Higinio Gonzalez Pasture (near the East end of Porcion 60) and which corner is an inner corner of this survey;

THENCE following fence, S. 53° W. 1750.0 feet to corner of fence West corner of this survey;

THENCE following fence, N. 39° 23' W. 913.0 feet to a point for the West corner of this survey;

THENCE N. 54° 28' E. 6664.1 feet to a point under fence, for the North corner of this survey;

THENCE following fence, as follows: S. 35° 49' E. 1469.4 feet; S. 35° 42' E. 1936.4 feet to a point for the East corner of this survey;

THENCE S. 53° 46' W. 5266.0 feet to a point under fence for the South corner of this survey;

THENCE N. 26° 37' W. 2616.0 feet to the Place of BEGINNING, and containing 431.44 acres of land out of Porcion No. 60.

103.35 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, described by metes and bounds as follows:

BEGINNING at a corner of fence, in Porcion No. 60, which corner is the West corner of Higinio Gonzalez Pasture (near the East end of Porcion 60) and which corner is the South corner of this survey;

THENCE following fence, N. 64° 11' W. 1489.0 feet to a point for the West corner of this survey;

THENCE N. 54° 28' E. 5265.2 feet to a point under fence, for the North corner of this survey;

THENCE S. 39° 23' E. 913.0 feet to a point under fence, for the East corner of this survey;

THENCE following fence, S. 53° 32' W. 4204.0 feet to the Place of BEGINNING, and containing 103.35 acres of land out of Porcion No. 60.

72.77 acres of land, more or less, undivided, in and out of Porcion 61, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

All of the right, title and interest in Porcion 61, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, acquired by grantor herein, in and by that certain Warranty Deed, dated July 16, 1932, recorded in Volume 71 at pages 196-199 of the Deed Records of Starr County, Texas, from Ercilia Canales de Martinez, and husband Cleofas Martinez, Francisco Martinez Benavidez, Rafael Martinez, Juana Canales de Rodriguez, Oresencio Canales, Maria Reyes Canales de Arsamendi and Jose Martinez Benavidez.

41.61 acres of land, more or less, undivided in and out of Porcion 62, of the former Jurisdiction of Mier, Mexico now in Starr County, Texas.

All of the right, title and interest in Porcion 62, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, acquired by grantor herein, in and by that certain Warranty Deed dated July 16, 1932

recorded in Volume 71, at pages 196-199, of the Deed Records of Starr County Texas, from Ercilia Canales de Martinez and husband Cleofas Martinez, Francisco Martinez Benavidez, Rafael Martinez, Juana Canales de Rodriguez, Cresencio Canales, Maria Reyes de Arsamendi and Jose Martinez Benavides.

20.12 acres, more or less, undivided; in and out of Porcion 64, of the former Jurisdiction of Mier, Mexico, now situated in Starr County.

All of the right, title and interest in Porcion 64, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, acquired by grantor herein in and by that certain Warranty Deed, dated July 16, 1932, recorded in Volume 71, at pages 196-199 of the Deed Records of Starr County Texas, from Ercilia Canales de Martinez et al.

36.20 acres, more or less, undivided, in and out of Porcion 65, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

All of the right, title and interest in Porcion 65 of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, acquired by grantor herein in and by that certain Warranty Deed, dated July 16, 1932, recorded in Volume 71, at pages 196-199, of the Deed Records of Starr County, Texas, from Ercilia Canales de Martinez et al.

Share 423, containing 2.00 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 424, containing 8.72 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 60, containing 22.76 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 61, containing 8.31 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 251, containing 2.90 acres of land of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 252, containing 2.88 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 264, containing 5.82 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 271, containing 8.30 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 483, containing 18.26 acres of land of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

Share 62, containing 34.08 acres of land, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

An undivided 1/14 interest in that certain 2.47 acres of land out of Share 2-D, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, said 2.47 acres having been acquired by deed dated December 12, 1939, recorded in Volume 113, at pages 214 to 215 of the Deed Records of Starr County, Texas, said 2.47 acres being described by metes and bounds in said deed to which reference is here made for a more particular description of the same.

yellow
An undivided 8.21 acres of land, in and out of Share 57-A, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

a
An undivided 3.03 acres of land, in and out of Share 57-B, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

c
An undivided 10.37 acres of land, in and out of Share 57-C, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

d
An undivided 20.26 acres of land, in and out of Share 57-E, of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas.

All of the land contained in each of the following numbered Shares of the partition of Porcion 66, of the former Jurisdiction of Mier, Mexico now situated in Starr County, Texas, to-wit:

Shares numbers, 67, 96, 97, 98, 130, 131, 134, 135, 136, 137, 140, 141, 142, 143, 144, 146, 147, 195, 201, 202, 203, 205, 206, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 222, 223, 228, 233, 235, 236, 238, 239, 240, 241, 242, 243, 244, 245, 246, 256, 259, 260, 261, 270, 276, 277, 278, 279, 280, 281, 284, 285, 286, 287, 288, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 310, 311, 312, 313, 314, 315, 316, 317, 319, 320, 321, 322, 323, 324, 325, 327, 329, 330, 331, 332, 333, 334, 335, 337, 338, 339, 340, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 378, 379, 380, 381, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 420, 435, 446, 447, 448, 455, 461, 517, 520, 521, and an undivided 5.145 acres in Share 207; reference is here made to the Final Decree of Partition of said Porcion 66, and the record thereof, for a more particular description of each of the above numbered shares.

All of the following described tracts of land being Shares Nos. 304-A, containing 30.57 acres; 304-B, containing 50.01 acres, and 304-C, containing 428.84 acres, of the partition of Porcion 67, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.

25
An undivided 3.19 acres, in and to Share 305-A, containing a total of 44.73 acres; an undivided 3.56 acres, in and out of Share 305-B, containing a total of 49.10 acres; an undivided 21.43 acres in and out of Share 305-C, containing a total of 300.00 acres and an undivided 42.79 acres in and out of Share 305-D, containing a total of 599 acres, each of said shares being of the partition of Porcion 67, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.

(X)
All of Grantor's right, title and interest in and to Share 306-A, Porcion 67, containing 55.41 acres being a one-half (1/2) interest in the oil and gas royalty in, under and that may be produced from said Share 306-A, and being the same interest retained and excepted by grantor in Deeds to Veterans' Land Board of Texas, dated September 20, 1955 and October 4, 1955, recorded

in Volume 206, page 499, and Volume 207, Page 212, Deed Records of Starr County, Texas, to which deeds reference is here made for a better description thereof.

All of Share 306-B, containing 70.36 acres of the partition of Porcion 67, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.

All of the following numbered Shares of the partition of Porcion 67, of the former Jurisdiction of Mier, Mexico now situated in Starr County, Texas, to-wit:

- Share 312, containing 9.65 acres; ✓
- Share 313, containing 16.09 acres; ✓
- Share 315, containing 16.08 acres; ✓
- Share 323, containing 27.90 acres; ✓
- Share 343, containing 9.65 acres; ✓
- Share 345, containing 20.70 acres; ✓
- Share 346, containing 6.90 acres; ✓
- Share 350, containing 24.13 acres; ✓
- Share 358, containing 13.73 acres; ✓
- Share 359, containing 93.23 acres; ✓
- Share 360, containing 90.35 acres; ✓
- Share 361, containing 89.31 acres; ✓
- Share 362, containing 101.43 acres; ✓
- Share 363, containing 95.64 acres; ✓
- Share 364, containing 94.53 acres; ✓
- Share 365, containing 91.50 acres; ✓
- Share 366, containing 101.68 acres; ✓
- Share 368, containing 42.09 acres; ✓
- Share 369, containing 9.19 acres; ✓
- X Share 370, containing 9.19 acres; ✓
- X Share 372, containing 39.82 acres; ✓
- X Share 374, containing 38.61 acres; ✓
- X Share 380, containing 34.75 acres; ✓
- X Share 384, containing 16.07 acres; ✓
- /// Share 391, containing 16.08 acres; ✓
- X Share 393, containing 13.79 acres; ✓
- /// Share 403, containing 6.04 acres; ✓
- /// Share 405, containing 18.38 acres; ✓
- /// Share 406, containing 9.65 acres; ✓
- /// Share 410, containing 18.39 acres; ✓
- /// Share 416, containing 5.16 acres; ✓
- X Share 419, containing 9.65 acres; ✓
- X Share 427, containing 6.89 acres; ✓
- /// Share 428, containing 10.39 acres; ✓
- /// Share 430, containing 6.89 acres; ✓
- X Share 442, containing 51.47 acres; ✓

Sh. 379 left out, supposed to be 27.41 Ac.

Sh. 408. Listed to crown

411 ✓

412 ✓

414 ✓

subject to the royalty and mineral reservations provided for and made in deeds to grantor conveying Shares 368, 374, 384, 393, 419, 427, 403, 405, 406, 410, 416, 391, 428 and 430.

All of the following numbered Shares of the partition of Porcion 68, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit:

- Share 89, containing 10.01 acres; ✓
- Share 90, containing 161.14 acres; ✓
- Share 97, containing 108.97 acres; ✓
- Share 98, containing 40.06 acres; ✓
- Share 99, containing 17.79 acres; ✓
- Share 100, containing 19.56 acres; ✓
- Share 101, containing 16.05 acres; ✓

what about Sh. 91

Share 103, containing 38.13 acres;
 Share 104, containing 38.13 acres;
 Share 107, containing 38.13 acres;
 subject to the royalty or mineral reservations provided for and made in deeds to
 grantor herein conveying Shares 103, 104, and 107.

g. Handwritten
 An undivided 142.18 acres in and out of Share 92, of the partition of
 Porcion 68, of the former jurisdiction of Mier, now in Starr County, Texas. ✓

Handwritten
 50.00 acres of land, lying in and being a divided and segregated
 part and portion of Share 92 of the partition of Porcion 68, of the former
 Jurisdiction of Mier, Mexico, now in Starr County, Texas, which 50.00 acres
 are described by metes and bounds in that certain deed from Miguel Rodriguez
 et al to M. Guerra & Son, dated October 2, 1928, recorded in Volume 61, page
 266 of the Deed Records of Starr County, Texas. ✓

MR
 Share 158, containing 10.69 acres, of the partition of Porcion 68,
 of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas,
 subject to the royalty reservation provided for and made in deed conveying
 said Share to grantor herein. ✓

Share 91, containing 181.80 acres, of the partition of Porcion 68,
 of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas. ✓

All of Grantor's undivided right, title and interest in and to the
 following described Shares of the partition of Porcion 69, of the former
 Jurisdiction of Mier, Mexico now in Starr County, Texas, to-wit:

13.49 acres, undivided, in Share 180-A; ✓
 23.36 acres, undivided, in Share 180-B; ✓
 0.33 acres, undivided, in Share 180-C; ✓


All of the following numbered Shares of the partition of Porcion 69,
 of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, to-wit:

Share 183, containing 44.18 acres; ✓
 Share 184, containing 111.13 acres; ✓
 - Share 185, containing 26.31 acres; ✓
 - Share 186, containing 14.72 acres; ✓
 - Share 188, containing 33.14 acres; ✓
 - Share 189, containing 33.15 acres; ✓
 - Share 190, containing 28.41 acres; ✓
 Share 199, containing 33.14 acres; ✓
 Share 208, containing 81.54 acres; ✓
 Share 209, containing 63.34 acres; ✓
 Share 220, containing 75.83 acres; ✓
 Share 222, containing 86.98 acres; ✓
 Share 223, containing 86.88 acres; ✓
 Share 224, containing 100.62 acres; ✓
 Share 215, containing 44.18 acres; ✓
 Share 218, containing 44.18 acres; ✓
 Share 225, containing 56.81 acres; ✓
 Share 252, containing 19.88 acres; ✓
 Share 254, containing 33.13 acres; ✓
 Share 214, containing 74.45 acres; ✓
 Share 217, containing 81.02 acres; ✓
 Share 226, containing 79.93 acres; ✓
 Share 219, containing 102.56 acres; ✓
 Share 221, containing 88.77 acres; ✓

1/32 Share 216, containing 44.18 acres; ✓
 1/32 Share 228, containing 113.01 acres; ✓
 1/32 Share 230, containing 22.09 acres; ✓
 1/32 Share 241, containing 11.80 acres; ✓
 1/32 Share 247, containing 26.50 acres; ✓
 1/32 Share 269, containing 44.18 acres; ✓
 1/32 Share 276, containing 11.04 acres; ✓
 1/32 Share 253, containing 132.54 acres; ✓
 Share 270, containing 132.54 acres;


subject to the royalty or mineral reservations provided for and made in the deeds conveying Shares 214, 217, 226, 216, 228, 230, 241, 247, 253, 269 and 276 to grantor herein.

Share 8-D, containing 226.81 acres, of the partition of Porcion 70, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.



 An undivided 26.76 acres, in and out of Share 42, of the partition of Porcion 71, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.


Share 8-B, containing 87.25 acres, of the partition of Porcion 71, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, save and except the 20.003 acres described in Grantor's deed to Starr Development Company, recorded in Volume 170, at pages 294 to 295, of the Deed Records of Starr County, Texas.

Share 8-C, containing 11.45 acres, of the Partition of Porcion 71, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, said Share 8-C lying partly in Porcion 71 and partly in Porcion 72.


 All of Grantor's, right, title and interest, being a one-thirty-second (1/32) interest in and to all of the oil, gas and other minerals in and under Share 24, containing 118.96 acres, of the partition of Porcion 71, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, said interest being the same acquired by Grantor from Rafael Jones et ux Luisa B. Jones by deed recorded in Volume 54, at page 316, of the Deed Records of Starr County, Texas.

Share 49, containing 10.71 acres, of the partition of Porcion 72, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, subject to the royalty reservation provided for and made in deed conveying said Share to Grantor herein.


 All of Grantor's right, title and interest in and to the oil, gas and other minerals in and under Share 8-A, containing 19.36 acres, of the partition of Porcion 72, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.


 An undivided 6 acres, more or less, in and out of Porcion 73, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.

All of Grantor's undivided right, title and interest in and to Porcion 75, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, being an undivided 20 acres of land, more or less, but intending to convey and hereby conveying all of Grantor's undivided interest in said Porcion 75.

All of Grantor's undivided right, title and interest in and to Porcion

00118

76, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, being an undivided 120 acres of land, more or less, but intending to convey and hereby conveying all of Grantor's undivided interest in said Porcion 76.

(X) 17.27 acres of land, lying in and forming a divided part and segregated portion of Porcion 76, of the former Jurisdiction of Mier, Mexico now in Starr County, Texas, said 17.27 acres being the same acquired by deed recorded in Vol. 61, page 305 of the Deed Records of Starr County, Texas, and described by metes and bounds in such deed, to which reference is here made for a particular description of the same; together with all improvements thereon situated.

(X) All of Grantor's undivided right, title and interest in and to Porcion 77, of the former Jurisdiction of Mier, Mexico, Now in Starr County, Texas, being an undivided 53 acres, more or less, but intending to convey, and hereby conveying all of Grantor's undivided interest in said Porcion 77.

(X) All of Grantor's undivided right, title and interest in and to Porcion 78, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, being an undivided 234 acres of land, more or less, but intending to convey and hereby conveying all of Grantor's undivided interest in said Porcion 78.

Share 138, containing 12.334 acres of the partition of Porcion 70, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas.

y An undivided 3.669 acres of land, in and out Share 41-A, of the partition of Porcion 70, of the former jurisdiction of Camargo, Mexico, now situated in Starr County, Texas.

y An undivided 25.56 acres of land in and out of Share 41-B, of the partition of Porcion 70, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas.

y An undivided 0.50 acres in and out of Share 87, of the partition of Porcion 71, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas.

y An undivided 33.00 acres of land more or less in and out of Porcion 78, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, being all of the right, title and interest which Grantor acquired in said Porcion 78, by deed from J. J. Guerra.

y An undivided .882 acres of land out of that certain 6.17 acres tract lying in and being and forming a divided and segregated part and portion of Porcion 78, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, which 6.17 acre tract is described by metes and bounds as follows:

Beginning at the N. W. corner of Tract No. 10, the S. W. Corner of Tract No. 17, of the partition of the West one-half of Porcion 79, for the N. E. Corner of this tract; thence N. 59 deg. 11 min. W. a distance of 274.1 feet to a point for the N. W. corner hereof; thence S. 4 deg. 51 min. W. a distance of 1431.0 feet to a point for a corner hereof. Thence N. 79 deg. 40 min. E. 254.0 feet to a point in the West line of Porcion 79, for the S.E. corner, hereof; thence N. along the West line of said Porcion 79, a distance of 1431 feet more or less to the place of beginning.

All of the following numbered and described Tracts of land, of the partition of the West one-half of Porcion 79, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, to-wit:

Tract 35 of Share 20, containing 11.83 acres;
 Tract 26 of Share 11, containing 14.18 acres;
 ✓ Tract 70 of Share 11, containing 105.80 acres;
 ✓ Tract 56, of Share 43, containing 12.00 acres;
 Tract 20 of Share 5, containing 12.02 acres;
 Tract 3, containing 11.06 acres;
 Tract 58, of Share 45 containing 12.00 acres;

All of Shares 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37, consisting of Tracts 36-A to 36-R inclusive, containing an aggregate total of 21.81 acres, of the partition of the West one-half of Porcion 79, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas.

All of Grantor's right title and interest acquired by deed from J. J. Guerra, dated December 4, 1949, recorded in Volume 163, at page 113 to 116, of the Deed Records of Starr County, Texas, in and to Tract 10, of the partition of West one-half of Porcion 79, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, being an undivided 1.39 acres out of the 19.47 acres remaining vested in the heirs of Virginia C. Guerra Deceased in said Tract 10.

All of Grantor's right, title and interest in and to Tract 17, containing 12.26 acres of the partition of the West one-half of Porcion 79, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, being an undivided 0.78 acres in and out of said Tract 17.

All of Grantor's right, title and interest in and to Tract 75, containing 267.74 acres, of the partition of the West one-half of Porcion 79, of the former, Jurisdiction of Camargo, Mexico, now in Starr County, Texas, being an undivided 18.27 acres in and out of said Tract 75.

All of Grantor's right, title and interest in and to Share 33, containing 31.56 acres, of the partition of Porcion 83, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, acquired by grantor by deed from J. J. Guerra dated December 4, 1949, being an undivided 2.25 acres in and out of said Share 33.

Share 154, containing 27.64 acres, of the partition of Porcion 93, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas.

Share 30, containing 28.88 acres, and Share 31, containing 43.32 acres, of the partition of Porcion 104, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas.

An undivided 1.35 acres of land, in and out of Share 92, of the partition of Porcion 104, of the former Jurisdiction of Camargo, Mexico, now in Starr County, Texas, the said 1.35 acres being the interest acquired by Grantor by deed from J. J. Guerra, dated December 4, 1949, recorded in Volume 163, at pages 113 to 116 of the Deed Records of Starr County, Texas.

5324.0 acres of land, being in and out of Share No. 1, of the partition of Porcions 109, 110 and 111, of the former Jurisdiction of Camargo, Mexico,

now in Starr County, Texas, said Share No. 1 having been awarded and set aside to Jesus Guerra Gonzalez in said partition by deed recorded in Book "F", at pages 58 to 63, of the Deed Records of Starr County, Texas, the said 5324.0 acres being all of Share No. 1, except 1176 acres conveyed by Jesus Guerra Gonzalez to Francisco Guerra y Guerra.

All of the following described Surveys, situated in Starr County, Texas, to-wit:

Survey No. 1, Abstract No. 156, containing 631.84 acres;
 Survey No. 44, Abstract No. 985, containing 634.42 acres;
 Survey No. 93, Abstract No. 38, containing 640 acres;
 Survey No. 95, Abstract No. 16, containing 640 acres;
 Survey No. 96, Abstract No. 777, containing 640 acres;
 Survey No. 148, Abstract No. 903, containing 623.29 acres;
 Survey No. 196, Abstract No. 902, containing 526.92 acres;
 Survey No. 250, Abstract No. 1005, containing 640 acres;
 Survey No. 251, Abstract No. 249, containing 640 acres;
 Survey No. 253, Abstract No. 248, containing 640 acres;
 Survey No. 254, Abstract No. 787, containing 637.78 acres;
 Survey No. 255, Abstract No. 247, containing 640 acres;
 Survey No. 361, Abstract No. 353, containing 640 acres;
 Survey No. 362, Abstract No. 835, containing 667.00 acres;
 Survey No. 367, Abstract No. 393, containing 609.00 acres;
 Survey No. 46, Abstract No. 987, containing 640 acres;
 Survey No. 48, Abstract No. 988, containing 630.10 acres;
 Survey No. 296, Abstract No. 834, containing 425.64 acres;
 Survey No. 298, Abstract No. 724, containing 559.80 acres;
 Survey No. 297, Abstract No. 231, containing 562.92;
 Survey No. 764, Abstract No. 1004, containing 623.4 acres;
 Survey No. 562, Abstract No. 989, containing 640.00 acres;

584.40 acres, in and out of Survey No. 924, Abstract No. 689, situated in Starr County, Texas, said 584.40 acres being the West 584.40 acres of said Survey No. 924.

All of Tract No. 1, of Survey No. 901, Abstract No. 887, containing 174.71 acres, described by metes and bounds in deed from A. G. Jones to H. P. Guerra, recorded in Volume 127, pages 80 to 83, of the Deed Records of Starr County, Texas;

All of Tract No. 2, of Survey No. 901, Abstract No. 887, containing 116.55 acres, described by metes and bounds in deed from A. G. Jones to H. P. Guerra, recorded in Volume 127, pages 80 to 83, of the Deed Records of Starr County, Texas.

All of Share No. 1, containing 213.33 acres, in and out of Survey No. 295, being Share No. 1 of the partition of said Survey No. 295, according to the Deed of Partition of such Survey recorded in Volume 217, at pages 55 to 69 of the Deed Records of Starr County, Texas, to which deed reference is here made for a more particular description of said Share No. 1.

80.00 acres of land, being Share No. 1, of the partition of Survey No. 299, Abstract No. 264, according to the partition of such Survey, recorded in Volume 70, at pages 215 to 217, of the Deed Records of Starr County Texas, to which deed reference is here made for a more particular description of said Share No. 1.

35.83 acres, in and out of Survey No. 635, Abstract No. 428, being that portion of said Survey No. 635 which lies and is situated in Starr County, Texas.

All of Share No. 3, containing 71.6 acres, of the partition of Survey

No. 301, Abstract 332, according to the partition of said Survey, deed recorded in Volume 63, at pages 2 to 8, of the Deed Records of Starr County, Texas, to which reference is made for a more particular description of said Share No. 1.

All of Grantor's right, title and interest, acquired by deed from J. J. Guerra, dated December 4, 1949, recorded in Volume 163, at pages 113 to 116 and by deed from J. J. Guerra dated August 4, 1944, recorded in Volume 134 at pages 456-457 of the Deed Records of Starr County, Texas, in and to the following described Surveys, situated in Starr County, Texas, to-wit:

An undivided 182.66 acres in and out of Survey No. 561, Abstract No. 390,

An undivided 6.33 acres, in and out of Survey No. 341, Abstract 398, being part of Share 1, of the partition of Surveys 10, 11, 23, 24, 85 and 341, as per Decree of Partition entered on the 10th day of September, 1925, in Cause No. 975½ in the District Court of Starr County, Texas,

An undivided 6.80 acres, in and out of Survey No. 24, Abstract 499, being a part of Share 4, of the partition of Surveys 10, 11, 23, 24, 85 and 341, as per Decree of Partition entered on the 10th day of September 1925, in Cause No. 975½ in the District Court of Starr County, Texas.

An undivided 43.07 acres, in and out of Survey No. 763, Abstract No. 498;

An undivided 91.43 acres, in and out of Survey No. 50, Abstract No. 566;

An undivided 89.89 acres, in and out of Survey No. 51, Abstract No. 10;

An undivided 91.50 acres, in and out of Survey No. 143, Abstract No. 29;

An undivided 90.9 acres, in and out of Survey No. 145 Abstract No. 30;

An undivided 86.14 acres, in and out of Survey No. 151, Abstract No. 62;

An undivided 91.50 acres, in and out of Survey No. 171, Abstract No. 201;

An undivided 91.80 acres, in and out of Survey No. 197, Abstract No. 217;

An undivided 91.50 acres, in and out of Survey No. 199, Abstract No. 212;

An undivided 88.90 acres, in and out of Survey No. 207, Abstract No. 205;

An undivided 91.50 acres, in and out of Survey No. 205, Abstract No. 219;

An undivided 91.03 acres, in and out of Survey No. 249, Abstract No. 244;

An undivided 91.50 acres, in and out of Survey No. 257, Abstract No. 230;

An undivided 83.81 acres, in and out of Survey No. 23, being a part of Share No. 6, of the partition of Surveys Nos. 10, 11, 23, 24, 85 and 341, as per Partition Decree in Cause 975½ in the District Court of Starr County, Texas;

An undivided 91.60 acres, in and out of Survey No. 283, Abstract No. 239;

An undivided 46.15 acres, in and out of Survey No. 8, Abstract No. 313;

An undivided 27.98 acres, in and out of Survey No. 10, being a part of Share No. 4 of the partition of Surveys 10, 11, 23, 24, 85 and 341, as per Decree of Partition entered on the 10th day of September, 1925, in Cause No. 975½, in the District Court of Starr County, Texas;

An undivided 27.85 acres, in and out of Survey No. 11, being a part of Share No. 4, of the partition of Surveys 10, 11, 23, 24, 85 and 341, as per Decree of Partition in Cause 975½ in the District Court of Starr County, Texas;

An undivided 91.50 acres, in and out of Survey No. 561, Abstract No. 390;

An undivided 91.50 acres in and out of Survey No. 891, Abstract No. 652;

An undivided 11.20 acres, in and out of Survey No. 897, Abstract No. 663;

An undivided 25.25 acres, in and out of Survey No. 914, Abstract No. 670;

An undivided 60.60 acres, in and out of Survey No. 915 Abstract No. 688;

An undivided 14.05 acres in and out of Share No. 2, of the partition of Survey No. 301, recorded in Volume 63, at pages 2 to 8, of the Deed Records of Starr County, Texas.

An undivided 90.55 acres, in and out of Survey No. 45, Abstract No. 7;

An undivided 91.50 acres, in and out of Survey No. 43, Abstract No. 6;

An undivided 91.23 acres, in and out of Survey No. 47, Abstract No. 8;

An undivided 88.95 acres, in and out of Survey No. 49, Abstract No. 9;

All of Share 14-B, containing 3127.3 acres, of the E. J. Foster Survey of Las Cuevitas Grant, Abstract 101, situated in Starr County, Texas, according to the map of said E. J. Foster Survey on file or of record in the office of the County Clerk of Starr County, Texas.

All of Share M-10, containing 316.9 acres, of the E. J. Foster Survey of Las Cuevitas Grant, Abstract 135, situated in Jim Hogg County, Texas, according to the map of said E. J. Foster Survey on file or of record in the office of the County Clerk of Jim Hogg County, Texas.

All of Share H-14A, containing 6110.9 acres, of the E. J. Foster Survey of Las Cuevitas Grant, Abstract 135, situated in Jim Hogg County, Texas, according to the map of said E. J. Foster Survey on file or of record in the office of the County Clerk of Jim Hogg County, Texas.

All of Share No. D-16A, containing 742.88 acres of the E. J. Foster Survey of Las Cuevitas Grant, Abstract 135, situated in Jim Hogg County, Texas,

according to the map of said E. J. Foster Survey on file or of record in the office of the County Clerk of Jim Hogg County, Texas.

All of Share N-7, containing 89 acres of the E. J. Foster Survey of Las Cuevitas Grant, Abstract 135, situated in Jim Hogg County, Texas, according to the map of said E. J. Foster Survey on file or of record in the office of the County Clerk of Jim Hogg County, Texas.

All of Share 1, containing 2352.5 acres, of the partition of La Sacatona Grant, originally granted to Antonio Gonzalez by the State of Tamaulipas, Mexico, now in Starr County, Texas, said partition being of record in Volume "52" at pages 301 to 310 of the Deed Records of Starr County, Texas, to which deed reference is made for a more particular description of said Share No. 1.

1936.6 acres of land, more or less, situated in the Counties of Starr and Jim Hogg, State of Texas, and being a part of El Javali Grant, originally granted to Juan Flores of the State of Tamaulipas, Mexico, now in Starr County, Texas, the said 1936.6 acres being described by metes and bounds in deed from San Antonio Loan and Trust Company to Grantor recorded in Volume 154, at page 513 et seq., of the Deed Records of Starr County, Texas and in Volume 30, at pages 407 to 410 of the Deed Records of Jim Hogg County, Texas, to which records reference is made for a more particular description of said 1936.6 acres.

263.0 acres of land, in and out of El Javali Grant, Abstract No. 107, situated in Jim Hogg County, Texas, the said 263.0 acres being the portion of El Javali Grant acquired by Grantor by Sheriff's Deed dated April 3, 1917, recorded in Volume 2, at pages 269 to 273, of the Deed Records of Starr County, Texas and also of record in Jim Hogg County, Texas; it being the intention of Grantor to convey all of his rights, title and interest in El Javali Grant in Jim Hogg County, Texas, in the event his said interest should be found to be in excess of the 263.0 acres here described.

*Las Comitas 18410
Sur 907
299*

1695.20 acres in and out of Share 2A, of Las Comitas Grant, Andrea Garcia Original Grantee, Abstract 90, situated in Starr County, Texas, being all of Grantor's right, title and interest in and to said Share No. 2.

1827.8 acres of land, in Survey No. 123, Abstract No. 43, situated in Jim Hogg County, Texas, being the total number of acres acquired in said Survey 123, by Grantor by deeds from Neville Hinnant and Maria Luisa Hinnant, recorded in Volume 26, at pages 599 to 600 and in Volume 25, at pages 70 to 71, of the Deed Records of Jim Hogg County, Texas.

*216.71
601.15
76.2
475.35
390.71
866.21*

All of Survey No. 635, Abstract No. 192, containing 645.88 acres, situated, in Starr and Jim Hogg Counties, 610.85 acres lying in Jim Hogg and 35.83 acres lying in Starr County.

All of Survey No. 639, Abstract No. 343, containing 1248.3 acres, situated in Jim Hogg County, Texas.

224.71 acres of land in and out of Survey No. 1 Abstract No. 251, situated in Jim Hogg County, Texas, being all of Grantor's right, title and interest in said Survey.

All of Survey No. 641, Abstract No. 1325, containing 74.2 acres, situated in Jim Hogg County, Texas.

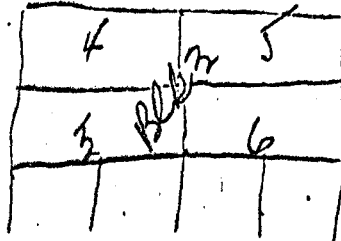
All of Survey No. 124, Abstract No. 363, containing 216.71 acres, situated in Jim Hogg County, Texas.

All of Grantor's undivided right, title and interest acquired by deed from J. J. Guerra, dated December 4, 1949, recorded in Volume 163, at pages 113 to 116, of the Deed Records of Starr County, Texas, in and to the following described lots of the original townsite of Roma, Starr County, Texas, according to the map or plat of said town on file or of record in the Office of the County Clerk of Starr County, Texas, which lots are now in and a part of the incorporated City of Roma, to-wit:

Lots 7 and 8, in Block 45;
 Lots 1 and 3 in Block 1;
 Lot 8 in Block 64;
 Lot 6 in Block 28;
 Lot 3 in Block 8;
 Lots 7 and 8 in Block 12;
 Lot 8 in Block 11;
 Lots 1 and 2 in Block 2;

All of the following described Lots of the original townsite of Roma, Starr County, Texas, according to the map or plat of said town of Roma on file or of record in the office of the County Clerk of Starr County, Texas, now lying in and being in the incorporation City of Roma, to-wit:

Lot 4 of Block 3;
 Lot 5 of Block 7;
 Lots 1 and 2 of Block 10;
 Lots 1, 2 and 3 Block 12;
 Lot 5, of Block 22;
 Lots 1, 2, 3, 4, 5, 6, of Block 45;
 Lots 1, 2, 3, 4, 5, 6, 7 and 8, of Block 45;
 Lots 5, 6, 7 and 8, of Block 59;
 Lot 4, of Block 60;
 Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 64;
 Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 65;
 Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 66;
 Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 67;
 5/6 interest in Lots 7 and 8, of Block 45;



All of the following described Lots of the Roma Addition No. 1, to the town of Roma, Starr County, Texas, as per the Map or Plat of said Addition on file or of record in the office of the County Clerk of Starr County, Texas, now being in and a part of the incorporated City of Roma, to-wit:

Lots 1, 2, 3, 4, 5, 6 and 7 of Block 4;
 Lots 1, 2, 3, 4, 5 and 6 of Block 2;
 Lots 1, 2 and 3, of Block 5.

All of Grantor's undivided right, title and interest, acquired by deed from J. J. Guerra, dated December 4, 1949, recorded in Volume 163, at pages 113 to 116, of the Deed Records of Starr County, Texas, in and to Lots 11 and 12, of Block 47, of the town of Rio Grande City, Starr County, Texas, as per the maps or plats of said town now on file or of record in the office of the County Clerk of Starr County, Texas.

All of the South one-half of Block 49, consisting of Lots 1, 2, 3, 4, 5 and 6, of the town of Rio Grande City, Texas, as per the map or plats of said Block now on file or of record in the office of the County Clerk of Starr County, Texas.

All of Lot 19 of Block 5 of the Los Olmos Addition to the town of Rio Grande City, Starr County, Texas, as per map or plat of said addition recorded in the office of the County Clerk of Starr County, Texas.

Part of Lot 1 of Block 42 and
Part of Lot 2 of Block 43 of the Wils Subdivision of the
town or City of Berclair, Goliad County, Texas, according
to the map or plat of said town and said subdivision.

All of the following described Surveys situated in Starr County,
Texas, to-wit:

Survey No. 183, Abstract No. 334, containing 640 acres;

Survey No. 3, Abstract No. 73, Certificate No. 29/106, containing
270 acres;

Survey No. 19, Abstract No. 188, containing 160 acres;

Survey No. 20, Abstract No. 72, containing 320 acres; subject
to the royalty reservations contained in deed to Grantor conveying each of
said Surveys, dated April 30, 1955, recorded in Volume 203 at pages 47 to 48
of the Deed Records of Starr County, Texas.

THE STATE OF TEXAS }
COUNTY OF JIM HOGG }

I, RAQUEL VELA-VASQUEZ, Clerk of the County Court of said County do hereby certify that
the foregoing instrument of writing dated on the.....13th.....day of.....
December.....A. D., 1956, with its certificate of authentication was filed
for record in my office on the.....2nd.....day of.....January.....A. D., 1957....
at.....O'clock.....A. M. and duly recorded this.....8th.....day of.....JANUARY.....
A. D., 1957.....at.....9:45o'clock.....A. M., in Volume.....37.....Page # 393n413.....of the
Deed.....Records of said county.

Witness my hand and the seal of the County Court of said County at office in Hebbronville,
Texas, the day and year last above written.

By.....Deputy

RAQUEL VELA-VASQUEZ
Clerk, County Court
Jim Hogg County, Texas

00126

NO.

CLINTON MANGES	X	IN THE DISTRICT COURT
	:	
VS.	X	79TH JUDICIAL DISTRICT
	:	
M. A. GUERRA, ET AL	X	STARR COUNTY, TEXAS

F I A T

On this the 9th day of October, 1968, there being presented to the Court the above and foregoing Petition and Application for the appointment of a Receiver, it is ORDERED that notice issue to the Defendants to appear before this Court in the Courthouse in Rio Grande City, Starr County, Texas, at 10 o'clock A.M. on the 17th day of October, 1968, to show cause why a Receiver should not be appointed as prayed for in this Petition, and the Clerk will cause a true copy of this Petition and this Order to be issued and served with a copy of the notices.

C. W. Laughlin
 C. WOODROW LAUGHLIN,
 Judge of the 79th
 Judicial District Court

Filed 11th day of Oct.
 A.D. 1968 at 9:35

B. Schaper
 District Clerk

Starr County, Texas
 By [Signature] Deputy

Vol 10 page 365


00127

THE STATE OF TEXAS, }
COUNTY OF STARR, } I, BLAS CHAPA, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is a true
and correct copy of the original PLAINTIFF'S ORIGINAL PETITION

_____ now on file in said court.

Witness my Hand and the Seal of said Court, at office in RIO GRANDE CITY,
TEXAS, this 12th day of April 1973.

BLAS CHAPA
DISTRICT CLERK, STARR COUNTY, TEXAS


By _____ Deputy
CORINA G. GONZALES

00128

NO. 3953

CLINTON MANGES)	IN THE DISTRICT COURT
	(
VS.)	79TH JUDICIAL DISTRICT
	(
M. A. GUERRA, ET AL)	STARR COUNTY, TEXAS

ORDER ON PLEAS IN ABATEMENT
AND MOTION FOR CONTINUANCE
AND ORDER APPOINTING RECEIVER

On the 12th day of November, 1968, at the time and place set therefor, came on to be heard in the above entitled and numbered cause the pleas in abatement of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, and the motion for continuance by Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, and the applications of the Plaintiff, CLINTON MANGES, and the Defendant and Cross-Plaintiff, VIRGIL H. GUERRA, for the appointment of a Receiver herein, and came the Plaintiff, CLINTON MANGES, in person and by his attorneys of record, and announced ready for such hearings, and came the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, by and through their attorneys of record, and announced ready for said hearings, and came the Defendants, J. C. GUERRA and wife, CORRINE W. GUERRA, and VIRGINIA G. JEFFERIES and husband, JAMES A. JEFFERIES, by and through their attorney of record, and announced ready for such hearings, and came the Defendant and Cross-Plaintiff, VIRGIL H. GUERRA, and wife, LYDIA S. GUERRA, by and through their attorney of record, and announced ready for such hearings, and came the Defendant, H. P. GUERRA, JR., in person but without his attorney of record, H. P. GUERRA, III, and announced ready for said hearings.

E-14

710 X-1

Thereupon, there having been presented to the Court the matter of the plea in abatement of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, to Plaintiff's petition, and the Court, having heard and considered the evidence offered by all parties in behalf of such motion and in contest thereto, and having heard the argument of counsel, is of the opinion and finds that such motion should be overruled and denied.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the plea in abatement of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, to Plaintiff's petition be and the same is hereby in all things overruled and denied.

Thereupon, there having been presented to the Court the motion of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, for a continuance by reason of the filing herein of the original answer and cross-action of the Defendant, VIRGIL H. GUERRA, and wife, LYDIA S. GUERRA, and the Court, having heard and considered the evidence offered in behalf of such motion for continuance and the argument of counsel, is of the opinion and finds that such motion for continuance should be denied.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the motion for continuance of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, be and the same is hereby in all things denied.

Thereupon, there having been presented to the Court the matter of the plea in abatement of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, to the cross-action by the

Defendant, VIRGIL H. GUERRA, and the Court, having heard and considered the evidence offered by all parties in behalf of such motion and in contest thereto, and having heard the argument of counsel, is of the opinion and finds that such plea in abatement should be overruled and denied.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the plea in abatement of the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, to the cross-action of the Defendant, VIRGIL H. GUERRA, be and the same is hereby in all things overruled and denied.

Thereupon, the Court proceeded to a hearing on the applications of both the Plaintiff, CLINTON MANGES--for the appointment of a Receiver of the lands involved herein and owned by the Defendant, M. GUERRA & SON, a partnership--and the Defendant and Cross-Plaintiff, VIRGIL H. GUERRA, for the appointment of a Receiver for the partnership of said M. GUERRA & SON, and the Court, having read and considered the pleadings of all parties, and having heard and considered all evidence offered for and against such applications, and after hearing and considering all argument of counsel, is of the opinion and finds that the appointment of a Receiver for the partnership of M. GUERRA & SON is necessary in that the interests of the Plaintiff, CLINTON MANGES, in the lands owned by such partnership is in imminent danger of being lost or damaged by reason of the large amount of outstanding, current obligations of the partnership, and that further, such Receiver is necessary to protect the interests of all of the partners in said M. GUERRA & SON in that said current debts and obligations of the

partnership are greatly in excess of any cash on hand or income, and that such debts and obligations cannot be paid in the ordinary course of business, and further, that from the evidence introduced at such hearing, the partners of M. GUERRA & SON are unable to jointly agree on business matters or to take any action on such financial problems, and further, that the withdrawals of funds from partnership banking accounts in the past have greatly exceeded the profits or income of the business, and which is endangering the financial condition of such partnership, and that the Plaintiff, CLINTON MANGES, and the Defendant and Cross-Plaintiff, VIRGIL H. GUERRA, have no other adequate remedies at law or in equity, and unless a Receiver is appointed herein, the Plaintiff, CLINTON MANGES, and the Cross-Plaintiff, VIRGIL H. GUERRA, and the other partners in the partnership of M. GUERRA & SON, will suffer irreparable loss or damage, and that the applications of both the Plaintiff, CLINTON MANGES, and the Cross-Plaintiff, VIRGIL H. GUERRA, for the appointment of a Receiver should be granted by the Court.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that JAMES S. BATES, a duly qualified person, be and he is hereby appointed a Receiver over all the property and assets of M. GUERRA & SON, a partnership, including but not limited to all of the ranch lands, improvements and equipment located thereon and owned by or under the control of M. GUERRA & SON, to-wit: Rancho Nuevo, Rancho Las Islas, Anacua and Puerto ranch areas, Rancho San Roman, Rancho El Bravo, and Rancho El Junco, all being located in Starr and Jim Hogg Counties, Texas;

town lots and buildings; livestock owned by said partnership and located on said ranches; including but not limited to all bank accounts of the partnership; all bank stock owned by the partnership; all apartments or rent properties owned by the partnership in the Cities of Roma and Rio Grande City, Texas; and all personal property, including trucks, automobiles, farm and ranching equipment owned by said partnership.

It is further ORDERED, ADJUDGED and DECREED by the Court that said JAMES S. BATES, Receiver, is authorized and empowered to take physical possession of said properties, including but not limited to real estate, improvements, livestock and other personal property located thereon, and to manage and operate all of the property belonging to M. GUERRA & SON; said Receiver is authorized and empowered to employ necessary ranch-hands, farm labor and other employees to continue the efficient operation of the ranches, farm lands and other properties of M. GUERRA & SON; said Receiver is authorized and empowered to pay all bills and expenses in connection with his management and control of the assets of M. GUERRA & SON; said Receiver is further authorized and empowered to create a bank account in the name of such Receivership, to close any existing accounts; said Receiver is authorized and empowered to collect and deposit all rents and revenues from hunting, grazing and pasturage leases and bonus rents and royalties from mineral leases and any other revenues due said partnership; said Receiver is authorized and empowered to make necessary repairs and improvements to the property of M. GUERRA & SON, to pay such taxes as may be due and to insure the improvements on said property in a responsible insurance company.

It is further ORDERED, ADJUDGED and DECREED by the Court that said Receiver is authorized and empowered to retain the services of an accountant or accountants or other professional persons in the management of the assets of M. GUERRA & SON; said Receiver is authorized and empowered to collect into his possession or into his control the books and records of M. GUERRA & SON and to set up and maintain books of accounts for this Receivership, and he is authorized and empowered to pay such persons the usual and customary fees for such professional services.

It is further ORDERED that the said JAMES S. BATES, before entering on his duties as Receiver, shall take oath as required by law and execute a bond with good and sufficient sureties in the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars, payable to the Defendants, M. A. GUERRA, R. R. GUERRA, J. C. GUERRA, CORRINE W. GUERRA, VIRGINIA G. JEFFERIES and JAMES A. JEFFERIES, and in the wording and conditioned as required by law to be approved by this Court, and that this appointment shall take effect on the filing of such oath and on the approval by this Court of said bond, and that within thirty (30) days from qualifying, according to this order, said Receiver shall return and file with the Court a true and correct inventory of all the property and assets received by him as such Receiver, and that this appointment shall be in effect until further ordered by the Court.

To which order of the Court, the Defendants, M. GUERRA & SON, M. A. GUERRA and R. R. GUERRA, duly excepted, and in open Court gave notice of appeal to the Court of Civil Appeals for the

00134

Fourth Supreme Judicial District of Texas, sitting at San Antonio, and gave further notice that they desired to supersede the order of appointment of such Receiver, pending an appeal, and the Court, having considered the amount of such supersedeas bond, fixes the same at the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars, and in the wording and conditioned as required by law to be approved by this Court, at which time said order appointing the Receiver herein shall be stayed, pending the appeal hereof.

SIGNED at Falfurnes, Texas, this the 18th day of November, 1968.

C. W. Laughlin
C. W. LAUGHLIN, *Deputy*

Filed 19th day of Nov
A.D. 1968 at 9:30

12 o'clock P.M.
B. C. Chappell
District Clerk

Starr County, Texas
By B. C. Chappell Deputy

vol "R" Pages 29 to 35

00135

THE STATE OF TEXAS,
COUNTY OF STARR, }

I, BLAS CHAPA, Clerk of the District

Court of Starr County, Texas do hereby certify that the foregoing is a true

and correct copy of the original ORDER ON PLEAS IN ABATEMENT AND MOTION FOR

CONTINUANCE AND ORDER APPOINTING RECEIVER now on file in said court.

Witness my Hand and the Seal of said Court, at office in RIO GRANDE CITY,

TEXAS, this 12th day of April 19 23.

BLAS CHAPA
DISTRICT CLERK, STARR COUNTY, TEXAS


Deputy
CORINA G. GONZALES

CLINTON MANGES I IN THE 79TH DISTRICT COURT
VS. I OF
M. A. GUERRA, ET AL I STARR COUNTY, TEXAS

SUPERSEDEAS BOND

WHEREAS, in a certain proceeding in the 79th District Court of Starr County, Texas, which involved a hearing on an application for the appointment of a receiver by the Plaintiff, Clinton Manges, and the Cross-Plaintiff, Virgil H. Guerra, in the above entitled and numbered cause, the Court entered an Order granting such applications for the appointment of a receiver and entered an Order appointing James S. Bates as a Receiver, and,

WHEREAS, M. Guerra and Son, a limited partnership, and M. A. Guerra, R. R. Guerra, and H. P. Guerra, Jr., Defendants, desire to appeal to the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, sitting at San Antonio, Texas, and,

WHEREAS, the said Defendants desire to supersede the Interlocutory Order of the said District Court appointing said Receiver, and,

WHEREAS, the amount of said Supersedeas Bond to be given has been fixed by the Judge of said District Court at Fifty Thousand Dollars (\$50,000.00);

NOW THEREFORE, M. A. Guerra and Son, a limited partnership and M. A. Guerra, R. R. Guerra and H. P. Guerra, Jr., as principals, and J. A. Garza and A. V. Margo as Sureties, acknowledge ourselves bound to pay to Clinton Manges and Virgil H. Guerra, the sum of Fifty Thousand Dollars (\$50,000.00), conditioned that M. A. Guerra and Son, a limited partnership, and

E-15

M. A. Guerra, R. R. Guerra, and H. P. Guerra, Jr., as Principals,
and J. A. Garza and A. V. Margo as
Sureties, will pay to Clinton Manges, and Virgil H. Guerra any
loss or damage occasioned by the delay on Appeal, or suffered
by the said Clinton Manges and Virgil H. Guerra, or either of
them, by the delay on Appeal.

WITNESSETH our hands this 20th day of November, 1968.

M. GUERRA & SON, A PARTNERSHIP
PRINCIPALS

BY: M. A. Guerra
M. A. GUERRA, a General Partner

and
BY: R. R. Guerra
R. R. GUERRA, a General Partner

and
BY: H. P. Guerra, Jr.
H. P. Guerra, Jr., a General
Partner

M. A. Guerra
M. A. Guerra, Individually as
Principal, and as Surety for
said Partnership

R. R. Guerra
R. R. Guerra, Individually as
Principal, and as Surety for
said Partnership

H. P. Guerra, Jr.
H. P. Guerra, Jr., Individually
as Principal, and as Surety for
said Partnership

J. A. Garza
Surety

A. V. Margo
Surety

Bles Chapar
CLERK OF THE DISTRICT COURT OF
STARR COUNTY, TEXAS

By Silvia Gonzalez Deputy

Filed 20th day of Nov.
A.D. 1968 at 9:25

Bles Chapar
District Clerk

Starr County, Texas
Silvia Gonzalez Deputy

(THE STATE OF TEXAS,)
COUNTY OF STARR,) I, BJAS CHAPA, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is a true
and correct copy of the original SUPERSEDES BOND

_____ now on file in said court.
Witness my Hand and the Seal of said Court, at office in RIO GRANDE CITY,
TEXAS, this 12th day of April 19 73.

BJAS CHAPA
DISTRICT CLERK, STARR COUNTY, TEXAS

By  Deputy
CORINA G. GONZALES

NO. 3953

CLINTON MANGES	Y	IN THE DISTRICT COURT
VS.	:	229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	Y	OF STARR COUNTY, TEXAS

ORDER AUTHORIZING AND DIRECTING RECEIVER TO
SELL REAL ESTATE AND CONVEY PARTNERSHIP LANDS IN
PARTIAL DISTRIBUTION AND DISSOLUTION OF M. GUERRA & SON

On this day came on to be heard in the above styled and numbered proceeding, the application of JAMES S. BATES, Receiver herein, for authority to sell a portion of the real estate owned by M. GUERRA & SON, in his hands as Receiver, and for authority to convey a portion of such real estate in partial distribution and dissolution of the partnership of M. GUERRA & SON, and it appearing to the Court and the Court finds that J. C. GUERRA, VIRGIL H. GUERRA, R. R. GUERRA and H. P. GUERRA, JR., the remaining general partners of M. GUERRA & SON have joined in such application and therefore, have been fully advised as to such actions and it further appearing to the Court from the evidence that the allegations and statements made in the Receiver's application to sell and to convey partnership lands, are true and correct and that it would be in the best interests of such Receivership that the real estate as described in the Receiver's application be sold and conveyed, free and clear of all liens and encumbrances and that therefore, such application should be granted.

It is therefore ORDERED, ADJUDGED and DECREED that JAMES S. BATES, Receiver, be and he is hereby authorized and directed to sell at private sale, to CLINTON MANGES, the following described real estate, to-wit:

E-16

All that certain real estate described in that deed of conveyance from HORACE P. GUERRA to M. GUERRA & SON, dated December 13, 1956, recorded in Volume 220, beginning at page 448 of the Deed Records of Starr County, Texas, and in Volume 37, beginning at page 393 of the Deed Records of Jim Hogg County, Texas, and including all right, title and interest owned, claimed or possessed by M. GUERRA & SON in any other lands enclosed in said land described in said deed, SAVE AND EXCEPT sub-divided city and town lots in Roma and Rio Grande City, Texas, and all real estate situated in Goliad County, Texas, and further SAVE AND EXCEPT the surface rights and surface rights only in and to the following described Three Tracts of land, to-wit:

00142 ONE

A tract of land comprised of Portions of Porcion 55, 56, 57, 58 and State Survey 301, all Porcions of the Ancient Jurisdiction of Mier, Presently Starr County, Texas, 13,425.0 acres, and being described by metes and bounds as follows:

BEGINNING at a point on the North Boundary Line of Porcion 57, a distance of 300.0 feet, bearing South 35 degrees, Forty-five minutes East from an intersection of said North line with the East Boundary Line of Porcion 56. Said intersection is also the Northwest corner of Porcion 57.

THENCE South Fifty-four degrees, Fifteen minutes West; (S54-15W) for a distance of 11,498.2 feet to an intersection with the North line of Share 15, Porcion 57 for an interior corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) for a distance of 3310 to an interior corner hereof. Said interior corner also being the Northeast corner of Share 13, Porcion 57.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) at 1615.1 feet passed the Southeast corner of Share 13, Porcion 57 and at 2103.0 feet came to an interior corner of this survey, said corner being in the East line of said Porcion 57.

THENCE South Nineteen degrees, Forty-five minutes West (S19-45W) for a distance of 822.0 feet along an old fence to an interior corner hereof.

THENCE South Nine degrees, Thirty-five minutes East (S9-35E) along old fence for a distance of 267.0 feet to an interior corner of this survey.

THENCE South Eighteen degrees, Fifteen minutes East (S18-15E) along old fence line for a distance of 1309.0 feet to an interior corner of this survey.

THENCE North Forty-nine degrees, Zero five minutes East (N49-05E) along old fence line for a distance of 1516.0 feet to an interior corner of this survey.

THENCE South Sixty-nine degrees, Eighteen minutes East (S69-18E) along old fence for a distance of 1618.0 feet to an interior corner hereof.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 2869.0 feet to an interior corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) along old fence line for a distance of 161.0 feet to an interior corner hereof, said corner being a point of intersection in the East line of Porcion 58 and the most Northeasterly corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along the East line of Porcion 58 and along old fence line for a distance of 25,891.0 feet in said fence line and said East line of Porcion 58, said point being the most Southeasterly corner of this survey.

THENCE North Thirty-five degrees, Forty-five minutes West (N35-45W) at 3610.0 feet intersected the East line of Porcion 57, at 4022.0 feet came to an intersection of the South right of way line of U.S. Highway 83 with the East line of State Farm Road 2098, said intersection being an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along the East right of way line of Farm Road 2098, for a distance of 2066.0 feet to a point in said fenced right of way line, said right of way line being a distance of 412.0 feet West and parallel to the East line of Porcion 57. This point of intersection is an interior corner of this survey.

THENCE North Thirty-five degrees, Forty-five minutes West (N35-45W) at 3198.0 feet intersected the East line of Porcion 56; at 6808.0 feet intersected the East line of Porcion 55 and at 10,418.0 feet intersected the West line of Porcion 55, said intersection being the Southwest corner of this survey.

THENCE North Fifty-four degrees, Fifteen minutes East (N54-15E) along old fence line same being the West line of Porcion 55, said fence line also being the Starr-Zapata County line and on a prolongation thereof and along same bearing at 48,260.0 feet came to a monument appearing to be the Northwest corner of said Porcion 55, a stone marked HH/SS, at 53,614.0 feet, same prolongation same bearing and being on the West line of Survey 301, came to a point in old fence line, said point being a corner therein and the Northwest corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) along old fence line, at 3610.0 feet intersected the East line of Porcion 55 extended, at 3910.0 feet came to corner in said fence line for an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 7248.0 feet to an intersection with the North line of Porcion 56, for an interior corner of this Survey, said intersection also being in a South line of Survey 299.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E); at 3310.0 feet along the North line of Porcion 56 and a South line of Survey 299, came to the Northeast corner of Porcion 56, at 3610.0 feet along old fence line came to a corner thereof same being an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 2509.0 feet to the hereinbefore described PLACE OF BEGINNING.

The delineation of area noted above contains 13,425.0 acres of land more or less.

00144

TRACT THREE

A tract of land containing 7595.44 acres, more or less, comprised of the following parcels located in Starr County, Texas:

PARCEL 1:

The following numbered shares as awarded and allotted in and by final decree of partition in Cause No. 4801, in the District Court of Hidalgo County, Texas, said partition being of Porciones 67 to 72, inclusive, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit:

In Porcion 67: Shares 372, 374, 370, 369, 368, 365, 366, 363, 364, 362, 361, 360, 359, 358, 306-b, 323, 350, 346, 345, 304-c, 343;
In Porcion 69: Shares 230, 228, 225, 226, 224, 223, 222, 221, 220, 219, 218, 217, 216, 215, 214, 199, 190, 189, 188, 185, 186, 183, 184, 178;
In Porcion 70: Share 8-d;
In Porcion 68: Shares 97, 107, 104, 103, 101, 100, 99, 98, 91, 90 and 89.

PARCEL 2:

A tract of land containing Fifty (50) acres of land, in and out of Share Number 92, in Porcion No. 68, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas; which Share No. 92 was set apart and allotted to Virginia C. Guerra in and by final decree of partition in Cause No. 4801, in the District Court of Hidalgo County, Texas, and which tract herein described was subsequently acquired by M. Guerra & Son, a partnership; said tract being described by metes and bounds as follows:

Beginning at a post set under fence on the dividing line of Porciones 68 and 69, distant S. 9 deg. 15' W. 496 feet from the S.W. corner of Share 194, Porcion 69, for the S. E. corner of this tract; Thence N. 80 deg. 45' W. 2287.7 feet to a stake set for the S. W. corner of this tract; Thence N. 9 deg. 15' E. 829.4 feet to a stake set for the N. W. corner of this tract; Thence S. 89 deg. 45' E. 1000 feet to a stake set for a corner of this tract; Thence S. 80 deg. 45' E. 1300 feet to a stake under fence, on the dividing line of Porciones 68 and 69, 985.8 feet, to the place of beginning and containing within these metes and bounds, 50.00 acres of land.

PARCEL 3:

859.57 acres of land, lying in, being and forming a divided and segregated part and portion of Porcion 58, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, said 859.57 acres being described by metes and bounds as follows:

BEGINNING at corner of fence, on the dividing line between Porciones 58 and 59, being also the N. W. line of Share 38 Parcel "B" of said Porcion No. 59, and which corner of fence is the East corner of the pasture originally known as the "Rosendo Martinez Sandia Ranch Pasture" for the South corner of this survey; THENCE following fence as follows: N. 32° 10' W. 951.0 feet; N. 30° 40' W. 384.0 feet; N. 27° 26' W. 1261.0 feet; N. 19° 04' W. 267.0 feet to a bend in fence for a corner of this survey; THENCE following fence N. 10° 45' E. 1122.0 feet to a point under fence on the dividing line between Porciones 57 and 58 for the West corner of this survey; THENCE N. 54° 15' W. with the dividing line of said Porciones 57 and 58, 9531.2 feet to a point under fence for the North corner of this survey; THENCE following fence as follows: S. 34° 06' E. 2311.0 feet; S. 34° 04' E. 1300.0 feet to corner of fence, for the East corner of this survey; THENCE S. 54° 20' W. 10593.0 feet to the Place of BEGINNING, and containing 859.77 acres of land out of Porcion No. 58.

PARCEL 4:

The following described shares of the partition of Porcion 59, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit:

Share No. 77, containing 368.76 acres
Share No. 78, containing 286.68 acres
Share No. 36A, containing 44.00 acres
Share No. 25, containing 8.01 acres

A tract of land comprised of the following described parcels located in Starr and Jim Hogg Counties, Texas:

PARCEL 1:

273 acres, more or less, out of and forming a part of Survey 293, Abstract No. 410, and being the most Easterly 273 acres thereof.

PARCEL 2:

213.33 acres, more or less, out of and forming a part of Survey 295, Abstract 233, and being the most Northeasterly 213.33 acres thereof.

PARCEL 3:

425.64 acres, more or less, out of and forming a part of Survey 296, Abstract 834, and being the Southwesterly 425.64 acres thereof.

PARCEL 4:

All of the following Surveys:

- (a) Survey 361, Abstract No. 353, containing 640 acres
- (b) Survey 362, Abstract No. 835, containing 667 acres
- (c) Survey 367, Abstract No. 393, containing 640 acres
- (d) Survey 368, Abstract No. 1036, containing 617.5 acres
- (e) Survey 635, Abstract No. 428, containing 645.88 acres

PARCEL 5:

5324 acres of land, being in and out of Share No. 1, of the partition of Porcions 109, 110 and 111, of the former jurisdiction of Camargo, Mexico, now in Starr County, Texas. Said Share No. 1 having been awarded and set aside to Jesus Guerra Gonzalez in said partition by deed recorded in Volume "P", pages 58 to 63, of the Deed Records of Starr County, Texas, the said 5324.0 acres being all of Share No. 1, except 4176.0 acres conveyed by Jesus Guerra Gonzalez to Francisco Guerra y Guerra;

totaling 10,080.25 acres, more or less.

00146

Share No. 23, containing	8.01 acres
Share No. 22, containing	16.02 acres
Share No. 21, containing	51.16 acres
Share No. 20, containing	4.71 acres
Share No. 18, containing	8.17 acres
Share No. 17, containing	8.17 acres
Share No. 16, containing	78.52 acres
Share No. 15, containing	78.52 acres
Share No. 14, containing	16.36 acres
Share No. 13, containing	24.66 acres
Share No. 11, containing	16.58 acres
Share No. 9, containing	37.39 acres

PARCEL 5:

1247.93 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas, and of Section No. 591, described by metes and bounds as follows:

BEGINNING at the N.W. corner of Porcion No. 69 being an inner corner of this survey; THENCE following fence S. 09° 42' W. 1600.0 feet to corner of fence for a corner of this survey; THENCE following fence N. 62° 46' W. 4616.0 feet to corner of fence for a corner of this survey; THENCE N. 54° 28' E. 15567.0 feet to a point under fence for a corner of this survey; THENCE S. 84° 11' E. 1489.0 feet to corner of fence for a corner of this survey; THENCE following fence as follows: S. 21° 39' E. 1000.0 feet; S. 21° 56' E. 1000.0 feet; S. 21° 34' E. 606.0 feet to corner of fence for the East corner of this survey; THENCE following fence between the "Bartolina" and R. E. Margo Pastures as follows: S. 54° 23' W. 6200.0 feet; S. 54° 40' W. 1400.0 feet; S. 54° 11' W. 3300.0 feet; S. 54° 41' W. 1334.0 feet to corner of fence for a corner of this survey; THENCE following fence N. 80° 08' W. 833.0 feet to the Place of BEGINNING, and containing 1247.93 acres of land, being about 1240.93 acres in Porcion No. 60, and about 7 acres in Section 951.

PARCEL 6:

431.44 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, described by metes and bounds as follows:

BEGINNING at a corner of fence, in Porcion No. 60, which corner is the North corner of Higinio Gonzalez Pasture (near the East end of Porcion 60) and which corner is an inner corner of this survey; THENCE following fence, S. 53° W. 1750.0 feet to corner of fence West corner of this survey; THENCE following fence, N. 39° 23' W. 913.0 feet to a point for the West corner of this survey; THENCE N. 54° 28' E. 6064.1 feet to a point under fence, for the North corner of this survey; THENCE following fence, as follows: S. 35° 49' E. 1469.4 feet; S. 35° 42' E. 1936.4 feet to a point for the East corner of this survey; THENCE S. 53° 46' W. 5266.0 feet to a point under fence for the South corner of this survey; THENCE N. 26° 37' W. 2616.0 feet to the Place of BEGINNING, and containing 431.44 acres of land out of Porcion No. 60.

PARCEL 7:

103.35 acres of land lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, described by metes and bounds as follows:

BEGINNING at a corner of fence, in Porcion No. 60, which corner is the West corner of Higinio Gonzalez Pasture (near the East end of Porcion 60) and which corner is the South corner of this survey; THENCE following fence, N. 84° 11' W. 1489.0 feet to a point for the West corner of this survey; THENCE N. 54° 28' E. 5265.2 feet to a point under fence, for the North corner of this survey; THENCE S. 39° 23' E. 913.0 feet to a point under fence, for the East corner of this survey; THENCE following fence, S. 53° 32' W. 4204.0 feet to the Place of BEGINNING, and containing 103.35 acres of land out of Porcion No. 60.

It is further ORDERED that such sale and conveyance shall retain for M. GUERRA & SON, an undivided one-half (1/2) of any oil, gas or other minerals or royalties now owned by said partnership in said land, however, that such sale and conveyance to CLINTON MANGES shall include all executory rights in connection with said minerals and royalties.

It is further ORDERED that such sale and conveyance of the real estate to CLINTON MANGES shall be made by the cancellation of the outstanding debts due CLINTON MANGES by M. GUERRA & SON and the credit due him by the partnership in a final accounting herein and for the further consideration of the interest of 31.332 percent now owned by CLINTON MANGES in said lands and that such sale and conveyance of said real estate shall be made free and clear of all liens and encumbrances against the same.

It is further ORDERED that the said JAMES S. BATES, as Receiver, shall within ten (10) days after making the sale of the above described real estate and the conveyance to CLINTON MANGES of his undivided interest owned in said lands through M. GUERRA & SON, make a report of said sale to this Court for confirmation herein.

SIGNED this the 9th day of February, 1971.



 JUDGE

Vol. "T" Pages 210 to 217

Filed 11th day of Feb.

A.D. 1971 at 4:30

o'clock P.M.



 District Clerk

Start County, Texas

By 

 Deputy

00148

THE STATE OF TEXAS }
COUNTY OF STARR } I, JUAN ERASMO SAENZ, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is
a true and correct copy of the original ORDER AUTHORIZING AND DIRECTING
RECEIVER TO SELL REAL ESTATE AND CONVEY PARTNERSHIP LANDS IN PARTIAL DISTRIBUTION
AND DISSOLUTION OF M. GUERRA & SON now on file in said court.
Witness my Hand and the Seal of said Court at office in RIO GRANDE
CITY, TEXAS, this 1st day of OCTOBER 19 75 .

JUAN ERASMO SAENZ
DISTRICT CLERK, STARR COUNTY, TEXAS

BY:  DEPUTY
CORINA G. GONZALES, CHIEF

NO. 3953

CLINTON MANGES	X	IN THE DISTRICT COURT
VS.	:	229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	X	OF STARR COUNTY, TEXAS

APPLICATION FOR ORDER AUTHORIZING SALE AND
CONVEYANCE OF PARTNERSHIP LANDS IN PARTIAL
DISTRIBUTION AND DISSOLUTION OF M. GUERRA & SON

TO THE HONORABLE JUDGE OF SAID COURT:

JAMES S. BATES, Receiver, duly appointed, qualified, and acting as such herein, files this, his application for authority to sell a portion of the real estate in his hands as Receiver, and for authority to convey a portion of such real estate in his hands as Receiver in partial distribution and dissolution of the partnership of M. GUERRA & SON, and for such would respectfully show the Court.

1.

That as such Receiver, he has in his constructive possession, all lands owned by M. GUERRA & SON, and more particularly those lands described in a Warranty Deed dated December 13, 1956, from HORACE P. GUERRA to M. GUERRA & SON, which deed is duly recorded in Volume 220, pages 448, to 468 of the Deed Records of Starr County, Texas, and duly recorded in Volume 30, pages 393 to 413 of the Deed Records of Jim Hogg County, Texas, to which recorded deed reference is hereby made for an accurate description of said lands. That, in addition, your Receiver has taken possession of all other assets of the partnership which includes only the sum of \$50.68 on deposit in the McAllen State Bank and the sum of \$1,203.88 on deposit in the First State Bank and Trust of Rio Grande City, Texas.

2.

Your Receiver would further show the Court that prior to the receivership proceedings herein, J. C. GUERRA, individually,

MX-5

E-17

and as a general partner of M. GUERRA & SON, joined by his wife, CORINNE W. GUERRA, did on the 31st day of August, 1968, allegedly convey to CLINTON MANGES, an undivided one-sixth (1/6th) interest in and to said real property owned by the partnership, which deed is recorded in Volume 335, pages 390-391 of the Deed Records of Starr County, Texas. That likewise, VIRGIL H. GUERRA, individually, and as a general partner and as Independent Executor of the Estate of H. P. Guerra, Deceased, and as Independent Executor of the Estate of Catalina N. Guerra, Deceased, joined by his wife, LYDIA S. GUERRA, did on the 30th day of August, 1968, execute a deed conveying to CLINTON MANGES, an undivided one-sixth (1/6th) interest in and to said real property owned by the partnership, M. GUERRA & SON, which deed is recorded in Volume 335, pages 401-402 of the Deed Records of Starr County, Texas. That thereafter, and subject to this receivership proceedings, the said J. C. GUERRA and VIRGIL H. GUERRA, acting as general partners of M. GUERRA & SON, did on the 31st day of March, 1969, convey to CLINTON MANGES, all of the real estate described in that deed of conveyance from HORACE P. GUERRA to M. GUERRA & SON, dated December 13, 1956, as hereinabove set out, which deed excepted sub-divided city or town lots in Roma and Rio Grande City, Texas, and all real estate situated in Goliad County, Texas, and did reserve to M. GUERRA & SON, the partnership, one-half (1/2) of all oil, gas and other minerals and royalties then owned by said partnership which deed is recorded in Volume 341, pages 196-197 of the Deed Records of Starr County, Texas, and recorded in Volume 56, pages 359, 360 of the Deed Records of Jim Hogg County, and to which deed reference is hereby made for a more accurate description of the interest covered in said conveyance.

3.

Your Receiver would further show the Court that all of such deeds hereinabove described conveying interests in said real estate to CLINTON MANGES have been contested by other partners of M. GUERRA & SON, and that the total consideration of THREE MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 (\$3,575,000.00) DOLLARS for the deed of March 31, 1969, as agreed upon by J. C. GUERRA and VIRGIL H. GUERRA and CLINTON MANGES by a Contract of the same date of March 31, 1969, has not been paid and by reason of such facts, the title to such lands is in contest between M. GUERRA & SON and the said CLINTON MANGES.

4.

Your Receiver would further show the Court that CLINTON MANGES has heretofore purchased all of the right, title and interest of the general partner, M. A. GUERRA, and the limited partner, VIRGINIA G. JEFFRIES, in and to M. GUERRA & SON, and therefore, is now the owner of a 31.332 percent interest in the lands owned by M. GUERRA & SON. That, in addition, the said CLINTON MANGES has advanced and paid in cash, the sum of TWO HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED ELEVEN AND 55/100 (\$245,911.55) DOLLARS to the First State Bank and Trust of Rio Grande City, which was for the benefit of M. GUERRA & SON, such amounts representing the total of the promissory notes which were the obligation of the partnership. That, in addition, the said CLINTON MANGES is the owner of that certain real estate note dated October 28, 1964, originally in the principal sum of FOUR HUNDRED THOUSAND AND 00/100 (\$400,000.00) DOLLARS and payable to the Southwestern Life Insurance Company of Dallas, Texas, and on which note there is due from the partnership assets to CLINTON MANGES, the sum of THREE HUNDRED EIGHTY-

FOUR THOUSAND SEVEN HUNDRED NINETY-EIGHT AND 67/100 (\$384,798.67) DOLLARS. That in connection with said Southwestern Life Insurance Company note, there is also due CLINTON MANGES, the sum of TWENTY THOUSAND SEVEN HUNDRED FORTY-SEVEN AND 95/100 (\$20,747.95) DOLLARS representing the premium of NINETEEN THOUSAND AND 00/100 (\$19,000.00) DOLLARS, plus accrued interest originally paid by MARSHALL G. JOHNSON to Southwestern Life Insurance Company to purchase said note at the request of the partnership M. GUERRA & SON, and that in addition, there is due the said CLINTON MANGES, by M. GUERRA & SON, the sum of ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 (\$125,000.00) DOLLARS for past due rentals and undistributed income from the partnership and which is due CLINTON MANGES, individually, and as a successor to the interest of M. A. GUERRA and VIRGINIA G. JEFFRIES as a general partner and a limited partner in M. GUERRA & SON. That in addition, the said CLINTON MANGES owns a credit of FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS against the interest of H. P. GUERRA, JR., a credit of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS against the interest of J. C. GUERRA and a FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS credit against the interest of VIRGIL H. GUERRA in and to M. GUERRA & SON, which would be a credit to the said CLINTON MANGES in the final distribution and dissolution of the partnership under the operation of your Receiver herein.

5.

Your Receiver would further show the Court that in connection with the receivership of M. GUERRA & SON, that the following is an itemization of other claims besides CLINTON MANGES against the partnership assets and an estimate of receivership expenses, to-wit:

- 1). National Bank of Commerce of San Antonio, Texas,
ONE HUNDRED FIFTY-EIGHT THOUSAND TWO HUNDRED SIX
AND 25/100 (\$158,206.25) DOLLARS;

- 2). Corpus Christi State National Bank the sum of ONE HUNDRED TWO THOUSAND TWENTY AND 91/100 (\$102,020.91) DOLLARS;
- 3). Capitol National Bank of Austin, Texas, the sum of ONE HUNDRED EIGHTY THOUSAND AND 00/100 (\$180,000.00) DOLLARS;
- 4). J. C. Guerra, advances for partnership, the sum of EIGHTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY-FOUR AND 55/100 (\$88,574.55) DOLLARS;
- 5). Cox, Smith, Smith, Hale and Guenther and Trueheart, McMillan, Russel & Hoffman, the sum of EIGHT THOUSAND FOUR HUNDRED TWENTY-SIX AND 36/100 (\$8,426.36) DOLLARS;
- 6). Carter, Stiernberg, Skaggs & Koppel, the sum of TWELVE THOUSAND FIVE HUNDRED SIXTY AND 00/100 (\$12,560.00) DOLLARS;
- 7). Sheinfeld, Maley & Kay, the sum of NINE THOUSAND SIX HUNDRED NINETY-NINE and 42/100 (\$9,699.42) DOLLARS;
- 8). M. A. Canales Estate, the sum of TWENTY-SIX THOUSAND AND 00/100 (\$26,000.00) DOLLARS;
- 9). W. T. Shropshire, accounting fees, the sum of ONE THOUSAND TWO HUNDRED AND 00/100 (\$1,200.00) DOLLARS;
- 10). Arnulfo Guerra, the sum of EIGHT THOUSAND FIVE HUNDRED AND 00/100 (\$8,500.00) DOLLARS;
- 11). Dean Moorhead, the sum of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS;
- 12). Estimated receivership expenses, the sum of ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 (\$125,000.00) DOLLARS.

6.

Your Receiver would further show the Court that by reason of the above alleged facts and because CLINTON MANGES is the largest creditor of M. GUERRA & SON, that it would be to the best interest of this receivership that your Receiver be authorized to convey to CLINTON MANGES, valid title to enough of the real estate owned by M. GUERRA & SON in satisfaction of the debts due him and in partial distribution of partnership assets for the interest owned by him. That after such conveyance and sale as herein set out, there would be enough of the real estate owned by M. GUERRA & SON left in the receivership to satisfy all other debts of the partnership. That the remaining general partners of M. GUERRA & SON,

being J. C. GUERRA, VIRGIL H. GUERRA, R. R. GUERRA, and H. P. GUERRA, JR., are in accord with the suggested sale and conveyance as herein set out and have joined in this application as shown by their signatures affixed thereto.

7.

Your Receiver would further show the Court that he herewith requests authority to sell and convey to CLINTON MANGES, all of the real estate described in that certain deed of conveyance from HORACE P. GUERRA to M. GUERRA & SON dated December 13, 1956, and hereinabove mentioned, save and except any sub-divided city or town lots in Roma and Rio Grande City, Texas, and any real estate situated in Goliad County, Texas, and retaining for the benefit of said partnership, one-half of all the minerals and royalties now owned by said partnership, however, with the said CLINTON MANGES to receive the executory rights covering said minerals and royalties. That said conveyance would include all right, title or interest owned, claimed or possessed by M. GUERRA & SON in and to said lands described by the deed of December 13, 1956, and any other lands now owned, claimed or possessed by M. GUERRA & SON, save and except the surface rights and surface rights only in and to the following three described tracts of land, to-wit:

A tract of land comprised of Portions of Porcion 55, 56, 57, 58 and State Survey 301, all Porcions of the Ancient Jurisdiction of Mier, Presently Starr County, Texas, 13,425.0 acres, and being described by metes and bounds as follows:

BEGINNING at a point on the North Boundary Line of Porcion 57, a distance of 300.0 feet, bearing South 35 degrees, Forty-five minutes East from an intersection of said North line with the East Boundary Line of Porcion 56. Said intersection is also the Northwest corner of Porcion 57.

THENCE South Fifty-four degrees, Fifteen minutes West, (S54-15W) for a distance of 11,498.2 feet to an intersection with the North line of Share 15, Porcion 57 for an interior corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) for a distance of 3310 to an interior corner hereof. Said interior corner also being the Northeast corner of Share 13, Porcion 57.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) at 1615.1 feet passed the Southeast corner of Share 13, Porcion 57 and at 2103.0 feet came to an interior corner of this survey, said corner being in the East line of said Porcion 57.

THENCE South Nineteen degrees, Forty-five minutes West (S19-45W) for a distance of 822.0 feet along an old fence to an interior corner hereof.

THENCE South Nine degrees, Thirty-five minutes East (S9-35E) along old fence for a distance of 267.0 feet to an interior corner of this survey.

THENCE South Eighteen degrees, Fifteen minutes East (S18-15E) along old fence line for a distance of 1309.0 feet to an interior corner of this survey.

THENCE North Forty-nine degrees, Zero five minutes East (N49-05E) along old fence line for a distance of 1516.0 feet to an interior corner of this survey.

THENCE South Sixty-nine degrees, Eighteen minutes East (S69-18E) along old fence for a distance of 1618.0 feet to an interior corner hereof.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 2869.0 feet to an interior corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) along old fence line for a distance of 161.0 feet to an interior corner hereof, said corner being a point of intersection in the East line of Porcion 58 and the most Northeasterly corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along the East line of Porcion 58 and along old fence line for a distance of 25,891.0 feet in said fence line and said East line of Porcion 58, said point being the most Southeasterly corner of this survey.

THENCE North Thirty-five degrees, Forty-five minutes West (N35-45W) at 3610.0 feet intersected the East line of Porcion 57, at 4022.0 feet came to an intersection of the South right of way line of U.S. Highway 83 with the East line of State Farm Road 2098, said intersection being an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along the East right of way line of Farm Road 2098, for a distance of 2086.0 feet to a point in said fenced right of way line, said right of way line being a distance of 412.0 feet West and parallel to the East line of Porcion 57. This point of intersection is an interior corner of this survey.

THENCE North Thirty-five degrees, Forty-five minutes West (N35-45W) at 3193.0 feet intersected the East line of Porcion 56; at 6308.0 feet intersected the East line of Porcion 55 and at 10,418.0 feet intersected the West line of Porcion 55, said intersection being the Southwest corner of this survey.

THENCE North Fifty-four degrees, Fifteen minutes East (N54-15E) along old fence line same being the West line of Porcion 55, said fence line also being the Starr-Zapata County line and on a prolongation thereof and along same bearing at 48,260.0 feet came to a monument appearing to be the Northwest corner of said Porcion 55, a stone marked III/BS, at 53,614.0 feet, same prolongation same bearing and being on the West line of Survey 301, came to a point in old fence line, said point being a corner therein and the Northwest corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) along old fence line, at 3610.0 feet intersected the East line of Porcion 55 extended, at 3910.0 feet came to corner in said fence line for an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 7248.0 feet to an intersection with the North line of Porcion 56, for an interior corner of this Survey, said intersection also being in a South line of Survey 299.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E); at 3310.0 feet along the North line of Porcion 56 and a South line of Survey 299, came to the Northeast corner of Porcion 56, at 3610.0 feet along old fence line came to a corner thereof same being an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 2509.0 feet to the hereinbefore described PLACE OF BEGINNING.

The delineation of area noted above contains 13,425.0 acres of land more or less.

00157
TRACT TWO

A tract of land comprised of the following described parcels located in Starr and Jim Hogg Counties, Texas:

PARCEL 1:

273 acres, more or less, out of and forming a part of Survey 293, Abstract No. 410, and being the most Easterly 273 acres thereof.

PARCEL 2:

213.33 acres, more or less, out of and forming a part of Survey 295, Abstract 233, and being the most Northeasterly 213.33 acres thereof.

PARCEL 3:

425.64 acres, more or less, out of and forming a part of Survey 296, Abstract 834, and being the Southwesterly 425.64 acres thereof.

PARCEL 4:

All of the following Surveys:

- (a) Survey 361, Abstract No. 353, containing 640 acres
- (b) Survey 362, Abstract No. 835, containing 667 acres
- (c) Survey 367, Abstract No. 393, containing 640 acres
- (d) Survey 368, Abstract No. 1036, containing 617.5 acres
- (e) Survey 635, Abstract No. 428, containing 645.88 acres

PARCEL 5:

5324 acres of land, being in and out of Share No. 1, of the partition of Porcions 109, 110 and 111, of the former jurisdiction of Camargo, Mexico, now in Starr County, Texas. Said Share No. 1 having been awarded and set aside to Jesus Guerra Gonzalez in said partition by deed recorded in Volume "P", pages 58 to 63, of the Deed Records of Starr County, Texas, the said 5324.0 acres being all of Share No. 1, except 4176.0 acres conveyed by Jesus Guerra Gonzalez to Francisco Guerra y Guerra;

totaling 10,080.25 acres, more or less.

TRACT THREE

A tract of land containing 7595.44 acres, more or less, comprised of the following parcels located in Starr County, Texas:

PARCEL 1:

The following numbered shares as awarded and allotted in and by final decree of partition in Cause No. 4801, in the District Court of Hidalgo County, Texas, said partition being of Porciones 67 to 72, inclusive, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit:

In Porcion 67: Shares 372, 374, 370, 369, 368, 365, 366, 363, 364, 362, 361, 360, 359, 358, 306-b, 323, 350, 346, 345, 304-c, 343;
 In Porcion 69: Shares 230, 228, 225, 226, 224, 223, 222, 221, 220, 219, 218, 217, 216, 215, 214, 199, 190, 189, 188, 185, 186, 183, 184, 178;
 In Porcion 70: Share 8-d;
 In Porcion 68: Shares 97, 107, 104, 103, 101, 100, 99, 98, 91, 90 and 89.

PARCEL 2:

A tract of land containing Fifty (50) acres of land, in and out of Share Number 92, in Porcion No. 68, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas; which Share No. 92 was set apart and allotted to Virginia C. Guerra in and by final decree of partition in Cause No. 4801, in the District Court of Hidalgo County, Texas, and which tract herein described was subsequently acquired by M. Guerra & Son, a partnership; said tract being described by metes and bounds as follows:

Beginning at a post set under fence on the dividing line of Porciones 68 and 69, distant S. 9 deg. 15' W. 496 feet from the S.W. corner of Share 194, Porcion 69, for the S. E. corner of this tract; Thence N. 80 deg. 45' W. 2287.7 feet to a stake set for the S. W. corner of this tract; Thence N. 9 deg. 15' E. 829.4 feet to a stake set for the N. W. corner of this tract; Thence S. 89 deg. 45' E. 1000 feet to a stake set for a corner of this tract; Thence S. 80 deg. 45' E. 1300 feet to a stake under fence, on the dividing line of Porciones 68 and 69, 985.8 feet, to the place of beginning and containing within these metes and bounds, 50.00 acres of land.

PARCEL 3:

859.57 acres of land, lying in, being and forming a divided and segregated part and portion of Porcion 58, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, said 859.57 acres being described by metes and bounds as follows:

BEGINNING at corner of fence, on the dividing line between Porciones 58 and 59, being also the N. W. line of Share 38 Parcel "B" of said Porcion No. 59, and which corner of fence is the East corner of the pasture originally known as the "Rosendo Martinez Sandia Ranch Pasture" for the South corner of this survey; THENCE following fence as follows: N. 32° 10' W. 951.0 feet; N. 30° 40' W. 384.0 feet; N. 27° 26' W. 1261.0 feet; N. 19° 04' W. 267.0 feet to a bend in fence for a corner of this survey; THENCE following fence N. 10° 45' E. 1122.0 feet to a point under fence on the dividing line between Porciones 57 and 58 for the West corner of this survey; THENCE N. 54° 15' W. with the dividing line of said Porciones 57 and 58, 9531.2 feet to a point under fence for the North corner of this survey; THENCE following fence as follows: S. 34° 06' E. 2311.0 feet; S. 34° 04' E. 1300.0 feet to corner of fence, for the East corner of this survey; THENCE S. 54° 20' W. 10593.0 feet to the Place of BEGINNING, and containing 859.77 acres of land out of Porcion No. 58.

PARCEL 4:

The following described shares of the partition of Porcion 59, of the former Jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit:

Share No. 77, containing 368.76 acres
 Share No. 78, containing 286.68 acres
 Share No. 36A, containing 44.00 acres
 Share No. 25, containing 8.01 acres

CURIO

Share No. 24, containing	8.01 acres
Share No. 23, containing	8.01 acres
Share No. 22, containing	16.02 acres
Share No. 21, containing	51.16 acres
Share No. 20, containing	4.71 acres
Share No. 18, containing	8.17 acres
Share No. 17, containing	8.17 acres
Share No. 16, containing	78.52 acres
Share No. 15, containing	78.52 acres
Share No. 14, containing	16.36 acres
Share No. 13, containing	24.66 acres
Share No. 11, containing	16.58 acres
Share No. 9, containing	37.39 acres

PARCEL 5:

1247.93 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas, and of Section No. 591, described by metes and bounds as follows:

BEGINNING at the N.W. corner of Porcion No. 69 being an inner corner of this survey; THENCE following fence S. 09° 42' W. 1600.0 feet to corner of fence for a corner of this survey; THENCE following fence N. 62° 46' W. 4616.0 feet to corner of fence for a corner of this survey; THENCE N. 54° 28' E. 15567.0 feet to a point under fence for a corner of this survey; THENCE S. 84° 11' E. 1489.0 feet to corner of fence for a corner of this survey; THENCE following fence as follows: S. 21° 39' E. 1000.0 feet; S. 21° 56' E. 1000.0 feet; S. 21° 34' E. 606.0 feet to corner of fence for the East corner of this survey; THENCE following fence between the "Bartolina" and R. E. Margo Pastures as follows: S. 54° 23' W. 6200.0 feet; S. 54° 40' W. 1400.0 feet; S. 54° 11' W. 3300.0 feet; S. 54° 41' W. 1334.0 feet to corner of fence for a corner of this survey; THENCE following fence N. 80° 08' W. 833.0 feet to the Place of BEGINNING, and containing 1247.93 acres of land, being about 1240.93 acres in Porcion No. 60, and about 7 acres in Section 951.

PARCEL 6:

431.44 acres of land, lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, described by metes and bounds as follows:

BEGINNING at a corner of fence, in Porcion No. 60, which corner is the North corner of Higinio Gonzalez Pasture (near the East end of Porcion 60) and which corner is an inner corner of this survey; THENCE following fence, S. 53° W. 1750.0 feet to corner of fence West corner of this survey; THENCE following fence, N. 39° 23' W. 913.0 feet to a point for the West corner of this survey; THENCE N. 54° 28' E. 6064.1 feet to a point under fence, for the North corner of this survey; THENCE following fence, as follows: S. 35° 49' E. 1469.4 feet; S. 35° 42' E. 1936.4 feet to a point for the East corner of this survey; THENCE S. 53° 46' W. 5266.0 feet to a point under fence for the South corner of this survey; THENCE N. 26° 37' W. 2616.0 feet to the Place of BEGINNING, and containing 431.44 acres of land out of Porcion No. 60.

PARCEL 7:

103.35 acres of land lying in and being and forming a divided and segregated part and portion of Porcion 60, of the former Jurisdiction of Mier, Mexico, now in Starr County, Texas, described by metes and bounds as follows:

BEGINNING at a corner of fence, in Porcion No. 60, which corner is the West corner of Higinio Gonzalez Pasture (near the East end of Porcion 60) and which corner is the South corner of this survey; THENCE following fence, N. 84° 11' W. 1489.0 feet to a point for the West corner of this survey; THENCE N. 54° 28' E. 5265.2 feet to a point under fence, for the North corner of this survey; THENCE S. 39° 23' E. 913.0 feet to a point under fence, for the East corner of this survey; THENCE following fence, S. 53° 32' W. 4204.0 feet to the Place of BEGINNING, and containing 103.35 acres of land out of Porcion No. 60.

WHEREFORE, your Receiver prays that no notice being necessary herein with all parties joining in this cause, that on a hearing of this application, your Receiver be authorized and directed to sell and convey the above described real estate to CLINTON MANGES free and clear of all liens and encumbrances of whatever nature in consideration of the cancellation of the debts due the said CLINTON MANGES by M. GUERRA & SON, and/or its partners, and for the sum heretofore agreed upon between the owners and Clinton Manges, as shall be shown in the report of sale and of the further consideration of the distribution to the said CLINTON MANGES of his proportionate interest owned in and to the said real estate by reason of the partnership interest acquired by him in M. GUERRA & SON, all of which is in the best interest of the receivership estate and of all parties to this cause.

Handwritten initials and notes:
 C.B.
 H.H.
 J.M.
 J.C.

Handwritten signature of James S. Bates

 JAMES S. BATES, Receiver

J O I N D E R

TO SAID HONORABLE COURT:

J. C. GUERRA, VIRGIL H. GUERRA, R. R. GUERRA and H. P. GUERRA, JR., being all of the remaining general partners of M. GUERRA & SON, hereby join with The Honorable JAMES S. BATES, Receiver, in the above and foregoing application for authority of this Court and by joining herein do hereby agree to the authorization to be granted to said Receiver by the Court.

Handwritten signature of J.C. Guerra

 J. C. GUERRA
Handwritten signature of Virgil H. Guerra

 VIRGIL H. GUERRA
Handwritten signature of R.R. Guerra

 R. R. GUERRA
Handwritten signature of H.P. Guerra, Jr.

 H. P. GUERRA, JR.

Filed 11th day of Feb.
 A.D. 1911 at 4:25

Handwritten signature of Jack P. My

 Jack P. My

District Clerk
 Starr County, Texas
Handwritten signature of Deputy

 Deputy

THE STATE OF TEXAS }
COUNTY OF STARR } I, JUAN ERASMO SAENZ, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is
a true and correct copy of the original APPLICATION FOR ORDER AUTHORIZING SALE
AND CONVEYANCE OF PARTNERSHIP LANDS IN PARTIAL DISTRIBUTION AND DISSOLUTION OF
M. GUERRA & SON now on file in said court.
Witness my Hand and the Seal of said Court at office in RIO GRANDE
CITY, TEXAS, this 1st day of OCTOBER 19 75.

JUAN ERASMO SAENZ
DISTRICT CLERK, STARR COUNTY, TEXAS

BY:  DEPUTY
CORINA G. GONZALES, CHIEF

00162

NO. 3953

CLINTON MANGES

VS.

M. A. GUERRA, ET AL

I
I
I
I
I

IN THE DISTRICT COURT

229TH JUDICIAL DISTRICT

STARR COUNTY, TEXAS

ORDER AUTHORIZING AND DIRECTING RECEIVER
TO SELL REAL ESTATE AND CONVEY PARTNERSHIP
LANDS IN PARTIAL DISTRIBUTION AND DISSOLU-
TION OF M. GUERRA & SON

On this day came on to be heard in the above styled and numbered proceeding, the application of JAMES S. BATES, Receiver herein, for authority to sell a portion of the real estate owned by M. GUERRA & SON, in his hands as Receiver, and for authority to convey a portion of such real estate in partial distribution and dissolution of the partnership of M. GUERRA & SON, and it appearing to the Court and the Court finds that CLINTON MANGES, J. C. GUERRA, VIRGIL H. GUERRA, R. R. GUERRA AND H. P. GUERRA, JR., the remaining general partners of M. GUERRA & SON have joined in such application and therefore, have been fully advised as to such actions and it further appearing to the Court from the evidence that the allegations and statements made in the Receiver's application to sell and to convey partnership lands, are true and correct and that it would be in the best interests of such Receivership that the real estate as described in the Receiver's application be sold and conveyed, free and clear of all liens and encumbrances and that therefore, such application should be granted.

It is therefore ORDERED, ADJUDGED and DECREED that JAMES S. BATES, Receiver, be and he is hereby authorized and directed to sell at private sale, to H. P. Guerra, Jr., the following described real estate, to-wit:

E-18
MX-10

00163

It is therefore ORDERED, ADJUDGED and DECREED that
JAMES S. BATES, Receiver be and he is hereby authorized
and directed to sell at private sale to R. R. Guerra, the
following real estate, to-wit:

MX-10

A tract of land comprised of Portions of Porcion 55, 56, 57, 58 and State Survey 301, all Porcions of the Ancient Jurisdiction of Mier, Presently Starr County, Texas, 13,425.0 acres, and being described by metes and bounds as follows:

BEGINNING at a point on the North Boundary Line of Porcion 57, a distance of 300.0 feet, bearing South 35 degrees, Forty-five minutes East from an intersection of said North line with the East Boundary Line of Porcion 56. Said intersection is also the Northwest corner of Porcion 57.

THENCE South Fifty-four degrees, Fifteen minutes West, (S54-15W) for a distance of 11,498.2 feet to an intersection with the North line of Share 15, Porcion 57 for an interior corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) for a distance of 3310 to an interior corner hereof. Said interior corner also being the Northeast corner of Share 13, Porcion 57.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) at 1615.1 feet passed the Southeast corner of Share 13, Porcion 57 and at 2103.0 feet came to an interior corner of this survey, said corner being in the East line of said Porcion 57.

THENCE South Nineteen degrees, Forty-five minutes West (S19-45W) for a distance of 822.0 feet along an old fence to an interior corner hereof.

THENCE South Nine degrees, Thirty-five minutes East (S9-35E) along old fence for a distance of 267.0 feet to an interior corner of this survey.

THENCE South Eighteen degrees, Fifteen minutes East (S18-15E) along old fence line for a distance of 1309.0 feet to an interior corner of this survey.

THENCE North Forty-nine degrees, Zero five minutes East (N49-05E) along old fence line for a distance of 1516.0 feet to an interior corner of this survey.

THENCE South Sixty-nine degrees, Eighteen minutes East (S69-18E) along old fence for a distance of 1618.0 feet to an interior corner hereof.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 2869.0 feet to an interior corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) along old fence line for a distance of 161.0 feet to an interior corner hereof, said corner being a point of intersection in the East line of Porcion 58 and the most Northeasterly corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along the East line of Porcion 58 and along old fence line for a distance of 25,891.0 feet in said fence line and said East line of Porcion 58, said point being the most Southeastern corner of this survey.

00165

(S54-15W) at 1010.0 feet intersected the East line of Porcion 57, at 4022.0 feet came to an intersection of the South right of way line of U.S. Highway 83 with the East line of State Farm Road 2098, said intersection being an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along the East right of way line of Farm Road 2098, for a distance of 2086.0 feet to a point in said fenced right of way line, said right of way line being a distance of 412.0 feet West and parallel to the East line of Porcion 57. This point of intersection is an interior corner of this survey.

THENCE North Thirty-five degrees, Forty-five minutes West (N35-45W) at 3198.0 feet intersected the East line of Porcion 56; at 6808.0 feet intersected the East line of Porcion 55 and at 10,418.0 feet intersected the West line of Porcion 55, said intersection being the Southwest corner of this survey.

THENCE North Fifty-four degrees, Fifteen minutes East (N54-15E) along old fence line same being the West line of Porcion 55, said fence line also being the Starr-Zapata County line and on a prolongation thereof and along same bearing at 48,260.0 feet came to a monument appearing to be the Northwest corner of said Porcion 55, a stone marked III/88, at 53,614.0 feet, same prolongation same bearing and being on the West line of Survey 301, came to a point in old fence line, said point being a corner therein and the Northwest corner of this survey.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E) along old fence line, at 3610.0 feet intersected the East line of Porcion 55 extended, at 3910.0 feet came to corner in said fence line for an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 7248.0 feet to an intersection with the North line of Porcion 56, for an interior corner of this Survey, said intersection also being in a South line of Survey 299.

THENCE South Thirty-five degrees, Forty-five minutes East (S35-45E); at 3310.0 feet along the North line of Porcion 56 and a South line of Survey 299, came to the Northeast corner of Porcion 56, at 3610.0 feet along old fence line came to a corner thereof same being an interior corner of this survey.

THENCE South Fifty-four degrees, Fifteen minutes West (S54-15W) along old fence line for a distance of 2509.0 feet to the hereinbefore described PLACE OF BEGINNING.

The delineation of area noted above contains 13,425.0 acres of land more or less.

SAVE AND EXCEPT as to all tracts above, all oil, gas and other minerals in, on or that may be produced from said lands, together with the right of ingress and egress for the purpose of exploration for and production of oil, gas and other minerals.

1. The most Northeasterly 208.2 acres, more or less of Survey 295, Abstract 233, Starr County, Texas.
2. The most Southwesterly 560 acres, more or less of Survey 296, Abstract 834, Starr County, Texas.
3. All of Survey 362, Abstract 835, Starr County, Texas containing 676.84 acres, more or less.
4. All of Survey 361, Abstract 353, Starr County, Texas containing 677.86 acres, more or less.
5. The most Southeasterly 23 acres, more or less, of Survey 293, Abstract 410, Starr County, Texas.
6. The most Northeasterly 1258.1 acres, more or less, of Porcion 109, Starr County, Texas.
7. All of that portion of Porcion 110, Starr County, Texas lying East of the East right-of-way line of Farm to Market Road 649, save and except 53 acres owned by H. Hinojosa estate, and being 2,035.5 acres, more or less.
8. All of that portion of Porcion 111, Starr County, Texas lying East of the East right-of-way line of Farm to Market Road 649, and being 1,488.10 acres, more or less.
9. All of Survey 367, Abstract 393, Starr County, Texas, containing 607.2 acres, more or less.
10. 435.4 acres, more or less, out of Survey 635, Abstract 428, Starr and Jim Hogg Counties, Texas and being more particularly described as follows: BEGINNING at the Southeast corner of said Survey for the Southeast corner of this tract; THENCE, N. 07° 35' E., a distance of 8109.1 feet to a point for the Northeast corner of this tract; THENCE N. 80° 45' W. to a point in the West line of said Survey for the Northwest corner of this tract; THENCE in a southerly direction with and along the west line of said Survey, 8213.10 feet to the Southwest corner of said Survey for the Southwest corner of this tract; THENCE, N. 82° 25' E. with and along the South line of said Survey, 3000.0 feet to the POINT OF BEGINNING.
11. All of Share H-14-b, Las Cuevitas Grant, Starr County, Texas, lying East of the East right-of-way of Farm to Market Road 649, and being 1,230.0 acres, more or less.
12. 2,798.90 acres, more or less, out of Share H-14-a, Las Cuevitas Grant, Jim Hogg County, Texas and more particularly described as follows: BEGINNING at the Northwest corner of Tract 10 hereinabove described; THENCE, N. 80° 45' W. to a point in the East right-of-way line of Farm to Market Road 649; THENCE, in a Southerly direction with and along the meanders of the East right-of-way line of said Farm to Market Road 649, to the Starr-Jim Hogg County line, for the Southwest corner of this tract; THENCE in an Easterly direction with and along the said Starr-Jim Hogg County line and being the South line of said Share to a point for the Southeast corner of this tract; THENCE, in a Northerly direction with and along the East line of said Share, the same being the West line of Survey

00167

635, Abstract 428, Jim Hogg County, 7,613.10 feet to
the PLACE OF BEGINNING.

SAVE AND EXCEPT as to all tracts above, all oil, gas
and other minerals in, on or that may be produced from
said lands, together with the right of ingress and
egress for the purpose of exploration for and production
of oil, gas and other minerals.

MX-10

00168

It is therefore ORDERED, ADJUDGED and DECREED that JAMES S. BATES, Receiver, be and he is hereby authorized and directed to sell at private sale, to Virgil H. Guerra, the following described real estate, to-wit:

MX-10

TRACT 1: All of the following described parcels of land, comprising 7,294.77 acres, more or less, being identified by Share Number; as awarded and allotted in and by final decree of partition in Cause No. 4801, in the District Court of Hidalgo County, Texas, said partition being of Porciones 67 to 72, inclusive, of the former jurisdiction of Mier, Mexico, now situated in Starr County, Texas, to-wit: In Porcion 67, Shares 304-C, 305-C, 306-B, 323, 343, 345, 346, 350, 358 through 366 inclusive, 368 through 370 inclusive, 372 and 374; in Porcion 68, Shares 89 through 92, inclusive, 97 through 101, inclusive, 103, 104 and 107; in Porcion 69, Shares 178, 180-A, 180-B, 183 through 186, inclusive, 188 through 190, inclusive, 199, 214 through 226, inclusive, 228 and 230; and in Porcion 70, Share 8-9.

TRACT 2: All of Share 57-E, containing 323.11 acres, more or less, in Porcion 66, Mier Jurisdiction, Starr County, Texas.

SAVE AND EXCEPT as to all tracts above, all oil, gas and other minerals in, on or that may be produced from said lands, together with the right of ingress and egress for the purpose of exploration for and production of oil, gas and other minerals.

Filed 17th day of July

A.D. 19 71 at 8:35

12 o'clock P.M.
[Signature]
District Clerk

Starr County, Texas
By [Signature] Deputy

VOL. "T" PAGES 243 to 251

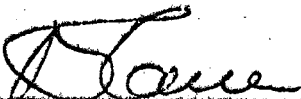
00170

It is further ORDERED, ADJUDGED and DECREED that the sale of the lands above described to H. P. Guerra, Jr., R. R. Guerra and Virgil H. Guerra, shall be based upon a gross consideration of \$54.30 per acre, taking into account such credits as may be due and owing to each of said Grantees, respectively, from M. GUERRA & SON; that such sale and conveyance of said real estate to H. P. Guerra, Jr., R. R. Guerra, and Virgil H. Guerra shall be made free and clear of all liens and encumbrances against same.

It is further ORDERED that such sale and conveyance shall retain for M. GUERRA & SON, all oil, gas or other minerals or royalties now owned by said partnership in said land.

It is further ORDERED that the said JAMES S. BATES, as Receiver, shall within 20 days after making the sale of the above described real estate and the conveyance to H. P. Guerra, Jr., R. R. Guerra and Virgil H. Guerra, make a report of said sale to this Court for confirmation herein.

SIGNED this the 19th day of February, 1971.


O. P. CARRILLO, Judge Presiding

MX-10

NO. 3953

CLINTON MANGES		IN THE DISTRICT COURT
VS.		229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL		STARR COUNTY, TEXAS.

MOTION FOR DISQUALIFICATION OR RECUSATION

TO HONORABLE O. P. CARRILLO, JUDGE OF SAID COURT:

NOW COME R. R. Guerra and M. A. Guerra, defendants in the above styled and numbered cause, and submit for the consideration of the Judge of this Honorable Court alleged grounds for disqualification or recusation as follows:

I.

a. The Texas Constitution, Article V, Section 11 provides that "no judge shall sit in any case wherein he may be interested."

b. The canons of Judicial Ethics as approved by the American Bar Association (copy attached hereto as Appendix A) contain provisions of similar, or stricter import, as follows:

4. Avoidance of Impropriety: A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

13. Kinship or Influence: A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

24. Inconsistent Obligations: A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

26. Personal Investments and Relations: A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them with-

E-19

out serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

29. Self-Interest: A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

32. Gifts and Favors: A judge should not accept any presents or favors from litigants, or from lawyers practising before him or from others whose interests are likely to be submitted to him for judgment.

33. Social Relations: It is not necessary to the performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

II.

The attention of the Judge of this Honorable Court is invited to the following alleged facts:

a. This cause of action was filed in this Court on October 11, 1968 by the Plaintiff, Clinton Manges, and has been pending on the docket of this said Court at all times since and was pending at the time your Honor was elected, qualified and assumed the duties of Judge of said Court in January 1971.

b. One of the purposes of Plaintiff, Clinton Manges in filing the original cause of action was to cause a confirmation of his purchase of the majority of the stock (or controlling interest) in the First State Bank and Trust

Company of Rio Grande City from M. Guerra and Son, or the partners therein, some of whom opposed the acquisition of control of said bank by Plaintiff, Manges.

c. It is alleged by these defendants that the only reason for the Receiver's request to this Honorable Court to sell the mineral interests and town lots (incorrectly called assets of M. Guerra and Son) is a result of alleged improper accounting practices, and excessive expenses performed or incurred by the Receiver, his agents and employees, to the benefit of Plaintiff Manges, and to the detriment these defendants and the other owners or former owners of assets of M. Guerra and Son.

When Plaintiff Manges made his separate settlements with the former partners of M. Guerra and Son, effecting a withdrawal from the partnership of M. A. Guerra and Virginia G. Jeffries, and his acceptance as a partner therein, the withdrawing partners reserved as part of the consideration for the settlement with Plaintiff, Manges, their interest in the minerals, town lots and lands reserved in the deed given on behalf of M. Guerra and Son by J. C. Guerra, V. H. Guerra (and their wives) to Plaintiff Manges on March 31, 1969. ~~When these transactions were approved by the Receiver and the Court, the said reserved minerals, town lots and lands (for brevity hereinafter referred to as "minerals and town lots") ceased to be assets of M. Guerra and Son, and therefore ceased to be subject to control of the Receiver or this Court, but were assets owned jointly by M. A. Guerra, Virginia G. Jeffries, Ruben R. Guerra, H. P. Guerra, Jr., J. C. Guerra and V. H. Guerra, who no longer constituted the partners in M. Guerra and Son, the Plaintiff Manges having replaced M. A. Guerra and Virginia G. Jeffries as a partner therein. These defendants allege that a conspiracy was carried~~

out between Plaintiff Manges, the Receiver, and J. C. Guerra and V. H. Guerra to cause sale to Plaintiff Manges of controlling interest in the First State Bank and Trust Company of Rio Grande City and of the 72,000 acres of ranch lands of M. Guerra and Son at less than the fair market value thereof; and that the sale to Manges of the controlling interest in said Bank was confirmed in the separate settlements made between Manges these defendants and other partners and former partners in M. Guerra and Son, under the terms of which the former partners in M. Guerra and Son retained the interests in minerals and town lots (which the Receiver here seeks to sell). ~~To~~ protect themselves against the possibility of sale of such minerals and town lots the settlements required, and Manges agreed to pay receivership expenses in excess of \$50,000.00.]

d. There is attached and marked Appendix "B" a copy of the Statement of Condition of the First State Bank and Trust Company Rio Grande City, Texas at the close of business December 31, 1972, which shows as directors, among others, O. P. Carillo, whom we believe to be, and allege to be your Honor, O. P. Carillo, Judge of the 229th District Court of Starr County; and Dennis E. Hendrix, whom we believe and therefore allege to be the attorney for the Receiver; and Don A. Manges, whom we believe to be and allege to be the same Don A. Manges, who was appointed by the Receiver to be the overseer of the assets of M. Guerra and Son at a salary of \$1,500.00 per month, whose expenses in the sum of \$33,363.90 is being contested as an unnecessary and unreasonable and excessive charge against the assets of M. Guerra and Son; and Frank R. Nye, Jr., who was employed as a special attorney by the Receiver

for some purpose unknown to these defendants, whose attorneys' fees in the sum of \$14,306.64 are being contested as not incurred in the interest of M. Guerra and Son, not authorized, not necessary and constitute an unreasonable charge against the partnership. With Manges owning controlling interest in said bank, none of these appointments or elections to the Board of Directors could have been made without his consent or active participation.

e. It is alleged in the objections filed herein by these defendants that while they knew Plaintiff Manges and the Receiver Bates were friends, they interposed no objections to Bates appointment as Receiver. However, in February 1971, Manges, to induce further good will and possible favor of the Receiver and possibly to influence his decisions, sought to have him elected or appointed to the Board of Directors of the Groos National Bank of San Antonio, Texas. That Manges did so attempt is confirmed by Appendix "C" attached hereto, which consists of a letter dated February 16, 1971 addressed to Carl Jockusch, chairman of the Board of Groos National Bank by Honorable Jack Skaggs, attorney for Clinton Manges, to which is attached three separate requests by Plaintiff Manges to the Board of said bank, one request being that two men, Senator James S. Bates of Edinburg, Texas, (the Receiver in this cause) and a San Antonio Judge, be appointed to the Board; and also a letter from William B. Camp, Comptroller of Currency to Manges, which probably explains why the appointments were not made. The originals of these documents are in evidence as Exhibits D, E, F, G and H attached to a defendants affidavit in Civil Action SA71CA362 in the U. S. District Court for the Western District of Texas, entitled "Clinton Manges Plaintiff vs. William B. Camp, Comptroller

of the Currency," which is now on appeal in the U. S. Court of Appeals, Fifth Circuit, New Orleans, Louisiana in cause no. 72-1962, styled "Clinton Manges, Appellant vs. William B. Camp, Comptroller, et al."

f. Defendants pleadings also allege that Plaintiff, Manges, employed for the handling of his controversy with Groos National Bank, and other litigation involving ranch lands in Duval County Texas, the attorney who represented defendant Ruben R. Guerra in this action in this Court, to curry favor with such attorney and to the detriment of said defendant. In the end, said attorney became (in the opinion of these defendants) ineffective in his efforts to deal with Plaintiff Manges or the Receiver on behalf of this defendant in this cause, and this defendant employed other counsel.

III.

When all of these efforts of Plaintiff Manges to inject himself into close association with the decision making personnel of this Court in this case and by conferring favors upon them, by efforts to appoint the Receiver to the Board of Directors of one of the larger banks in Texas; by his success in appointment to the Board of Directors of the First State Bank and Trust Company of Rio Grande City of the attorney for the Receiver, Dennis Hendrix; a special attorney for the Receiver, Frank R. Nye, Jr. (whose fees are contested as being not properly assessed against the estate of M. Guerra and Son); Don A. Manges, the overseer appointed by the Receiver (whose expenses of \$33,363.90 are also contested as improperly assessed against the estate of M. Guerra and Son); and finally, your Honor, O. P. Carillo, Judge of the 229th District Court of Starr County, Texas, in which court this case pends, are considered, the interests of the Judge of this Court are so intermingled and bound up with those of the Plaintiff, Manges, as to disqualify the Judge for interest.

A directorship in a bank is a thing of value - which carries with it prestige, director's fees, and tangible economic benefits including easy access to credit, favorable interest rates, and many other benefits. A Judge, and other officer's of the Court, who accept the gift of a directorship in a bank from the majority stockholder of a bank, if not too compromised because of direct interest to participate in judicial proceedings to which the donor is a party, are nevertheless so compromised that the appearance of interest and impropriety can not be escaped.

Wherefore these Defendants suggest that the Judge of this Honorable Court disqualify or recuse himself from further proceeding in the case.

Respectfully submitted,

SMITH, McILHERAN, McKINNEY & YARBROUGH

BY: Garland F. Smith

Attorneys at Law
P. O. Box 416
Weslaco, Texas 78596

CANONS OF JUDICIAL ETHICS*

Ancient Precedents.

"And I charged you judges at that time, saying Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it."—*Deuteronomy*, I, 16-17.

"Then shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous."—*Deuteronomy*, XVI, 19.

"We will not make any justiciaries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it."—*Magna Charta*, XI.V.

"Judges ought to remember that their office is *ius dicere* not *ius dare*; to interpret law, and not to make law, or give law."

"Judges ought to be more learned than witty; more reverend than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue."

"Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent information by questions through pertinent."

"The place of justice is a hallowed place; and therefore not only the Bench, but the foot pace and precincts and purprise thereof ought to be preserved without scandal and corruption." . . . —*Bacon's Essay "Of Judicature."*

Preamble.

In addition to the Canons for Professional Conduct of Lawyers which it has formulated and adopted, the American Bar Association, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

I. Relations of the Judiciary.

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses,

* These Canons, to and including Canon 34, were adopted by the American Bar Association at its Forty-Seventh Annual Meeting, at Philadelphia, Pennsylvania, on July 9, 1924. The Committee of the Association which prepared the Canons was appointed in 1922, and composed of the following: William H. Taft, District of Columbia, Chairman; Leslie C. Corliss, Maine; Robert von Moschisler, Pennsylvania; Charles A. Boston, New York; and Garret W. McEnerney, California. George Sutherland, of Utah, originally a member of the Committee, retired and was succeeded by Mr. McEnerney. In 1923, Frank M. Angellotti, of California, took the place of Mr. McEnerney.

Canons 28 and 30 were amended at the Fifty-Sixth Annual meeting, Grand Rapids, Michigan, August 30-September 1, 1933. Canon 28 was further amended at the Seventy-Third Annual Meeting, Washington, D. C., September 29, 1930; Canons 35 and 36 were adopted at the Sixtieth Annual Meeting, at Kansas City, Missouri, September 30, 1937. Canon 35 was amended at San Francisco, Calif., Sept. 1952.

jurors and attendants who aid him in the administration of its functions.

2. The Public Interest.

Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

3. Constitutional Obligations.

It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.

4. Avoidance of Impropriety.

A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law, and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

5. Essential Conduct.

A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

6. Industry.

A judge should exhibit an industry and application commensurate with the duties imposed upon him.

7. Promptness.

A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

8. Court Organization.

A judge should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiescence by reason of friendly association with him.

It is desirable too, where the judicial system permits, that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

9. Consideration for Jurors and Others.

A judge should be considerate of jurors, witnesses and others in attendance upon the court.

10. Courtesy and Civility.

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

11. Unprofessional Conduct of Attorneys and Counsel.

A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counsellors, brought to his attention; and, if adverse comment is not a sufficient corrective, should send the

APPENDIX "A"

P. 1

matter at once to the proper investigating and disciplinary authorities.

12. Appointees of the Judiciary and Their Compensation.

Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence.

A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

14. Independence.

A judge should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor by apprehensions of unjust criticism.

15. Interference in Conduct of Trial.

A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examining of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

16. Ex parte Applications.

A judge should discourage *ex parte* hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act upon such *ex parte* applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigation as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

17. Ex parte Communications.

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such brief presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to

the judge intended or calculated to influence action should be made known to opposing counsel.

18. Continuances.

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

19. Judicial Opinions.

In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that Courts of Appeals in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing that in writing opinions which are to be published judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusions and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

20. Influence of Decisions Upon the Development of the Law.

A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.

21. Idiosyncrasies and Inconsistencies.

Justice should not be moulded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

22. Review.

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the questions arising upon the trial exactly as they arose, were presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly

APPENDIX "A"

P. 2

worthy of condemnation because the wrong done may be irremediable.

23. Legislation

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

24. Inconsistent Obligations.

A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. Business Promotions and Solicitations for Charity.

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. Personal Investments and Relations.

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

27. Executorships and Trusteeships.

While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. Partisan Politics.*

While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities.

Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or reelection.

* Amended August 31, 1933 and September 20, 1950.

29. Self-Interest.

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. Candidacy for Office.*

A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

31. Private Law Practice.

In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practises law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practise in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practise law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of law.

32. Gifts and Favors.

A judge should not accept any presents or favors from litigants, or from lawyers practising before him or from others whose interests are likely to be submitted to him for judgment.

33. Social Relations.

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

34. A Summary of Judicial Obligation.

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere

* As amended August 31, 1933.

APPENDIX "A"

P.3

with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

35. Improper Publicizing of Court Proceedings.*

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Provided that this restriction shall not apply to the broadcasting or televising, under the supervision of the

* Adopted September 30, 1937; amended September 13, 1952 and February 5, 1963.

court, of such portions of naturalization proceedings (other than the interrogation of applicants) as are designed and carried out exclusively as a ceremony for the purpose of publicly demonstrating in an impressive manner the essential dignity and the serious nature of naturalization.

36. Conduct of Court Proceedings.*

Proceedings in court should be so conducted as to reflect the importance and seriousness of the inquiry to ascertain the truth.

The oath should be administered to witnesses in a manner calculated to impress them with the importance and solemnity of their promise to adhere to the truth. Each witness should be sworn separately and impressively at the bar or the court, and the clerks should be required to make a formal record of the administration of the oath, including the name of the witness.

* Adopted September 30, 1937.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."

—ABRAHAM LINCOLN

APPENDIX "A"

P. 4

STATEMENT OF CONDITION

First State Bank & Trust Company

Rio Grande City, Texas

At The Close Of Business December 31, 1973

<u>RESOURCES</u>	<u>LIABILITIES</u>
Loans & Discounts	\$ 6,967,803.24
Banking House	114,000.00
Furniture & Fixtures	15,108.52
Other Real Estate	12,947.20
Investment in Life Ins.	61,245.07
Cash & Due From Banks	2,084,743.77
U. S. Gov. Securities	1,228,818.00
Federal Funds Sold	1,500,000.00
Other Stocks, Bonds & Warrants	3,093,865.14
Other Assets	5,911.00
TOTAL	\$ 15,084,441.94
	Capital Stock
	\$ 700,000.00
	Certified Surplus
	500,000.00
	Undivided Profits & Reserves
	653,167.95
	Deposits
	13,085,181.68
	Interest Collected - Not Earned
	135,634.46
	Other Liabilities
	10,457.85
	TOTAL
	\$ 15,084,441.94

OFFICERS

Frank L. Anderson	Pres. & Chm. of Bd.
Robert G. Richmond	V. P. & Vice Chm. of Bd.
H. P. Guerra III	Vice-President
René G. Smith	Vice-President
M. F. Garcia	Inactive Vice-Pres.
Manuel P. Guillén	Ass't Vice-Pres.
Beulah G. Gonzalez	Cashier
Crisanta Vela	Ass't Cashier
Yola Saldaña	Ass't Cashier
Vilma Treviño	Ass't Cashier
Kenneth Anderson	Ass't Cashier

DIRECTORS

Frank L. Anderson
O. P. Carrillo
Ramiro Carrillo
Pedro Diaz, Jr.
M. F. Garcia
Francisco Garza
H. P. Guerra, III
Dennis E. Hendrix
Max L. Jones
Don A. Manges
Frank R. Nye, Jr.
Robert G. Richmond
R. Charles Richmond

APPENDIX "B"

00183

February 16, 1971

Mr. Carl Jockusch
Chairman of the Board
Groos National Bank of San Antonio
San Antonio, Texas

Dear Mr. Jockusch:

I attach three separate requests, directed to the Board. I would appreciate it if you would present these requests to the Board in behalf of my client, Mr. Clinton Manges.

Very truly yours,


JACK SKAGGS

JS/af

Enclosures: 3

APPENDIX "C"

Page 1

Exhibit 0

REQUEST FOR ACTION BY THE BOARD OF DIRECTORS
OF THE GROOS NATIONAL BANK OF SAN ANTONIO

The undersigned, CLINTON MANGES, being one of the principal stockholders of this Association, does hereby request that the Board of Directors of the Association consider and pass the following Resolution:

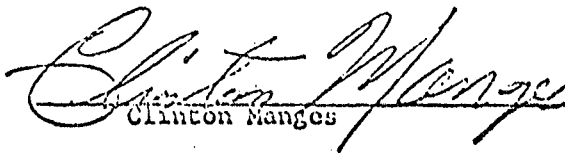
"BE IT RESOLVED: That the officers of this Association be, and they are hereby, instructed that they will not employ in behalf of the Association nor will they pay out of funds belonging to the Association any attorney, counselor, public relations advisor, nor any other person, firm or corporation, for any of the following purposes:

1. To prepare, circulate or solicit proxies or agreements in the nature of a voting trust;
2. To advise any stockholder or group of stockholders in relation to their ownership of stock in the Association; and
3. To lobby or otherwise seek to influence or affect the vote or opinion of any public official, state or federal, elective or appointive."

and,

CLINTON MANGES does further request that a copy of this Request and the action of the Board thereon be spread upon the Minutes of the Association and that the said Minutes reflect the action of the Board thereon.

San Antonio, Texas
February 16, 1971


Clinton Manges

REQUEST FOR ACTION BY THE BOARD OF DIRECTORS
OF THE GROOS NATIONAL BANK OF SAN ANTONIO

The undersigned, CLINTON MANGES, being one of the principal stockholders of this Association, does hereby request that the Board of Directors of the Association consider and pass the following Resolution:

"BE IT RESOLVED: That the Officers of this Association be, and they are hereby, instructed to take whatever action is necessary to withdraw from registration, deregister and delist the common stock of said Association so that the same will not constitute a 'registered security' as meant and defined by the Securities Exchange Act of 1934, as Amended, and by the Regulations of the Comptroller of Currency; and

BE IT FURTHER RESOLVED: That pending such withdrawal from registration that no officer or Director of this Association shall circulate or solicit from stockholders proxies, either in direct proxy form or in voting trust form; and

BE IT FURTHER RESOLVED: That a copy of this Resolution be spread upon the Minutes of the Association and be forwarded to the Comptroller of Currency to evidence the intent of this Board."

CLINTON MANGES further requests that this Request be spread upon the Minutes of the Association and that the Minutes reflect the action of the Board on the same.

San Antonio, Texas
February 16, 1971


Clinton Manges

00186

REQUEST FOR ACTION BY THE BOARD OF DIRECTORS
OF THE GROOS NATIONAL BANK OF SAN ANTONIO

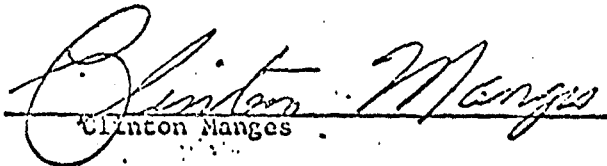
The undersigned, CLINTON MANGES, being one of the principal stockholders of this Association, hereby requests that the Board of Directors fill two of the vacancies on the Board, as provided by Section 3 of the By-Laws of the Association and in accordance with the Laws of the United States, and to fill two of such vacancies he suggests the following persons:

JUDGE SOLOMON CASSEB, of San Antonio, Texas, who should be invited to join the Board as a Director, subject to compliance with all of the requirements of the Comptroller of Currency and the Federal Deposit Insurance Corporation.

SENATOR JAMES S. BATES, of Edinburg, Texas, who should be invited to join the Board as a Director, subject to compliance with all of the requirements of the Comptroller of Currency and the Federal Deposit Insurance Corporation.

The undersigned further requests that a copy of this Request be spread upon the Minutes of the Association and that the Minutes reflect the action of the Board thereon.

San Antonio, Texas
February 16, 1971


Clinton Manges

APPENDIX "C"

Page 4 Exhibit C.

00187

MAR 1 1971

CERTIFIED MAIL
Return Receipt Requested

Mr. Clinton Manges
6701 Blanco Road
San Antonio, Texas

Dear Mr. Manges:

It has come to the attention of the Comptroller's office that you are participating in the conduct of the affairs of Groos National Bank, San Antonio, Texas. We also understand that you were charged on May 10, 1963, in an indictment, authorized by a United States attorney, with the commission or participation in a felony involving dishonesty or breach of trust; and that this indictment resulted in a judgment of conviction on October 8, 1965.

In accordance with the provisions of 18 U.S.C. §1818(g)(1), you are hereby prohibited from further participation in any manner in the conduct of the affairs of Groos National Bank. This prohibition includes, but is not limited to, any attempt to effectuate or continue the effectuation of the requests for action you addressed to the board of directors of Groos National Bank on February 16, 1971.

A copy of this order is being served upon Groos National Bank. This prohibition shall remain in effect until modified or terminated by the Comptroller's office.

Very truly yours,

(SIGNED)

William B. Camp
Comptroller of the Currency

Filed 10th day of Jan

A.D. 1973 at 9:20

12 o'clock A M

Blaschke
District Clerk

Starr County, Texas

By [Signature] Deputy

APPENDIX "C"

Page 5

Exhibit H

00188

THE STATE OF TEXAS }
COUNTY OF STARR } I, JUAN ERASMO SAENZ, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is
a true and correct copy of the original _____

MOTION FOR DISQUALIFICATION OR RECUSATION

_____ now on file in said court.

Witness my Hand and the Seal of said Court at office in RIO GRANDE

CITY, TEXAS, this 1st day of OCTOBER 19 75 .

JUAN ERASMO SAENZ

DISTRICT CLERK, STARR COUNTY, TEXAS

BY:  DEPUTY
CORINA G. GONZALES, CHIEF

00189

NO. 3953

CLINTON MANGES	:	IN THE DISTRICT COURT
VS.	:	229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	:	STARR COUNTY, TEXAS

REQUEST FOR ADMISSIONS
UNDER RULE 169

TO: Hon. O. P. Carrillo, Judge of the 229th District
Court of Starr County, Texas, Duval County Courthouse, San
Diego, Texas

GREETING:

On behalf of defendants, Ruben R. Guerra and M. A. Guerra, you are hereby requested under the provisions of Rule 169 of the Texas Rules of Civil Procedure to admit the truth of the matters of fact set forth below. Each of the matters of which an admission is requested shall be deemed admitted unless a sworn statement is delivered to us or to our attorney of record at the address below not more than thirteen (13) days after these requests are delivered to you either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why you can not either admit or deny those matters. Any admission made by you pursuant to this request is for this pending "Motion for Disqualification or Recusation" only and neither constitutes an admission by you for any other purpose nor may be used against you in any other proceeding. The requested admissions are as follows:

1. That you are now serving as a Director of the First State Bank and Trust Company of Rio Grande City, Texas by virtue of election by the stockholder of the Bank, or appointment of the Board of Directors thereof.

2. That you have served as a Director of the First State Bank and Trust Company of Rio Grande City, Texas during all or part of the time between the time of the annual stockholders' meeting held in January 1971 and the present time.

E-20

EXHIBIT

5

00190

3. The First State Bank and Trust Company of Rio Grande City, Texas pays monthly directors fees to its directors.

4. You have received payment of directors fees from said First State Bank and Trust Company of Rio Grande City, Texas, for all or part of the time you have so served as director.

5. As Judge of the 229th District Court you approved the application of the Receiver of M. Guerra and Son to convey part of the ranch lands of said partnership to Clinton Manges, Plaintiff herein.

6. Subsequent to the approval of the conveyance to said Plaintiff, Clinton Manges, you have been permitted to graze a number of your cattle on lands so acquired by said Clinton Manges under such conveyance.

7. On or about the month of January 1971, the Plaintiff, Clinton Manges, delivered to you a cadillac automobile.

8. The cadillac automobile so delivered to you by Plaintiff, Clinton Manges, as stated in No. 7 above, was a gift from Plaintiff, Clinton Manges, to you.

Respectfully submitted

RUBEN R. GUERRA AND M. A. GUERRA,
DEFENDANTS

BY Garland F. Smith
Garland F. Smith of
Smith, McIlheran, McKinney & Yarbrough
Attorneys for Defendants
R. R. Guerra and M. A. Guerra

CERTIFICATE OF SERVICE

I, Garland F. Smith, of counsel for defendants, Ruben R. Guerra and M. A. Guerra, have this day served a copy of the above and foregoing requests for admission on Hon. O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas, by placing a copy thereof as certified mail in the U. S. Post Office in Weslaco, Texas this 23rd day of January 1973 addressed to him at the Duval County Courthouse, San Diego, Texas 78384. At the same time and in like manner by certified mail I also served copies hereof on all other parties hereto by placing the same in the U. S. Post Office

EXHIBIT 5

00191

in Weslaco, Texas addressed to such parties as indicated below.


Garland F. Smith

Copies to:

1. Hon. Arnulfo Guerra
Attorney at Law
Drawer 905
Roma, Texas 78584
Attorney for J. C. Guerra, V. H. Guerra
and Virginia Jeffries
2. Mr. H. P. Guerra, Jr., Defendant
Drawer G.
Rio Grande City, Texas 78582
Attorney for Self
3. Hon. William C. Church
Messrs. Kampmann, Church, Burns and Brennan
612 Milam Bldg.
San Antonio, Texas
4. Hon. Dennis E. Hendrix
Attorney
Box 117
Edinburg, Texas 78539
Attorney for the Receiver, James S. Bates
5. Hon. Blas Chapa
District Clerk
Starr County Courthouse
Rio Grande City, Texas 78582

EXHIBIT 5

NO. 3953

CLINTON MANGES	I	IN THE DISTRICT COURT
VS.	I	229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	I	STARR COUNTY, T E X A S

STATEMENT IN RESPONSE TO
REQUEST FOR ADMISSIONS

TO: RUBEN R. GUERRA and M. A. GUERRA, DEFENDANTS IN THE ABOVE
ENTITLED AND NUMBERED CAUSE:

In response to your Request for Admissions in this Cause, received on the 24th day of January, 1973, O. P. Carrillo, says that:

1. Yes, it is true that I am now serving as a Director of the First State Bank and Trust Company of Rio Grande City, Texas, by virtue of election by the Stockholders of the Bank or appointment of the Board of Directors thereof.

2. Yes, it is true that I have served as a Director of the First State Bank and Trust Company of Rio Grande City, Texas, during all or part of the time between the time of the annual stockholders' meeting held in January, 1971 and the present time.

3. Yes, it is true that the First State Bank and Trust Company of Rio Grande City, Texas, pays monthly directors' fees to its Directors, in the amount of \$50.00 per month, as a token payment to help defray the actual expenses of travel, meals and time.

4. Yes, it is true that I have received payment of directors' fees from said First State Bank and Trust Company of Rio Grande City, Texas, for all or part of the time I have so served as director.

5. Yes, it is true that as Judge of the 229th District Court I approved the application of the Receiver of M. Guerra & Sons to convey part of the ranch lands of said partnership to Clinton Manges, Plaintiff herein, upon the written request of the Receiver, joined therein by Ruben R. Guerra, J. C. Guerra, Viegilio H. Guerra, H. P. Guerra, Jr., and Clinton Manges.

6. Yes, it is true that subsequent to the approval of the conveyance to said Clinton Manges, I have been permitted to graze cattle on lands so acquired by said Clinton Manges under such conveyance under a lease agreement for three years providing for such at the rate of \$5,000.00 per year payable at the end of said lease in cash or the equivalent in cattle at the option of said Clinton Manges.

E-21

EXHIBIT 6

6

7. No, it is not true that on or about the month of January, 1971, the Plaintiff Clinton Manges, delivered to me a Cadillac Automobile.

8. No, it is not true that the Cadillac Automobile was delivered to me by Plaintiff, Clinton Manges, as stated in No. 7 above, nor was it a gift from Plaintiff, Clinton Manges.

9. On further answer and explanation of the statements in 7 and 8 above, the following Statement is made. On October 12, 1970, I conveyed a House and lot in Benavides, Duval County, Texas, to Clinton Manges in exchange for ten (10) shares of Stock in the First State Bank and Trust Company of Rio Grande City, Texas, and the payment by Clinton Manges of the balance due on the purchase of a new car, which I had previously ordered from Riata Cadillac Co., in San Antonio, Texas. The Bank Stock was formally transferred to me on December 10, 1970, and the payment by Clinton Manges to Riata Cadillac Co., on my behalf was made in the amount of \$6,915.55 on January 27, 1971. The car was picked up by me.

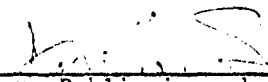

O. P. Carrillo

THE STATE OF TEXAS I
COUNTY OF DUVAL I

BEFORE ME, the undersigned authority, on this day personally appeared O. P. CARRILLO, known to me to be a credible person, who being by me first duly sworn, on oath says that he has read the foregoing Statement in Response to Request for Admissions, designed to be used in the above entitled and numbered cause, and knows the contents of such, and that such and every statement and allegation thereof are true and correct.


O. P. Carrillo

SUBSCRIBED AND SWORN TO BEFORE ME by the said O. P. CARRILLO, on this 5th day of February, 1973, to certify which witness my hand and seal of office.


Notary Public in and for Duval
County, T E X A S

Copies to: Hon. Blas Chapa
District Clerk
Starr County Courthouse
Rio Grande City, Texas

00194

2. Hon. Arnulfo Guerra
Attorney at Law
Drawer 905
Roma, Texas 78584
3. Mr. H. P. Guerra, Jr., Defendant
Drawer G.
Rio Grande City, Texas 78582
Attorney for Self
4. Hon. William C. Church
Messrs. Kampmann, Church, Burns and Brennan
612 Milan Bldg.
San Antonio, Texas
5. Hon. Dennis E. Hendrix
Attorney at Law
Box 117
Edinburg, Texas 78539
Attorney for the Receiver, James S. Bates
6. Hon. Garland Smith
Smith, McIlheran, McKinny & Yarbrough
Attorneys at Law
Professional Building
Fifth & Missouri Avenue
Weslaco, Texas 78596

Vol. "V" Page 51/53

Filed 7th day of Feb

A.D. 1973 at 9:45

o'clock P M

B. S. Chaga

District Clerk

Stav County, Texas

By [Signature] Deputy

00195

THE STATE OF TEXAS }
COUNTY OF STARR } I, JUAN ERASMO SAENZ, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is
a true and correct copy of the original _____
STATEMENT IN RESPONSE TO REQUEST FOR ADMISSIONS

_____ now on file in said court.

Witness my Hand and the Seal of said Court at office in RIO GRANDE
CITY, TEXAS, this 1st day of OCTOBER 19 75.

JUAN ERASMO SAENZ
DISTRICT CLERK, STARR COUNTY, TEXAS

BY:  DEPUTY
CORINA G. GONZALES, CLERK

00196

NO. 3953

CLINTON MANGES

VS.

M. A. GUERRA, ET AL

VS.

IN THE DISTRICT COURT

229TH JUDICIAL DISTRICT

STARR COUNTY, TEXAS.

SUPPLEMENTAL MOTION FOR
DISQUALIFICATION OR RECUSATION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME R. R. Guerra and M. A. Guerra, defendants in the above styled and numbered cause, and submit the following as a supplement and in addition to the grounds for disqualification or recusation heretofore included in the Motion for Disqualification or Recusation filed herein, and would respectfully show the Court:

I.

That in addition to the grounds for disqualification or recusation as set forth in the original motion filed herein, it has now come to the attention of these defendants and they allege that in addition to the grounds heretofore stated, that sometime between the month of October 1970 and June 1971, the Plaintiff, Clinton Manges, and Judge O. P. Carrillo entered into a grazing lease contract for a term of three years, under the terms of which Judge Carrillo was to pay for the lease at the end of the term in either in cash or in cattle at the rate of \$1.00 per acre for 5,000 acres, more or less; that in addition thereto, as a courtesy, Manges permitted Judge Carrillo to graze his cattle on a substantial acreage for some three months, more or less, without charge.

II.

In addition to the above, during sometime between October 1970 and February 1971, the Plaintiff, Clinton Manges, entered into a transaction with Judge O. P. Carrillo, whereby Manges traded Carrillo Ten (10) shares of stock in the First State

E-22

00197

Bank and Trust Company of Rio Grande City for a house and lot in Benavides, Texas, with the difference to be paid by Manges taking a second hand car owned by Judge Carrillo and trading it in to Riato Cadillac Company in San Antonio for a new Cadillac Automobile to be delivered to Judge Carrillo free and clear of encumbrances. Apparently no values were placed on either the house, the second hand car or bank stock in this transaction.

III.

In addition to other officers of the Court who have been elected to the Board of Directors of the First State Bank and Trust Company of Rio Grande City, of which Manges has at all times since October 1, 1970 owned the controlling interest, there was elected to the Board of Directors James S. Bates, the Receiver in this cause.

IV.

In addition to the above, Judge O. P. Carrillo has enjoyed extensive credit from the First State Bank and Trust Company of Rio Grande City over the period from October 1970 to the present time, with loans ranging as high as \$38,000.00 secured by a financial statement, and loans up to \$300,000.00 secured by real estate.

Respectfully submitted,

SMITH, McILHERAN, MCKINNEY & YARBROUGH

BY: _____
Attorneys for R. R. Guerra and
M. A. Guerra, Defendants

CERTIFICATE

I hereby certify that copies hereof have been mailed to other counsel or parties in this cause, February 21, 1973.

Garland F. Smith

00198

1. Mr. William C. Church, Jr.
Kampmann, Church, Burns & Brennan
612 Milam Building
San Antonio, Texas 78205
Attorneys for Plaintiff, Clinton Manges
2. Mr. Dennis E. Hendrix
P. O. Box 117
Edinburg, Texas 78539
Attorney for the Receiver, James S. Bates
3. Mr. Harvey L. Hardy
760 South GPM Building
Central Park - 800 NW Loop 410
San Antonio, Texas 78216
4. Mr. H. P. Guerra, Jr.
Drawer G
Rio Grande City, Texas 78582
Attorney for Self
5. Mrs. Virginia Jeffries
Roma, Texas 78584
6. Hon. O. P. Carrillo
Judge
229th District Court
San Diego, Texas 78384
7. Blas Chapa
District Clerk
Rio Grande City, Texas 78584

CLINTON MANGES		IN THE 229TH DISTRICT COURT
VS.		OF
R. A. GUERRA, ET AL		STARR COUNTY, TEXAS

BRIEF OF DEFENDANTS, R. R. GUERRA AND M. A. GUERRA, SUPPORTING THEIR MOTION FOR DISQUALIFICATION OR RECUSATION OF THE PRESIDING JUDGE

TO THE HONORABLE JUDGE OF SAID COURT:

STATEMENT

This cause of action was instituted by Plaintiff, Clinton Manges, on October 11, 1968 and has been pending on the docket of this Court or the Appellate Courts at all times since to the present time. The original order appointing Hon. James S. Bates to be Receiver of M. Guerra and Son was entered by Judge C. Woodrow Laughlin, judge of the District Court of Starr County prior to creation of the 229th District Court, to which Hon. O. P. Carrillo was elected Judge. He assumed his duties as Judge of this Court in January 1971, at a time when this cause was still pending on the docket of the Court.

Among the first acts Judge Carrillo was requested to perform after the Receiver took possession of the assets on February 1, 1971 were the following:

1. On February 9, 1971, to approve or confirm sale of some 39,000 acres of the 72,000 acres of ranch lands of M. Guerra and Son to Plaintiff Clinton Manges. (See Final Report, paragraph V) The Receiver's request to Judge Carrillo was that the conveyance be made to Plaintiff Manges without reserving a vendor's lien for the unpaid part of the purchase price. The Receiver's final report made over two years later shows Manges still owing \$94,447.51, and these defendants contend this is an understatement of Manges balance by \$217,792.88, and that in fact he still owes

E-23 *cy H*
11

00200

\$312,240.49.

2. On February 20, 1971 to approve or confirm a sale of 40 shares of bank stock in the First State Bank and Trust Company of Rio Grande City to the Plaintiff, Clinton Manges.

3. On August 20, 1971, to approve conveyance to other partners who received a partial distribution of lands in kind, R. R. Guerra, V. H. Guerra and H. P. Guerra, Jr. Unlike Manges, each was required to put up in cash the amount each would owe the partnership estate at the time of receiving their deeds from the Receiver. (Final Report, paragraph VI)

The following are some of the pertinent facts relating to this motion:

1. At all times for many months prior to January 1, 1971, and continuing to the present time, Plaintiff Clinton Manges owned the majority of the stock in the First State Bank and Trust Company of Rio Grande City.

2. In response to requests for admission under Rule 169, Judge Carrillo stated that the facts concerning his election or appointment to the Board of Directors of the First State Bank and Trust Company, his grazing cattle on lands acquired by Plaintiff Manges under the order mentioned in paragraph 1 above, and of the purchase of a Cadillac automobile from Riata Cadillac Company, are as follows:

a. Yes, it is true that I am now serving as a Director of the First State Bank and Trust Company of Rio Grande City, Texas, by virtue of election by the Stockholders of the Bank or appointment of the Board of Directors thereof.

b. Yes, it is true that I have served as a Director of the First State Bank and Trust Company of Rio Grande City, Texas, during all or part of the time between the time of the annual stockholders' meeting held in January, 1971 and the present time.

c. Yes, it is true that the First State Bank and Trust Company of Rio Grande City, Texas, pays monthly directors' fees to its Directors, in the amount of \$50.00 per month, as a token payment to help defray the actual expenses of travel, meals and time.

d. Yes, it is true that I have received payment of directors' fees from said First State Bank and Trust Company of Rio Grande City, Texas, for all or part of the time I have so served as director.

EX 4
2 WRMH

e. Yes, it is true that as Judge of the 229th District Court I approved the application of the Receiver of M. Guerra and Son to convey part of the ranch lands of said partnership to Clinton Manges, Plaintiff herein, upon the written request of the Receiver, joined therein by Ruben R. Guerra, J. C. Guerra, Viegilio H. Guerra, H. P. Guerra, Jr., and Clinton Manges.

f. Yes, it is true that subsequent to the approval of the conveyance to said Clinton Manges, I have been permitted to graze cattle on lands so acquired by said Clinton Manges under such conveyance under a lease agreement for three years providing for such at the rate of \$5,000.00 per year payable at the end of said lease in cash or the equivalent in cattle at the option of said Clinton Manges.

g. No, it is not true that on or about the month of January, 1971, the Plaintiff Clinton Manges, delivered to me a Cadillac Automobile.

h. No, it is not true that the Cadillac Automobile was delivered to me by Plaintiff, Clinton Manges, as stated in No. g above, nor was it a gift from Plaintiff, Clinton Manges.

i. On further answer and explanation of the statements in g and h above, the following Statement is made. On October 12, 1970, I conveyed a house and lot in Benavides, Duval County, Texas, to Clinton Manges in exchange for ten (10) shares of Stock in the First State Bank and Trust Company of Rio Grande City, Texas, and the payment by Clinton Manges of the balance due on the purchase of a new car, which I had previously ordered from Riata Cadillac Co., in San Antonio, Texas. The Bank Stock was formally transferred to me on December 10, 1970, and the payment by Clinton Manges to Riata Cadillac Co., on my behalf was made in the amount of \$6,915.55 on January 27, 1971. The car was picked up by me.

3. In addition to the appointment or election of Judge Carrillo to the Board of said First State Bank and Trust Company of Rio Grande City, a number of other officers of the Court or employees of the Receiver have been elected to and are now serving on the Board of Directors of said bank, including Dennis E. Hendrix, attorney for the Receiver, Frank R. Nye, Jr., a special attorney for the Receiver, and Ramiro Carrillo, brother of the Judge.

4. Some of the matters now pending before the Court (in addition to the motion to disqualify) are the following:

a. The motion of Plaintiff, Manges, to strike these defendants' Requests for Admissions under Rule 169.

b. Motion for Protective Orders filed on behalf of Plaintiff, Manges, and defendants, J. C. and V. H. Guerra,

EX 4
WHT
3/11

00204

bank, certainly invites the speculation that the Plaintiff Manges places value on doing favors for the Judge, the Receiver and those close to the Judge in the case.

We submit that the moment a judge enters an order displeasing to a litigant from whom the judge is receiving current benefits derived from orders favorable to a litigant, as here, where such benefits are entirely at the pleasure of the litigant, he places such benefits in jeopardy. This is, as a matter of law, a direct interest. The director's fees of \$50.00 per month are enough, since extent of interest is not important; it is the fact of interest.

But suppose the judge rules, as we contend he must, that he is disqualified; this raises a question of the validity of his lease of grazing lands from Manges under orders he has approved, since disqualification renders all acts of the disqualified Judge absolutely void (except certain administrative acts). (Elizabeth Slaven v. Jube Wheeler, et al. Tex 1882, 58 Tex 23; Fry, et al v. Tucker, et al Sup. Ct., 1947, 202 Sw 2d 218.) Thus the judge is not free to rule either way, lest he void his own lease - and probably the transaction under which Manges acquired control of the Bank, thereby also threatening his membership on the Bank Board. These are things of measurable value.

By virtue of the Judge's previous actions in this case, the Judge has obtained interests that are capable of being valued by pecuniary standards. It is elementary and without dispute that the position of Director in a Bank is a valuable interest; and certainly in a cattle country such as here involved, no one would contend that a grazing lease^{or a right thereto} is not a thing of value. The Judge has received grazing rights and bank directorship by virtue of proceedings in this case. Clinton Manges acquired said property from the Receiver of

Ex 4
6
11

the partnership M. Guerra and Son, and under orders signed by the Judge. The Judge, having acquired these two valuable interests by virtue of previous rulings in this case, now holds interests which he can protect in only one way; by ruling that he is qualified on the pending motions, and protecting Manges' interest on the merits, and thereby protecting his own interest in the directorship and the grazing lease or right to it.

III. In Case of Doubt: While Canons of Judicial Ethics adopted by the American Bar Association do not have the status of law in Texas, they should be persuasive in pointing the way in a doubtful case. We invite the court's attention especially to the following Canons:

4. Avoidance of Impropriety: A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

13. Kinship or Influence: A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

24. Inconsistent Obligations: A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

26. Personal Investments and Relations: A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

29. Self-Interest: A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal

EXH
J. [unclear]

litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

32. Gifts and Favors: A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

33. Social Relations: It is not necessary to the performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

Defendants do not contend that such canons are law in Texas, nor that they have attained the status of being ethically binding on Texas Judges. So far as we know, Texas Judges have taken no official action thereon. Defendants do submit, however, that the canons adopted by the American Bar Association set forth only a minimum standard of conduct for Judges: that if there be doubt as to the directness of the interest shown, and the conduct is in conflict with these minimum standards, such fact should be persuasive in favor of disqualification or recusation. While it would require a very immaculate isolation from all human nature and human history to find the interest here involved as other than direct, Texas Courts have spoken on doubtful situations. In Cotulla State Bank v. Herron, 202 S.W. 797 (Tex. Civ. App.---San Antonio 1918), Justice Fly stated for the court:

It is to be regretted that a judge should try a case in which there is the least ground upon which to base a claim for his disqualification, and, if an error is ever made as to disqualification, it should be in favor of the disqualification rather than against it. An independent, unbiased, disinterested, fearless judiciary is one of the bulwarks of American liberty, and nothing should be suffered to exist that would cast a doubt or shadow of suspicion upon its fairness and integrity.

*Exc H
S. W. H.
"*

The Herron case was on motion for new trial, based on the Judge's prior consultation with one of the litigants and is not in point as to the type of interest here alleged, but is cited as accurately stating the judicial basis and philosophy in disqualification and recusation matters.

Judge Fly's statement is certainly consistent with the constitutional mandate that no Judge shall sit in a case "wherein he may be interested". The word "may" as used in the context of the constitution can be defined only in its common sense meaning that if the connection of the Judge with the parties, facts or issues in a case are such that a weak Judge might (may) be persuaded thereby, a fatal doubt is raised, and the Judge should not sit.

The interests here shown (1) directorship in a bank; (2) a grazing lease, or even (3) a right or option to have a grazing lease. These all have value. The acceptance of these benefits by a Judge from a litigant in a pending case invites curiosity as to whether fair consideration was paid, and this invitation creates a fatal doubt as to the Judge's impartiality. Once a doubt is raised by impropriety pointing up that the Judge "may" have an interest, he is constitutionally disqualified. (Cotulla State Bank v. Herron, 202 S.W. 797; Lindsley v. Lindsley, 152 S.W. 2d 415 at 432 ff)

IV. Presumption in Favor of Pleadings: At this stage of the proceedings, in a determination as to whether or not the Judge of the Court is disqualified, the allegations or the moving party are accepted as true, just as is the procedure in a similar judgment motion. Many of the facts herein alleged constitute a portion of the record in this suit, and these defendants request that judicial notice be taken of such facts. Some additional facts herein alleged are within the personal knowledge of the Judge. However, Movants herein do not waive their right to prove additional facts by introduction of evidence. Slaven v. Wheeler, 58 Tex. 23 (1882); Wright v. Sherwood, 37 S.W. 468 Tex. Civ. App. (1896)

Ex 4
9 WAA
11

PRAYER

Wherefore these Defendants pray that the Judge enter an order disqualifying or recusing himself from further proceeding herein, and submitting the matter to the Presiding Judge of the Fifth Administrative Judicial District to appoint a Judge to hear the matter on the merits.

Respectfully submitted,

SMITH, McILHERAN, McKINNEY & YARBROUGH

BY Garland F. Smith

Box 416, Weslaco, Texas 78596

Phone 968-2196

Attorneys for Defendants

R. R. Guerra and

M. A. Guerra

I hereby certify that a copy of this brief has been placed in the U. S. Mails addressed to other parties or their attorneys, as indicated below. *July 8, 1973.*

Garland F. Smith
Garland F. Smith, of Counsel for
Defendants R. R. Guerra and M. A. Guerra

Hon. O. P. Carrillo, Judge
229th District Court
San Diego, Texas 78384

Mr. William C. Church, Jr.
Kampmann, Church, Burns & Brennan
612 Milam Building
San Antonio, Texas 78205
Attorneys for Plaintiff, Clinton Manges

Mr. Dennis E. Hendrix
P. O. Box 117
Edinburg, Texas 78539
Attorney for the Receiver, James S. Bates

Mr. H. P. Guerra, Jr.
Drawer G
Rio Grande City, Texas 78582
Attorney for Self

Mr. Harvey L. Hardy
760 South GPM Building
Central Park - 800 NW Loop 410
San Antonio, Texas 78216

Filed 9:41 day of July
A.D. 1973 at 10:45

12:15 o'clock PM
Bliss
District Clerk

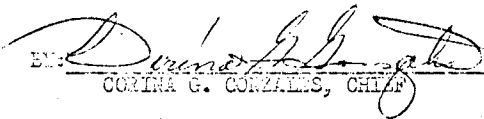
San Antonio, Texas

Ex 4
10/10/73
11

00209

STATE OF TEXAS)
COUNTY OF STARR) I, JUAN ERASMO SAENZ, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is
a true and correct copy of the original BRIEF OF DEFENDANTS, R. R. GUERRA AND
M. A. GUERRA, SUPPORTING THEIR MOTION FOR DISQUALIFICATION OR RECUSATION OF
THE PRESIDING JUDGE now on file in said court.
Witness my Hand and the Seal of said Court at office in RIO GRANDE
COUNTY, TEXAS, this 7th day of May 19 75.

JUAN ERASMO SAENZ
DISTRICT CLERK, STARR COUNTY, TEXAS


EM: CORINA G. CORZALES, CHIEF DEPUTY

EX 4
11/11 WNA

00210

NO. 3953

CLINTON MANGES

VS.

M. A. GUERRA, ET AL

IN THE DISTRICT COURT
229TH JUDICIAL DISTRICT
STARR COUNTY, TEXAS

IN THE DISTRICT COURT

229TH JUDICIAL DISTRICT

STARR COUNTY, TEXAS

SECOND SUPPLEMENTAL MOTION FOR
DISQUALIFICATION OR RECUSATION

Defendants R. R. Guerra and M. A. Guerra file this their second Supplemental Motion that Judge O. P. Carrillo be adjudged to be disqualified to try this cause for reasons in addition to those set forth in their original and supplemental motions filed herein, as follows:

I.

Under the due process provision of the Fourteenth Amendment to the Constitution of the United States, these defendants are entitled to have their cause tried by a fair and impartial judge, under fair and impartial trial procedures, which rights will be denied them if this cause is tried by Judge Carrillo, because of the gifts and favors given by the Plaintiff Clinton Manges to the judge and other officers of the court as specified in the original and supplemental motions filed herein, which are hereby adopted, and as shown by the evidence taken herein.

II.

These defendants are entitled to trial of their cause before a fair and impartial judge under the due process provisions of the Fifth Amendment to the Constitution of the United States, which right will be denied them if Judge Carrillo tries this cause for the reasons stated in paragraph I above.

III.

These defendants will be denied the equal protection of the laws of this State, which right is guaranteed by

E-24

00211

the Fourteenth Amendment to the Constitution of the United States, by denial of trial before a fair and impartial judge if Judge Carrillo should try this cause, for all of the reasons set forth in the original and Supplemental Motion, which are hereby adopted, and as shown by the evidence.

Respectfully submitted,

SMITH, McILHERAN, McKINNEY & YARBROUGH

BY: Garland F. Smith

Deputy
Starr County, Texas
District Clerk
of Starr County, Texas
A. D. 1975 at
day of

Filed 20th day of March

A.D. 1975 at 8:45

o'clock P M

Blanche

District Clerk

Starr County, Texas

By Blanche Deputy

00212

THE STATE OF TEXAS }
COUNTY OF STARR } I, JUAN ERASMO SAENZ, Clerk of the District
Court of Starr County, Texas do hereby certify that the foregoing is
a true and correct copy of the original SECOND SUPPLEMENTAL MOTION
FOR DISQUALIFICATION OR RECUSATION

_____ now on file in said court.

Witness my Hand and the Seal of said Court at office in RIO GRANDE
CITY, TEXAS, this 1st day of OCTOBER 19 75.

JUAN ERASMO SAENZ
DISTRICT CLERK, STARR COUNTY, TEXAS

BY:  DEPUTY
CORINA G. GONZALES, CHIEF

11782
00213

NO. 3953

IN THE DISTRICT COURT OF STARR COUNTY, TEXAS
FOR THE 229TH JUDICIAL DISTRICT OF TEXAS

- - o - -

CLINTON MANGES,

V S

M. A. GUERRA, ET AL

- - o - -

TRANSCRIPT OF THE EVIDENCE.

VOLUME I

E-25

D. A. VAN DRESAR,
Official Reporter,
93rd District Court,
Edinburg, Texas

00214
GENERAL INDEX

FEBRUARY 20, 1973

Page

CAPTION - - - - -	1
OPENING STATEMENTS - - - - -	2
INTRODUCTION OF DOCUMENTARY EVIDENCE - - - - -	26
F. R. NYE, Jr.	
Examination by Mr. Smith - - - - -	29
ROBERT G. RICHMOND	
Examination by Mr. Smith - - - - -	39
Examination by Mr. Church - - - - -	50
CLINTON MANGES	
Examination by Mr. Smith - - - - -	51
DENNIS HENDRIX	
Examination by Mr. Smith - - - - -	77
<u>MARCH 30, 1973</u>	
OPENING STATEMENTS - - - - -	100
O. P. CARRILLO	
Examination by Mr. Smith - - - - -	106
W. T. GUERRA	
Examination by Mr. Smith - - - - -	128
Voir Dire Examination by Mr. Church - - - - -	131
O. P. CARRILLO	
Examination by Mr. Church - - - - -	136
Examination by Mr. Smith - - - - -	140
DENNIS HENDRIX	
Examination by Mr. Church - - - - -	142
Examination by Mr. Smith - - - - -	145
FRANK ANDERSON	
Examination by Mr. Smith - - - - -	146
Examination by Mr. Church - - - - -	168
PRESENTATION OF MOTION TO TAKE JUDICIAL NOTICE - - - - -	170
CLINTON MANGES	
Examination by Mr. Smith - - - - -	188

00315
APRIL 23, 1973

DENNIS HENDRIX	
Examination by Mr. Smith - - - - -	197
O. P. CARRILLO	
Telephone statement - - - - -	214
W. T. GUERRA	
Examination by Mr. Smith - - - - -	217
Voir Dire Examination by Mr. Church - - - - -	229
Examination by Mr. Smith (Cont'd.) - - - - -	231
Examination by Mr. Church - - - - -	232
PRESENTATION DOCUMENTARY EVIDENCE - - - - -	233
OCTAVIO GONZALEZ	
Examination by Mr. Smith - - - - -	238
Examination by Mr. Church - - - - -	251
<u>MAY 18, 1973</u>	
PRESENTATION & ARGUMENT, MOTION TO REOPEN - - - - -	257
JAMES A. JEFFRIES	
Examination by Mr. Bates - - - - -	275
M. A. GUERRA	
Examination by Mr. Bates - - - - -	281
ARNULFO GUERRA	
Examination by Mr. Bates - - - - -	288
Examination by Mr. Smith - - - - -	291
Re-examination by Mr. Bates - - - - -	291
VIRGIL H. GUERRA	
Examination by Mr. Bates - - - - -	293
Examination by Mr. Smith - - - - -	297
Re-examination by Mr. Bates - - - - -	300
Re-examination by Mr. Smith - - - - -	302
Re-examination by Mr. Bates - - - - -	303
RUBEN R. GUERRA	
Examination by Mr. Bates - - - - -	304
Examination by Mr. Church - - - - -	319
Examination by Mr. Smith - - - - -	321
Re-examination by Mr. Church - - - - -	321
JACK SKAGGS	
Telephone statement - - - - -	327

00216

JAMES A. JEFFRIES	
Examination by Mr. Church - - - - -	331
ANNOUNCEMENT OF RULING OF COURT - - - - -	338
CERTIFICATE OF REPORTER - - - - -	343

00217

NO. 3953

IN THE DISTRICT COURT OF STARR COUNTY, TEXAS
FOR THE 229TH JUDICIAL DISTRICT OF TEXAS.

- - o - -

CLINTON MANGES,

V S

M. A. GUERRA, ET AL

- - o - -

A P P E A R A N C E S :

Messrs. Kampmann, Church, Burns & Brennan, of San Antonio,
Texas, per Hon. WILLIAM C. CHURCH,

ATTORNEYS FOR THE PLAINTIFF,

(Respondent herein).

Messrs. Smith, McIlheran, McKinney & Yarbrough, of Weslaco,
Texas, per Hon. GARLAND F. SMITH and Hon. MICHAEL
McKINNEY,

ATTORNEYS FOR DEFENDANTS, M. A.

GUERRA AND R. R. GUERRA, (Movants
herein).

- - o - -

BE IT REMEMBERED, that a hearing in the above styled and
numbered cause of the Motion of defendants, M. A. Guerra and
R. R. Guerra to disqualify Judge O. P. Carillo, begun and
holden on the 20th day of February, 1973, before The Honorable
Magus F. Smith, District Judge, Presiding, the following

U0213

proceedings were had and evidence adduced, to-wit:

- - o - -

MR. SMITH: For the record, I am Garland F. Smith, and we represent Ruben -- R. R., that is -- and M. A. Guerra on a motion to disqualify Judge Carrillo to hear this case. Mr. Harvey Hardy of San Antonio represents J. C. and V. H. Guerra. I have a copy of a letter that he wrote to the Clerk that he would not appear, that they were not taking sides on this motion. H., P. Guerra, Jr. and Mrs. Jeffries are also parties to the suit, but as far as I can tell they have no answers on file which take issue on the motion. Mr. Church, here, represents Mr. Manges.

MR. CHURCH: I am William C. Church, of San Antonio, and I represent Mr. Clinton Manges. We filed a motion, actually, to dismiss their motion, but we are ready on this matter.

THE COURT: Well, I haven't seen your motions. I have been furnished with copies of the briefs. Perhaps I had better get the motions here, and see what it is we are - - - well, here is plaintiff's first amended motion to dismiss defendants' motion to disqualify.

MR. CHURCH: Yes, that would be our motion.

00219

THE COURT: Is your brief the same as the one you mailed to Judge Carrillo?

MR. CHURCH: Yes, sir, and also I have furnished this Court a copy of it.

THE COURT: Maybe, to save time, it would not be a bad idea to bring the Court up to date on exactly what is the status of the law suit, and more or less what it's about. I thought I might look at the papers in the case, but they are quite voluminous and it would take quite a bit of time.

MR. SMITH: Your Honor, I think that to rule on this motion will be necessary that you - - - that it will be necessary your Honor have a little bit of background on the case, because to a degree it has something to do with why the motion is filed. We did not file this motion lightly. This is the first case I have ever had, contested case, in the District Court in Starr County, Texas, and it is somewhat embarrassing, on the first effort, to bring a motion like this. But probably our facts will make it plain that it should be done so we won't wind up with a void judgment.

In August of 1968, J. C. and V. H. Guerra, who are two of the partners in a limited partnership known as M. Guerra & Son - - - this whole thing concerns that partnership. The partnership was set up in 1956 by H. P.

00220

Guerra, Sr. and his six children, five of whom were men and one was a lady, the daughter. The five sons were designated as general partners in this limited partnership, and their names were V. H. Guerra, Joe, or J. C. Guerra, M. A. Guerra, H. P. Guerra, Jr. and Ruben R. Guerra. And the daughter was Mrs. Virginia Jeffries.

The partnership affairs went on all right until the death of the senior Mr. Guerra, I believe in 1958. Anyway, that is immaterial to this matter here today. But in 1968 the partnership affairs had run into trouble. There were debts coming due faster than they could pay them off. The partnership was not insolvent, you understand, but they were having difficulties. There were disagreements among the partners. And as a result Mr. Manges, the plaintiff here, was attempting to buy the ranch lands of the partnership, which was the principal asset of the partnership, some seventy-two thousand acres of land. The interests of the partners were set out in the partnership agreement, and it was roughly one-sixth each, but not exactly. Some had 16.66 percent, some 17.66, and I believe Ruben had 18.66, and Mrs. Jeffries a smaller interest. Mr. Manges was successful, in August of 1968, in securing from J. C. and V. H. Guerra a deed purporting to convey to him their one-sixth interests in the ranch lands in M. Guerra & Son. That was contested by a number

00221

of law suits, and I won't go into detail on that except to mention that there was a contest, on the grounds that under the partnership agreement J. C. and V. H. Guerra did not have the authority to make a sale because they did not first offer it to the partnership and to some other owners.

On October 11th, 1968, Mr. Manges, under these two deeds from J. C. and V. H. Guerra filed a petition in this Court to have a receiver appointed to take charge of the assets of M. Guerra and Son, and to pay the debts, give him his interest, and partition the lands and all. That receivership was contested also, and it went to the Supreme Court and was ultimately upheld.

What brought the whole thing to a head was that after having given the two deeds, J. C. and V. H. Guerra, in March of 1969, while the receivership was pending and Mr. Bates had been appointed as receiver, J. C. and V. H. Guerra gave Mr. Manges a deed purporting to convey the entire seventy-two thousand acres of M. Guerra & Son, which was the principal asset of the partnership. Ruben and M. A. Guerra, our clients, and H. P. Guerra, Jr., all three wanted to retain the ranch lands and make arrangements to sell enough to pay the debts and divide what was left. In order to try to accomplish that, they filed an Arrangement in Bankruptcy in Federal

00223

Court, under the terms of which the receiver was enjoined from proceeding until that was settled. In the meantime, Mr. Manges commenced a process of separate settlements with the parties, settling with Ruben in 1970, and H. P., Jr. in the summer or fall of 1970, and finally in December of 1970 M. A. Guerra, who is one of the movants here, made a settlement agreement with Mr. Manges, where he just sold to Mr. Manges his interest in the partnership, and received as consideration a cash consideration, first - - - this is M. A. Guerra, now, and he is in Court here. Would you stand up, please, Mr. Guerra. And Ruben is sitting next to him -- would you stand also, so the Court will know who you are. These are the two movants here, your Honor. Ruben Guerra has pursued the ranching business all his life, and he doesn't want to give up his ranch." Those are some of the considerations here.

But getting back - - -

THE COURT: You said M. A. Guerra conveyed to Manges - - -

MR. SMITH: Conveyed to Manges his interest in the partnership for the considerations -- and they are of extreme importance here -- a cash consideration, in which the amount is not necessarily relevant, and he also reserved his interest in the one-half of the minerals in

00223

the town lots and the land in Goliad County that was reserved in what we call the big deed, the one from J. C. and V. H. Guerra, purporting to convey the entire seventy-two thousand acres, purporting to act for the partnership. And he was to reserve his interest in the minerals that had been reserved in the deed to Manges, which presumably somewhere down the road would be conveyed to Manges, at least as far as M. A. was concerned, his interest in what was acquired. In addition, Manges was to pay all income taxes which would be assessed against M. A. as a result of his profit. And Manges was to step into M. A.'s shoes as a partner in M. Guerra & Son, and would have the benefit of any other assets or interests, and by the same token to become liable to pay any debts that M. A. might owe the partnership in overdrafts or adjustments that would have to be made. In other words, Manges was to take care of M. A.'s part of the internal and external debts.

After the settlement between M/ A. and Manges, then the Arrangement - - - this settlement was made, incidentally, on December 8th, 1970 and shortly thereafter, and I don't have the exact date, the Arrangement in Bankruptcy was dismissed in Federal Court, which removed every obstacle for the receiver to take charge of the assets and go ahead with the liquidation of the debts and making the necessary arrangements. On January 15th, 1971, M. A.

00224

Guerra executed some additional papers considered necessary to carry out the agreement. I think that is irrelevant, except that it was done.

In January, 1971, Judge Carrillo was inaugurated as Judge of this Court, and on February 9th - - - and by that time Mr. Bates had got into the case far enough that he had an application made to the Court, and it was approved, to convey to Mr. Manges all of the ranch lands of M. Guerra & Son except those that by the settlements that had been made by some of the Guerras with Manges would go to Manges -- roughly 40,800 acres of land as I calculate it. They have since had some surveys made and it could be a little bit off, but it is substantially correct. That deed was made and approved by the Judge on February 9th, 1971.

THE COURT: You say that was an agreement?

MR. SMITH: Well, the receiver made the application for authority to convey this land to Manges. Now, it is true that that application was approved by Ruben - - - well, by all of the partners except of course M. A. Guerra who, no longer being a partner, did not approve it. And I think the same was true of Mrs. Jeffries.

On the merits of the - - -

THE COURT: Mrs. Jeffries didn't - - -

MR. SMITH: Didn't approve it. And there is

00225

a finding of fact both in the application and in the petition and in the approval, that the only partners remaining in M. Guerra & Son are Clinton Manges, R. R. Guerra, J. P. Guerra, Jr., V. H. Guerra and J. C. Guerra, which of course eliminates M. A. Guerra and ^Mrs. Jeffries who had sold to Manges, reserving as part of the consideration the one-half of the minerals and the town lots and land in Goliad County.

Now, there was a delay here from January 9th to August 20th. On the merits of the suit the contention will be made that it was the understanding of the other partners, Ruben, H. P., Jr. and I suppose V. H. Guerra, although I haven't talked to him about it, but certainly with respect to Ruben, the understanding was that he was also to get his deed to the property free and clear of liens immediately after the deed was given to Mr. Manges. The deed was given to Manges free and clear of liens, and he was not required to pay the balance of what he owed at that time. That was in February, 1971. We are now before you two years later, and Mr. Manges still has not paid the balance due the receiver, which the receiver indicates is ninety-four some thousand dollars. On the merits we are contending that a correct accounting would show that he actually owes three hundred and twelve thousand dollars, and we are also contesting an allocation of

00226

twenty-five thousand dollars to Mr. Manges because we say there is no basis for it. All of those items are in the picture on the merits.

Now the other partners, unlike Mr. Manges, when they got their deeds on August 20th, they were required to put up in cash the entire amount it took to pay the receiver for their property that they received, on the basis of fifty-four thirty an acre, which was the price figured out under this contract executed by J. C. Guerra and V. H. Guerra to Manges on March 31st, 1969. And that deed is significant because it was executed during the time the receivership was pending. It was an obvious contempt of Court, because it was at a time when the property was in custodia legis. And that is the background of that. But the price set in that deed, fifty-four thirty per acre, was used as the basis for the allocation of property to the partners in this final settlement that was made.

Now, there are some interim facts here that become important on this motion to disqualify. We intend to show that during the pendency of this law suit there have been favors and gifts of substantial value made by Manges not only to the Judge of the Court but to practically every officer of the Court who had anything to do with the decision-making in this receivership. It appears to me that Manges was attempting to smother the

00227

Court and its officers with favors in a manner that gives him both a past and a future interest in this law suit, such as is an absolute disqualification, no way to avoid it.

Among other things he did, the receiver - - - and these are facts that have to be understood in perspective -- the receiver was appointed, and Dennis Hendrix was named as his attorney. All right, there is nothing wrong there. He asked for the appointment of surveyors, and they were appointed. We think the fees authorized were exorbitant, but we don't necessarily argue that the appointment as such - - - we won't necessarily argue with that, if it was necessary. But it clearly was not necessary to give Manges his deed. Mr. Frank Nye was appointed the attorney for the receiver for some special duties. We don't know what they were -- the only thing pertinent here is that he did act as special attorney for the receiver.

Now, Mr. Manges' brother was appointed as an overseer of the receivership properties at a salary of fifteen hundred dollars a month. We question the necessity of an overseer, and of the salary, both.

Now we come to the facts that we think get right at the matter of the disqualification of the Judge. I want to point out that some of these things are indiscretions

00228

that could have been made innocently. I don't take any holier-than-thou attitude toward any of my fellow lawyers, Judge Carrillo or anybody else. I know Mr. Manges is a very aggressive man, and hard to say no to. But nevertheless, these things have happened. And from this point on there is no way to deal with the facts in this case except to take hold of them and see what it shows.

On February 16, 1971, and we have evidence of it attached to our pleadings, and we have requests for admissions out to Mr. Manges on which there is an effort to suppress, but it will show that on February 16, 1971 Mr. Manges, who at that time had acquired the majority of the stock in the Groos National Bank in San Antonio, made an effort to have the receiver appointed a director in the Groos National Bank. At the same time, in 1971, and I am not sure of the date but we have bank officials here under subpoena with the records, Judge Carrillo was appointed as a director of the First State Bank & Trust Company of Rio Grande City, of which bank Mr. Manges owned the controlling interest. On or about the same time -- and this, too, will be established -- Dennis Hendrix was elected a director of the First State Bank & Trust Company of Rio Grande City, and Mr. Hendrix, of course, is the attorney for the receiver here, and an officer of the Court in this case. Mr. Frank R. Nye, Jr., on or about

00229

the same date, was elected a director of the Rio Grande City Bank, and he, of course, was the special attorney for the receiver. And on or about the same time, Ramiro Carrillo, a brother of Judge Carrillo, was elected a director of the First State Bank & Trust Company at Rio Grande.

Now, we have on file the answers of Judge Carrillo to requests for admissions, which will be placed in evidence showing some of the facts. We were concerned about payment made by Mr. Manges for a Cadillac that was - - -that the Judge had. We had understood, and had evidence, that Mr. Manges had paid for the Cadillac. Judge Carrillo states that on October 12, 1970, he sold Mr. Manges a house and lot in Benavides, and received in return ten shares of stock in the First State Bank and Trust Company in Rio Grande City, and the remainder of the consideration was to be handled by Mr. Manges paying the balance due on the Cadillac which the Judge had previously ordered from the Riata Cadillac Company. We have subpoenaed Judge Carrillo to get the details and papers on that transaction, which we do not have at this time.

Now, after the Judge had approved this conveyance to Mr. Manges of the forty thousand acres, more or less, Judge Carrillo in his answers admits he had a grazing

00230

lease for a three year term on some of the acreage, and is grazing his cattle thereon. We do want to get the terms of that lease. Judge Carrillo admits that the directorship at the bank pays fifty dollars a month, and I believe on the grazing lease the deal is that at the end of the three years Mr. Manges will receive payment in cattle or in money, at his option.

Roughly, that is the facts. We call to your attention in our motion some of the - - - in addition to the Constitutional provision, which is in Article V, Section 11, that no Judge shall sit in any case wherein he may be interested -- that is based on interest. As far as we know, there is no relationship of the Judge with the party, or any basis for disqualification except the interest. But we do include in our motion, and will offer in interest the provisions from the American Bar Code of Judicial Ethics, and Canon 32 - - - there are quite a number of canons of ethics that are violated by what has been done, but 32 is directly in point. I would like to read that to your Honor. "32. Gifts and Favors. A Judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment." That is talking about it being indiscreet to accept favors from anyone who might be a litigant in

Court, and where the Judge accepts favors obtained from a litigant whose case was pending before the Judge at the time of the acceptance, that is even stronger. I don't think anyone would argue that a directorship of a bank is not a thing of value, or that the payment of fifty dollars a month would be adequate to bring it within the range of interest, present, past or future, that would be of concern. I don't think anyone would take the position in Starr County or in any other area where cattle raising, the cattle industry, is as important as it is here, that a grazing lease or even an option on a grazing lease would not be a thing of value to anyone having cattle. So the matters involved here are not things of insignificant interest, they are of substantial interest. My contention is that a Judge who has become this involved, and who has let the officers of his Court become so smothered with favors from a litigant, he has let both himself and his officers become so involved that the Judge should not proceed further in the case, and frankly I think Judge Carrillo recognized he is in this complicated position, and that is the reason he has asked Judge Alamia to assign another Judge to hear this motion.

I will not go into the law, because we have both filed briefs. But I believe those are substantially

00232

the facts. If I have misstated something, or left something out, maybe Mr. Church would want to correct me.

THE COURT: One question, Mr. Smith. You are asserting he is disqualified -- as of what date do you feel like, in your opinion - - -

MR. SMITH: I would say that the date he accepted the directorship of the bank would be one date of disqualification. That Cadillac deal, I feel like we need to go into that. I think the sort of a transaction involved there is one we have to air completely, and it might go back to October, before he took the Court over.

THE COURT: When was this leasing of the land?

MR. SMITH: Judge Carrillo stated it was shortly after - - - no he said it was after he had approved the order authorizing the receiver to convey the lands to Mr. Manges.

THE COURT: Well, now, are you asserting that the order approving the receiver's report is invalid?

MR. SMITH: I would say that - - - yes, I would say that any order that is not administrative is invalid. Now, a disqualified Judge can enter certain administrative orders.

THE COURT: But where it is a matter, as I understand it, of discretion, then that is void?

MR. SMITH: Absolutely void.

00233

THE COURT: But if it is more or less ministerial it might not be. Is that correct, Mr. Church?

MR. CHURCH: I would say yes, substantially. The only difference I have with Mr. Smith is that these orders entered by Judge Carrillo were all by agreement of the parties here today. In March, in August, all of them. And the matter has come along by agreement of all parties up to the time the objections to the receiver's accounting was filed by M. A. Guerra and R. R. Guerra. The matter before Judge Carrillo is the objections to the receiver's report, and cross action by R. R. Guerra. But Mr. Smith relates occurrences that appeared in the past, and says he is disqualified because he has an interest. I differ with him greatly, because I think the law is that the burden is on Mr. Smith to prove that in the particular matter before Judge Carrillo now, that he has a pecuniary interest in that proceeding. Not what happened in the past -- that has no bearing on whether or not he is disqualified under the constitution, which says, "in which he has an interest." And the cases say it must be a pecuniary interest, in the result of the matter he is sitting on. We have cited a recent Supreme Court case and one from the Amarillo Court of Civil Appeals, but even there I think a bank was involved, and the Judge even had a note at the bank, and they said he was not dis-

00234

qualified. It is not a question so much of being prejudiced or being influenced by these items he enumerates, perhaps as that he could be influenced, or biased, or prejudiced. Well, the statutes do not disqualify a Judge for prejudice or bias. And under the constitution that says he must have an interest in the result of the case on which he is sitting. Bias, prejudice, matters like that can be taken care of by an appeal, to see whether or not the bias or prejudice influenced his decision. The basis for disqualification, and the only thing, I think, that the Court has before it this morning on this motion, is whether or not in hearing the matter before this Court, being the objections to the receiver's report and the cross action, whether or not in making a decision there the Judge would have a pecuniary interest in the decision he makes. And that, I think, is the burden on Mr. Smith in his attempt to disqualify Judge Carrillo. The other matters he brings out are not, I think, constitutional grounds. That is why I filed my motion to dismiss, because if the Court will read his motion, he does not allege anywhere this specific ground that is necessary, that he has an interest in the outcome of what is before him. He raises all this stuff in the past, but he has to prove that Judge Carrillo has a pecuniary interest in the matter before him.

00235

THE COURT: Here is another question. It just kind of - - - I want it clear in my mind -- is this an appealable order, an appealable matter, or is it an interlocutory order that would have to go along with the rest of the case?

MR. CHURCH: The question of the contest of the receiver's report, it would have to be heard, and then whatever order was entered there, it would be appealable at the end of the receivership. I don't believe you could appeal directly at that time.

THE COURT: That's what I was wondering. Not that I want my opinion to stand up, because I have had a policy since I have been on the bench that I don't care what the appellate Court does. That's their business. They hire out to grade my papers, so to speak, and I don't care. It's up to them. What I was thinking about is this -- if the Judge is disqualified, I think of course both of you will agree that any order he may have entered is void. Some of the cases hold that it is the same as though he didn't even appear at the Courthouse. And if there are some void orders in there, if there is a question about it, the case could be finished and go up on its merits, and if the Supreme Court wants to write a little law on the constitution, which seems to be the thing to do these days - - - in other words, if I hold

00236

he was not disqualified and then they came along and reversed me, then everything would be wiped out and you would have to start all over again. Looks to me like a dangerous proposition, and I want to be right on it if I can.

MR. CHURCH: Now, Mr. Smith is contesting the receiver's accounting. From what the Court said, and what Mr. Smith is contending - - - is he contending that the conveyances to his clients are void? Is that what he is contending, that Judge Carrillo was disqualified from January 1st, 1971, and now all orders he has entered in this case are void?

THE COURT: I don't know. That's what I want to find out. In other words, is his act in receiving the lease on the land, and gratuitously, as he claims, or alleges, would that revert back and permeate back to the very beginning of his orders, and would it make them void? The appellate Courts could very easily make an expression on that. I don't know what they would do.

MR. SMITH: A correction on two items, please your Honor. No. 1, the orders of the receiver as far as M. A. Guerra is concerned, were not by agreement. He didn't sign anything, refused to sign anything unless, at the time of the assignment, he got his one-half of the minerals. And the other is, of course, that even

00237

the parties themselves cannot waive the disqualification of the Judge. If he is disqualified, everything is void.

THE COURT: Well, I understand that. In some states you can waive it, but not in Texas because it's a constitutional provision.

MR. SMITH: Of course the practical thing, the pragmatic thing that would happen in the case of the disqualification, the parties can always sit down and settle a law suit, which I think would be the first thing that should be considered if that happens. But that is beside the point. If we get started into an argument of further law, we will be here all day. We have quite a number of witnesses here under subpoena, and a lot of facts need to be developed. We would like to start putting on evidence, and then Mr. Church and I can argue the law.

MR. CHURCH: I just have one question of the Court -- is it Mr. Smith's position now that he files the motion to disqualify Judge Carrillo, and he is at the same time trying to set aside everything that has happened in this case, or does he want to affirm what he wants to, and void - - -

MR. SMITH: My position is I don't have to answer that silly question. The answer is, if Judge Carrillo is disqualified, whatever the law says is void,

00238

is void. That's trying to anticipate too far ahead, and it's not involved here.

THE COURT: As I understand your position, the motion to disqualify the judge - - - well, when that disqualification began I think would be very important.

MR. SMITH: And we can't determine that without the evidence.

THE COURT: Because disqualification can be raised even after the judgment is final. It's a snake that can raise its head anytime.

MR. SMITH: And that is exactly the reason we filed this motion. This is a prolonged case, extremely expensive, and we wouldn't want to go to the Supreme Court of Texas, or of the United States, and then have it turn out that everything is void.

THE COURT: I don't know if there have been any conveyances or mortgages of any of this land. That would of course make somebody else interested in whatever the - - -

MR. SMITH: Well, Judge, some of these things are void.

THE COURT: Well, at least it's a very dangerous proposition, and should be straightened out now.

MR. SMITH: And Mr. Church knows what we are asking for. We are just asking Mr. Manges to live up to

00239

his contracts, and if he does - - -

MR. CHURCH: The contracts Mr. Manges made are no part of the receivership. That is a separate matter entirely. The receiver is under orders of the Court. They have the right to sue Mr. Manges in any Court in the State where they can get jurisdiction, on his contracts. But it has no bearing at all on the receivership, or on this motion to disqualify. On the matter now before this Court, the Court can't tell Mr. Manges, "You live up to your contracts." But anyway, that hasn't anything to do with the receivership. He has nothing to do with Mr. Manges' contracts.

MR. SMITH: We admit that Mr. Manges is not supposed to bind the receiver. But the facts are that he did. Every contract Manges made, the receiver has gone right along with it. There are offers pending that would get at least a hundred thousand dollars more than he got for the property, but Manges has been calling this thing - - -

MR. CHURCH: I object to the remarks of Mr. Smith there. His clients got their property at exactly the same price as Mr. Manges - - -

THE COURT: Well, let's go forward, gentlemen.

MR. SMITH: Your Honor, would you like for us to read the motion?

00240

THE COURT: Yes - - - well, let me see if I can find it in the papers.

MR. SMITH: Yes, sir. Well, I will just read the motion to the Court.

(Whereupon such motion was read to the Court by counsel, same being as is contained in the Transcript in this cause made and filed.)

THE COURT: Now, I don't believe you said in there anything about any lease of any land?

MR. SMITH: I did not include that. That is information that was developed after we filed this. We may have to ask for a trial amendment.

MR. CHURCH: What was that, sir?

THE COURT: I said that he didn't say he included the lease of the land that he put in his brief.

MR. SMITH: Yes, that is information that was developed later. The Judge's admissions on that will be one of the first items of evidence. He did admit he was leasing the land. It may be that we should ask leave to amend and include that as one of our allegations. But I think the fact should be brought out. As a matter of fact, that could be brought out even after it goes to the Supreme Court, if necessary.

THE COURT: All right. Is there any objection

to his amending his pleading?

MR. CHURCH: I have no objection.

THE COURT: Fine. I think it would be wise to consider everything now.

MR. CHURCH: I have objections to his pleading as it is now, you understand, but not to his amending it.

THE COURT: What is your objection?

MR. CHURCH: His motion as written does not set out or allege the interest of Judge Carrillo in this proceeding. He alleges there was this contract with Mr. Manges and with these individuals, setting out the retention of the minerals, but that is not for the receivership - - -

THE COURT: Does the receivership attempt to sell - - -

MR. CHURCH: They made an application to sell half the minerals, and the town lots, and that was his objection.

THE COURT: Is that still to be heard by the Court?

MR. CHURCH: Yes, sir. But what I am getting at is, for instance, that he tried to make Mr. Bates a director of the San Antonio bank. That has nothing in the world to do with the disqualification of the Judge.

And that he made Dennis Hendrix a director of the Rio Grande City bank, that has nothing whatever to do with the disqualification of the Judge. It has nothing at all to do with, and has no connection with whether or not the Judge has an interest in the matter before him, and that is what he must allege and prove. He says because these other people have been offered a job someplace, and didn't get it, that that disqualifies Judge Carrillo, and we say it has no bearing on it whatsoever. If he has a direct pecuniary interest in the matter, that is valid. But that is not the basis of his motion at all. He just says that because he offered to make somebody a director, that he did make the attorney for the receiver a director, and that he did make F. R. Nye a director, that is the basis for his motion, and that has absolutely no connection with it. That is our objection to his motion.

THE COURT: Well, all right, I'll go ahead and hear you.

MR. SMITH: Your Honor, I believe the first item of evidence we would introduce would be the request for admissions and the answers of Judge Carrillo.

THE COURT: Do you think you will need Judge Carrillo here?

MR. CHURCH: I don't, your Honor.

THE COURT: He called me, I believe Saturday, and said that if necessary - - - well, he is holding Court for me in Hidalgo County.

MR. CHURCH: Well, he has the request for admissions and the answers made by the Judge.

MR. SMITH: The thing we wanted from Judge Carrillo, very likely we can furnish the documents and maybe stipulate on them. We wanted a copy of the lease contract on this grazing land. Maybe Mr. Manges has a copy, and if he does he can give it to us. But let us make the decision after we talk to Mr. Manges.

THE COURT: Okay, we will go ahead then. But first, let's take about a fifteen minute recess.

(Whereupon, following a recess in the proceedings, the hearing was resumed as follows:)

MR. SMITH: Your Honor, we have searched the files, and have probably just overlooked it, but we could not find the Judge's answers in the Clerk's files, but we do have a copy of the answers he sent to us, which we would like to offer in evidence. And we will assure the Court, of course, that this is a correct copy.

MR. CHURCH: I have no objection. We have a copy also.

MR. SMITH: Then we would like to offer the

Request for Admissions first, as Defendants' Exhibit No. 1.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 1, was received in the evidence, and is in words and figures as contained in the Appendix of Exhibits hereto.)

MR. SMITH: And we offer as our Exhibit No. 2, the answers of Judge Carrillo to the requests.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 2, was received in the evidence, and is in words and figures as contained in the Appendix of Exhibits hereto.)

MR. CHURCH: We have no objection to Defendants' Exhibits 1 and 2, your Honor.

MR. SMITH: Now, we have Mr. Nye here, and while we are waiting for another witness, if he would like to testify and get back to his duties, we could go ahead.

00245

F. R. NYE, JR.

Called as a witness by the defendants (movants herein), being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q Would you state your name, please?

A Frank Randall Nye, Jr.

Q And you are an attorney practicing at Rio Grande City?

A That is correct.

Q I believe we requested you to bring some papers and so forth, all the correspondence pertaining to M. Guerra & Son between yourself and Mr. Bates, Clinton Manges, or any other person relating to this case?

A Yes, sir.

Q Do you have it?

A Not all of it. I was under the impression this would just go to the disqualification.

MR. CHURCH: For the record, then, we do object to offering in evidence all of the correspondence requested by them, between Mr. Nye and the receiver, as not relevant or material as to any interest in this proceeding of Judge O. P. Carrillo. That was my objection to his motion at the start, but I now object to offering evidence in regard to that, because it is not relevant or material whether or not Judge Carrillo has an interest in it. If it pertains

00246

to Judge Carrillo, I have no objection. It does have a basis in the matter of the accounting, but we are not trying objections to that this morning. So we would object to the testimony.

THE COURT: What is the relevancy of it, Mr. Smith?

MR. SMITH: Your Honor, of course this matter of the disqualification of the Judge, and the efforts of the plaintiff to not only confer favors on the Judge during the pendency of the litigation but also on other officers of the Court who have anything to do with the decision making, all this is related to his disqualification. Mr. Nye was an attorney for the receiver, and we think those things constitute part of the pattern, and as such are admissible on the matter of the Judge's disqualification. The whole personnel of the court in a case like this, that is as complicated as this is, should be - - - the whole evidence just needs to come in on this, and we are contending it is entirely pertinent.

MR. CHURCH: The only question before this Court is whether or not Judge Carrillo is disqualified, not whether these individuals have gotten anything. there is no complaint against them, being disqualified or not. This is not evidence that could be said to be in any way relevant or material whether or not Judge O. P.

00247

Carrillo has an interest, under the cases and the constitution.

THE COURT: I believe I will sustain that objection. In other words, that would go more or less to the disqualification of the receiver, rather than the Judge.

MR. SMITH: Your Honor, we would except, and we want to put the evidence in on a bill of exceptions.

THE COURT: All right, if you want to put it in on a bill, go ahead.

Q What correspondence do you have with you, Mr. Nye?

A Well, I have a folder here with a number of - - -

Q As a matter of expediency, we also asked for your complete office files concerning matters for which you were employed by the receiver, and for which you submitted a bill to the receiver for \$4,660.00, and also all work papers prepared by you for the receiver or any person purporting to act for him. It may be the easiest way would be to submit the whole thing.

A Maybe, but I don't have it all with me. I didn't know it would come up, because I didn't know it was relevant to this hearing.

MR. SMITH: I want to explain to the Court that we may owe the witness an apology. This subpoena was requested for the previous hearing, and we didn't have it

00248

re-issued.

Q Could you submit the papers you have, please?

A I will be glad to submit them to the Court, yes, sir.

Q And on the others you have in your office, could you let us examine them, and on any where it would be necessary, to question you?

A Sure.

Q If it would be all right, let Mr. McKinney look over what you have - - -

MR. CHURCH: Please the Court, we are going to waste time here. I thought he was making a bill of exceptions, but he is now attempting to take an oral deposition on the content of the receiver's report, and we will be here until December at this rate. If he has any matters pertaining to the disqualification of the Judge, I have no objection to the bill. But now to take a deposition, and want to look at his file and all - - -

MR. SMITH: We can't make out our bill without knowing what is in those files. There will be a lot of questions I will want to ask him on the merits that I won't ask this morning. I want his connection with the case - - -

THE COURT: Well, ask what questions you have for this matter.

MR. CHURCH: Ask him what his connection is.

00249

I have no objection to that on his bill.

THE COURT: I don't want to be here all day on a deposition.

MR. CHURCH: And that is what he is getting into now.

MR. SMITH: Well, we are going to get to the bottom of this thing if it takes all day today, or takes two months. If I might tell this story about the Devil and Daniel Webster - - -

MR. CHURCH: Is this part of your bill?

THE COURT: Go ahead, let's go forward with this Mr. Smith.

Q Mr. Nye, state first, what was your employment that you had for the receiver?

A What was the employment?

Q Yes, sir, what were you employed to do?

A I was employed to assist the receiver in whatever was necessary that he had to do in relation to his duties as receiver, and also to assist Mr. Dennis Hendrix, the attorney for the receiver.

Q And were you present at the drafting, or did you draw up any pleadings in the case?

A I drew up certain pleadings. And I drew up certain orders.

Q Did you have anything to do with the preparation of the application for the sale of the land to Mr. Manges, which

- was filed, I believe, on February 9th?
- A I don't recall. I know I did some work on all of the various things the receiver was doing at that time, including notices to creditors, notices to banks, getting things of that kind in order. And I worked on some abstracts. I worked on some maps. I worked on some of the deeds, etcetera.
- Q In connection with your employment, who employed you, Mr. Hendrix, Mr. Bates?
- A Mr. Hendrix and Mr. Bates were both together when we discussed the employment.
- Q And did they discuss with you any of the contracts that had been made as between these various partners and Mr. Manges?
- A Not at that time, no.
- Q Did they discuss the fact that Mr. Manges was to bear all of the receiver's costs in excess of fifty thousand dollars?
- A No, sir.
- Q They didn't tell you about that?
- A No, sir.
- Q Did they tell you it was anticipated that Mr. Bates' fee would be fifty thousand dollars?
- A I think the matter was brought up, and I asked about how much the receiver would handle, and they indicated about

00251

a million and a half, so he said "My fee is fifteen thousand dollars." About one percent, I thought would be right.

Q Now, Mr. Nye, you have been an attorney here in Rio Grande City, Starr County, for many years, have you not?

A Yes, sir.

Q As an officer of the Court, and you are an officer of the Court in this case, are you not, as attorney for the receiver?

A I am an officer of the Court, being an attorney, yes.

Q Now, the Statement of Condition of the First State Bank & Trust Company of Rio Grande City shows you as as being a director?

A That is correct.

Q When were you first appointed or elected as a director?

A I don't recall. I think it was in early 1971, I believe.

Q Did you know at that time that Mr. Manges owned a controlling interest in the bank?

A Yes, I think I was aware of that.

Q Did you talk to Mr. Manges about serving as a director in that bank?

A At one time or another he might have mentioned it.

Q Who advised you that you had been elected or appointed as a director?

A I think that - - - I don't know if it was Mr. Anderson, or - - - I'm just not real sure.

00252

Q By Mr. Anderson, you mean Frank Anderson, the president of the bank?

A Yes, sir.

Q Do you know when Judge Carrillo first went on the Board of Directors of the bank?

A No, sir. I believe it was more or less in the same general period of time, but I don't recall exactly.

Q Do you know Ramiro Carrillo?

A Yes, sir.

Q He is also a director of the bank, is he not?

A Yes, sir.

Q Do you know when he was elected?

A Some time later, quite a bit later. Maybe a year or so, maybe even later.

Q Ramiro Carrillo is a brother of Judge O. P. Carrillo, is he not?

A That is correct.

Q Do you know when Dennis Hendrix was first elected to the Board of Directors of the bank?

A No, I think he was elected before I was.

Q He was on the board when you - - -

A I believe so.

Q Have you served continuously on the board since you were appointed in early 1971?

A Yes, sir.

Q Has Mr. Hendrix served continuously since the time you were put on the board?

A As far as I know, yes.

Q And Ramiro Carrillo, has he served continuously since he went on the board?

A I believe so.

Q How about Judge Carrillo, has he served continuously?

A I believe so.

Q Was he on the board at the time you came on?

A I don't recall. I think it was more or less at the same time.

Q Were you at the stockholders' meeting held in January of this year?

A Yes.

Q Who was elected to the board at that time, at that meeting?

A I believe it was James S. Bates and Clarence Martens.

Q They were the two who were added to the board?

A Yes, sir, I believe so.

Q For your assistance, I will show you the Statement of Condition as of January - - - I mean December 31st, which is attached to our motion.

A Yes, sir.

Q It shows the directors there -- would you read their names?

A The directors?

Q Yes, sir.

00254

A (Reading) "Frank L. Anderson, O. P. Carrillo, Ramiro Carrillo, Pedro Diaz, Jr., M. F. Garcia, Francisco Garza, H. P. Guerra, III, Dennis E. Hendrix, Max L. Jones, Don A. Manges, Frank R. Nye, Jr., Robert G. Richmond, R. Charles Richmond."

Q And there was added Clarence Martens and James S. Bates to the board?

A Yes, sir, that is correct.

Q Did any of these directors go off the board, or did they just add to it?

A I think just an addition of two people.

Q Mr. Nye, did you - - -

MR. SMITH: Well, your Honor, this completes our bill of exceptions. But I do want to ask you, Mr. Nye, if you would honor the subpoena previously issued, when the case comes to trial?

A Oh, by all means.

MR. SMITH: That's all, thank you.

MR. CHURCH: You may step down, I have no questions.

(Witness excused.)

- - o - -

00255

ROBERT G. RICHMOND,

Called as a witness by the defendants (movants herein), being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q Would you state your name, please?

A Robert G. Richmond.

Q I believe you are employed with the First State Bank & Trust Company of Rio Grande City?

A Yes.

Q Would you state what your position is with the First State Bank & Trust Company?

A Vice President.

Q And are you in charge of or do you have access to the records of the bank?

A Yes.

Q We had issued this subpoena to Frank Anderson, the President, and we have agreed to accept your testimony in lieu of his, as a matter of his convenience?

A Yes, sir.

Q And we had subpoenaed the stock records of the bank, and the records of any loans made by the bank to O. P. Carrillo from January 1st, 1971 to date, and minutes of the meetings of the stockholders and directors at which O. P. Carrillo, Dennis Hendrix, Frank Nye, Don A. Manges and Ramiro

Carrillo were originally elected to the board, and minutes of the meetings showing re-elections. Do you have them?

A Yes, sir.

Q Also copies of all checks drawn on the account of Clinton Manges which cleared since January, 1971. Do you have those?

A Yes, sir.

Q Could we see them?

MR. CHURCH: Your Honor, we will object to the evidence he is now adducing by this man, except as it pertains to Judge O. P. Carrillo. There again, he is asking for cancelled checks of Mr. Manges for this period, which has no bearing on Judge Carrillo. He is asking for blanket authority to examine Mr. Manges' checks, and to check all of the records he listed in the subpoena. We have them here, but we would object to the use of any records except as pertain to Judge Carrillo. That is the matter before your Honor. It is not a deposition, and it makes no difference where Mr. Manges wrote checks in those two months he asks about. And the records of these other bank matters -- the minutes we have where O. P. Carrillo was elected, I have no objection, because he says it has a bearing here. On the others, it is just a search of our records to try to determine if he can come up with something.

THE COURT: What bearing does it have on the matter here, Mr. Smith?

MR. SMITH: Your Honor, we understand, though we are not sure of the date, that this check given by Mr. Manges for Judge Carrillo's Cadillac, was made in January or February, and that's what we are looking for. And we think that is highly pertinent to the disqualification. And the other records there as to when Judge Carrillo was elected to the board -.- -

THE COURT: Well, can't you stipulate that?

MR. CHURCH: Your Honor, he has the records. Could you tell us the date on which Judge Carrillo was elected to the board?

Yes, sir.

MR. CHURCH: Would you get your records on it, please?

MR. SMITH: Your Honor, we also want in the record copies of the stockholders list, because it is one of our burdens to show that Mr. Manges had the controlling interest in the bank, and the only way I know to do that is - - -

MR. CHURCH: Oh, we will stipulate that he owns the controlling interest.

MR. SMITH: Could you stipulate how many shares out of how many?

00258

MR. CHURCH: I don't know that.

MR. SMITH: Well, that's what we want to know. Out of the one hundred percent it would have to be at least fifty-one - - -

MR. CHURCH: I will stipulate it is more than fifty-one, but that has no bearing on whether or not Judge Carrillo is disqualified. Your Honor, he is going into personal matters of Mr. Manges here, which have no such bearing whatsoever.

THE COURT: Well, I will overrule that part, but as to going into a lot of checks, I don't believe it should be necessary to go into those, unless you pick out the one check.

MR. SMITH: Well, we want that one check. That would satisfy us.

MR. CHURCH: Okay, we'll get him to come pick out the one check.

THE COURT: You might let him state what the record of the check was.

MR. CHURCH: That would be fine.

A What is your question?

Q Well, I have several of them. I see you have one of the items out, to answer one of the questions -- which one do you have?

A You asked when Judge O. P. Carrillo was first appointed

to the Board of Directors?

Q Yes, would you read the minutes and get that?

A The date is December 10, 1970, at the regular meeting.

(Reading:) "Upon motion made by A. V. Margo, seconded by M. F. Garcia and carried, the resignations were accepted. Upon motion made by Frank L. Anderson, seconded by R. R. Guerra and carried, Clinton Manges, Max L. Jones, H. P. Guerra III and O. P. Carrillo were named to fill in the vacancies created."

Q That is December 10, 1970?

A Yes, sir.

Q Is that a stockholders' or directors' meeting?

A The regular meeting of the Board of Directors.

Q I suppose in January, 1971, you had a stockholders' meeting?

A Yes, sir.

Q Could you read who was elected to the Board, and what the vote was on the stock.

A January 14th, 1971, annual stockholders' meeting. Total shares represented, 810. "Upon motion made by Clinton Manges, seconded by Max L. Jones, the following directors were unanimously elected: Clinton Manges, M. F. Garcia, Frank L. Anderson, H. P. Guerra, III, O. P. Carrillo, Max L. Jones, R. R. Guerra, Frank R. Nye, Jr. and Dennis Hendrix."

MR. CHURCH: What was the date of that?

A January 14th, 1971.

Q What do your records as of that date show to be the stock ownership by Clinton Menges, the date of that election?

A 740 shares.

Q What are the total shares of the bank?

A At that particular time, one thousand.

Q Does that record show, either that record - - - well, your stock transfer record will show how many shares Judge Carrillo owns?

A 10 shares.

Q And they were acquired on what date?

A December 10th, 1970.

Q And that was the date on which he was elected to the Board, I believe?

A Yes, sir.

Q Now, you had a stockholders' meeting again in January, 1971, I suppose?

A Yes, sir.

Q Would you find those minutes and read the election of officers at that meeting?

A This is the annual stockholders' meeting, January 13th, 1972. "Upon motion by Robert G. Richmond, seconded by Dennis Hendrix, the following directors were elected by unanimous vote of the 810 shares represented: Frank L.

"Anderson, Robert G. Richmond, H. P. Guerra, III, M. F. Garcia, Dennis Hendrix, Frank R. Nye, Jr., R. Charles Richmond, Max Jones, O. P. Carrillo, Pedro Diaz, Jr., Francisco Garza, Ramiro D. Carrillo and Don Manges."

Q Would you check your stock book again and tell us how many shares Clinton Manges owned that day?

A 730.

Q It was still a thousand share corporation?

A Yes.

Q Now, you had another meeting in January, 1973. Would you give us the same thing from the minutes of that meeting?

A Annual stockholders' meeting, January 11th, 1973. "Upon motion by Robert G. Richmond, seconded by Dennis H. Hendrix, the following Directors were elected by unanimous vote of the 6,786 shares represented: Robert G. Richmond, Dennis E. Hendrix, Frank L. Anderson, Francisco Garza, M. F. Garcia, O. P. Carrillo, R. Charles Richmond and Frank R. Nye, Jr." And the others, "James S. Bates, Clarence Martin, H. P. Guerra, III, Don Manges, Ramiro Carrillo, Max L. Jones, and Pedro Diaz, Jr."

Q Did Mr. Manges still own 730 shares?

A He owned 5617 shares.

Q The number of shares had been increased then?

A Yes, sir.

Q When was that increase in shares made?

A Do you want the exact date?

Q If you remember the month, that's all right.

A February, 1972.

Q And what was the total number of shares increased to?

A Seven thousand.

Q And of that Mr. Manges owned fifty-six hundred and something?

A 5617.

Q Now, we also asked in the subpoena for the indebtedness that might be owed by Judge O. P. Carrillo to your bank?

A Yes, sir.

Q Do you have that information?

A Yes, sir.

Q Would you read the record you have of any indebtedness Judge Carrillo owes the bank?

A Do you want a date by each note, or the total?

Q I believe we should have a date, the amount, what the security is, and - - - well, the date, amount and security.

A Well, I don't have the security on all of it. You didn't ask for those records.

Q Well, give us the security as best you remember it.

A All right. How do you want me to give it to you?

Q Chronologically, if you have it that way, or however you have it.

A All right. Here is August 16th, 1971, \$3500.00, on financial statement. September 17th, 1971, \$6111.00. To show you - - - I am giving you the notes, not giving you the ones that are paid off.

Q Well, when we get to the end, if some of them have been paid off, and you have that information, it should go into the record.

A Well, I have a balance after each note.

Q Fine, I think that would be all right.

A All right. October 6th, 1971, \$3500.00, for a total of \$7000.00 outstanding. November 15th, 1971, \$5650.00, total \$12650.00. December 7th, \$4363.00, for a total of \$17013.00. January 18th, 1972, \$1500.00, total \$12863.00. February 17th, \$2000.00, total \$12619.00. March 17th, \$3000.00, total \$15497.00. April 6th, \$3750.00, total \$19125.00.

Q That's April 6th, 1972?

A Yes. August 18th, 1972, \$3812.11, total indebtedness \$13950.11. September 6th, 1972, \$2800.00, total indebtedness \$16629.11. September 15th, 1972, \$9000.00, total of \$25629.11. September 21st, 1972, \$2000.00, total of \$24629.11. October 5th, 1972, \$500.00 -- pardon me, that's

\$4500.00, total \$25379.11. October 10, 1972, \$2000.00, for a total of \$27258.11. October 20th, 1972, \$3000.00, for a total of \$30258.11. November 20th, 1972, \$3500.00, total \$33637.11. December 4th, 1972, \$5000.00, total of \$38516.11. All of those notes were on financial statements. Then December 8th, 1972, \$306,000.00, total indebtedness \$238546.11. The \$306,000.00 loan was a real estate loan, on land. Then January 2nd, 1973, \$ 5000.00, total \$210000.00. January 9th, 1973, \$5000.00, for a total of \$215000.00. January 31st, 1973, \$5000.00, total indebtedness \$220,000.00. All of the notes with the exception of the one large one, were on financial statements.

Q And those you have read concern the First State Bank & Trust Company of Rio Grande City, of which you are Vice President?

A Yes, sir.

Q Now, the other question was the check given by Mr. Mangos to Riata Cadillac Company in San Antonio. Can you find that, in January or February?

A Did the Court so order me, to produce that check?

THE COURT: Yes, sir.

MR. CHURCH: Yes, I think you would have to produce that one.

A Was this a check to Mr. Carrillo?

Q It would be to Riata Cadillac Company, if my information

is correct.

A Yes, I have it here.

Q All right, sir, could I see it?

MR. SMITH: Your Honor, we would like to offer this check in evidence as the defendants' Exhibit 3, and we would agree that a copy could be made and substituted for the original.

MR. CHURCH: Yes, it may be marked as an exhibit, and if we are given an opportunity to substitute a copy for the original, we have no objection.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 3, was received in the evidence, and is in words and figures as contained in the Appendix of Exhibits hereto.)

Q Mr. Richmond, on the large loan there, secured by land, where was that land located, in Starr County?

A No, it's located in either Duval or Jim Wells County, and I'm not real sure right now which.

Q Was the deed of trust securing the loan recorded?

A Yes, sir

MR. SMITH: I believe that's all the questions I will have, your Honor.

00266

EXAMINATION BY MR. CHURCH:

- Q These loans made to Judge O. P. Carrillo, were they made with Board approval?
- A The large loan - - - well, yes, he had established a line of credit through the Board. The large loan on the real estate was approved specifically by the board.
- Q Mr. Manges is not on the Board at the present time, is he?
- A No, sir.
- Q Did Judge Carrillo make these applications for loans to the First State Bank & Trust, just like any other borrower?
- A Yes, sir.
- Q Was any influence used by Mr. Clinton Manges to get them made?
- A No, sir.

MR. CHURCH: I have no further questions.

(Witness excused.)

THE COURT: Gentlemen, it is just a little before twelve. Do you have something you can present in that time?

MR. SMITH: No, we are just getting ready to call Mr. Manges, and I don't think we can do it in the time left before noon.

THE COURT: All right, we will stand recessed until one-fifteen.

(Whereupon, at 11:50 A.M., the

5211
 COA-6
 CO-22-75 WRAH

(Court was recessed until 1:15 P.M.,
 at which time the Court convened
 and the hearing was resumed as fol-
 lows:)

- - o - -

CLINTON MANGES,

Plaintiff in this cause, called as a witness by the defendants,
 being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q Would you state your name, please?

A Clinton Manges.

Q I believe it has been testified this morning that you are
 the majority stockholder in the First State Bank & Trust
 Company of Rio Grande City?

A I am.

Q I meant to have this exhibit identified while Mr. Richmond
 was on the stand, but maybe you can do it. This is a
 statement of the condition of the bank as of December 31,
 1972, is that correct?

A I couldn't tell you. I'm not a director.

MR. SMITH: I will ask you if you would be
 willing to stipulate?

MR. CHURCH: If you would have it marked first.

we'll talk about it.

MR. SMITH: All right, mark it, please.

(The same was, by the reporter,
marked for identification as De-
fendants' Exhibit No. 4.)

MR. SMITH: It is the same document that was
attached to our motion as Appendix "A".

MR. CHURCH: Well, we will have no objection
except for the necessary correction -- it is stated on
here December 31, 1973, and it should be December 31, 1972.

MR. SMITH: Thank you, sir.

Q While we are on the question of the bank, Mr. Manges, I
would like for you to give me your understanding of how
Judge O. P. Carrillo got on the Board of Directors of the
First State Bank & Trust Company?

A I asked if he would like to serve.

Q Do you recall when you asked him?

A I really don't, just when I did.

Q To refresh your memory, I believe the record shows that
he acquired ten shares of stock on December 10, 1970.

A So it would be prior to that.

Q Would be just prior to that?

A I don't know, could be a month or two or three difference.
I don't remember just when.

Q In other words, it would be within two or three months?

A That's right.

Q What was the consideration for the ten shares of stock you sold him?

A A partial payment was the house in Benavides.

Q Do you recall what the values were that were put on the house and the stock?

A If I recall correctly, I was looking for a house in Benavides because we intended, my family and I, to move there. He had a house to sell, but he didn't want to accept cash at that time. I offered - - - I asked him if he would like to serve on the Board, and I offered to give him ten shares of stock at my cost. And he wanted a car, and we just agreed to make the trade. As far as dollars and cents, I don't know, other than what the shares cost me.

Q Do you recall what your cost was?

A Not off-hand.

Q Did you know at that time what his balance was on the Cadillac automobile?

A What do you mean, what balance?

Q Well, suppose you just tell me in your own words - - -

A I just told you. He was going to trade his car in for a new one, and he had one ordered. I just agreed that I would pay the difference over his car if I could go make the deal myself and save him some money.

Q Here is Exhibit 3, and this purports to be a copy of a check for sixty-nine hundred and some dollars, to Riata Cadillac Company.

A Right.

Q When you made this trade with Judge Carrillo, did you - - - what was the discussion concerning this Cadillac?

A I just told you. I would pay the difference.

Q Did you discuss how much the difference was?

A Whatever I could work out on it. If I could make the trade, I could save more.

Q You thought you could make a better deal with it than he could?

A Yes. I don't know if he was trying to trade his at the time or not. I think it was in Alice, but he delivered it to Riata.

Q And you handled that trade?

A Sure did.

Q Was that sixty-nine hundred the list price?

A No, sir, the difference.

Q What sort of horse trade did you make?

A \$6945.00.

Q What was the list?

A I don't know.

Q Do you know how much more it was than that?

A I don't have any idea.

00271

Q Would that trade have been made on or about December 10, 1972?

A No, sir, it was before. I think it was made in October, somewhere in there.

Q In other words, the bank stock deal and the deal on the Cadillac was at the same time?

A Yes, sir.

Q Was this the full purchase price on the car?

A As far as I know. He did trade in a car on it.

Q He did trade in a car on it?

A Yes, I told you that.

Q What kind of a car was traded in?

A I believe he had an older Cadillac.

Q Do you know what model it was?

A Sure don't.

Q Would you describe the house you acquired in this trade?

A I haven't been in it in the last few weeks, or last few months. It's about two blocks off of the main street in Benavides.

Q What is the address of it?

A I don't recall right off-hand.

Q How many rooms does it have?

Q I believe eight rooms.

Q How many bedrooms?

A I think four. I'm just trying to recall off-hand.

I never did move into it after I traded for it.

Q You didn't ever move into it?

A No, sir.

Q Is it rented now?

A No, sir.

Q It's standing vacant?

A Just vacant.

Q Did you receive a deed for the property?

A Yes, sir.

Q Has it been recorded?

A I don't know. Mr. Hendrix handled it, with the title company

Q Did you get a guaranteed title?

A I don't know that. He can answer that. The title company handled the trade and all.

Q And the date on the deed would be the date you actually consummated the deal?

A I'm sure it would. It would be of record, I'm sure of that.

Q Did you change your mind about moving into the property, or was that your intention?

A That was my intention when I traded for it.

Q And what happened?

A We decided to move to Freer -- I bought a ranch up there.

Q You are living in Freer now?

00273

A Yes, sir.

Q On the ranch?

A No, sir.

Q Now, at the time you asked Judge Carrillo to serve on the Board of Directors of the bank, you knew he was to be the Judge who would preside in this case, did you not?

A I really didn't take it into consideration, wasn't even thinking of that point at that time.

Q Now, when you sought to have the Receiver, Mr. Bates, made a director of the Groos National Bank in San Antonio, did you - - -

MR. CHURCH: Please the Court, we are going to object to any testimony or any inquiry about transactions with the Groos National Bank because it is outside the scope of this law suit and has nothing to do with Judge Carrillo's qualification or disqualification, and the inquiry is made purely out of curiosity and is not relevant or material here. We object to any inquiry into that transaction unless he can show it had any connection with Judge Carrillo's alleged disqualification.

THE COURT: What connection is there?

MR. SMITH: Our position is that the plaintiff here has made an effort to confer favors on every officer of this Court who had anything to do with decision making and it is material in light of the fact that the Judge and

00274

all these officers accepted the favors. This fact makes it material to the whole procedure this litigant is using to try to pervert justice in this Court.

MR. CHURCH: Now we object to that statement. Your Honor, he has filed a motion saying that Judge Carrillo was disqualified, not anybody else. He didn't say the receiver is disqualified, he didn't say that the attorneys are disqualified. The whole purpose of his motion and of this hearing is that Judge Carrillo is disqualified. Yet he comes in now and makes the statement to the Court that he can show that the officers of the Court, or the receiver had received some other favors, and that has nothing to do with whether or not Judge Carrillo is disqualified.

THE COURT: I'll sustain the objection.

MR. SMITH: Well, all right, but I want to put it in the record under a bill of exceptions.

THE COURT: Okay.

MR. CHURCH: Well, I don't know what his inquiry will be, but the record shows our objection to the inquiry relating to the Groos National Bank, and our objection is in the record, and the Court's ruling. That is clear. And the ruling of the Court is clear. We would object to any further interrogation of this witness on that.

THE COURT: I can't see the materiality of it too much. The remoteness of it is the - - - but I can see why you might try to show an underlying scheme.

MR. SMITH: Of which the Judge of the Court is a part.

THE COURT: Well, I don't think you can attribute everything to the Court.

MR. SMITH: The Court has to approve the applications of the receiver, and has done so.

THE COURT: Well, I'll still overrule and objection - - - I mean sustain the objection.

MR. SMITH: Well, then we will put it in under a bill.

Q You may now answer the question under our bill, Mr. Manges.

MR. CHURCH: No, we object to him answering any question as to the Groos National Bank, because it's not material or relevant under all the rules and statutes, and the Court has sustained the objection.

MR. SMITH: The right, your Honor, to put in a bill of exceptions is fundamental and absolute, so that the appellate Court gets a chance to rule on it. The trial Court is without power to stop that.

THE COURT: Okay, go ahead.

MR. SMITH: Your Honor, I don't think the bill is going to take any particular time. We want to submit

00276

to the witness here the material that was attached as Appendix "C" to our motion, and ask him if he authorized these - - - well, part of them are signed by him, but we would ask if he authorized this, and if he executed these and if this is action he took. That is very simple, and it will take only a minute.

MR. CHURCH: I understand how simple it is, but our objection goes to testimony referring to the Groos National Bank, which he raises not to show Judge Carrillo's disqualification, but to ask Mr. Manges about his personal business outside the scope of this case.

THE COURT: What is it you are going to ask him, counsel?

MR. SMITH: I will just let the Court see these documents I propose to ask him about, just for the information of the Court.

(The same were handed to the Court.)

THE COURT: Well, I will allow it to be put in on the bill of exceptions, but I don't see the materiality of it to this case.

MR. CHURCH: Please the Court, Mr. Smith's theory is this -- if, say on a deposition, Mr. Manges were asked the same question and he refused to answer it, and it came before the Court as to whether or not he was in contempt, the Court passing on the question would

find that it was not material or relevant. Mr. Smith's idea is that even though it is not material and not relevant, he can still make the witness answer the question. That is what he is asking now on his bill. I say under the rules I brought the matter to the attention of the Court, and the Court has sustained my objection, and that is all in the record and will go up on this record here as to whether or not the Court's ruling was correct. That is why we object to him asking him a question on what he calls a bill of exception to obtain from this witness evidence that is not relevant or material, just to satisfy his curiosity.

MR. SMITH: Your Honor, this is not a matter of curiosity. Well, anyway the Court has ruled, and we are submitting it under a bill of exception. I think that's all there is to it. The appellate courts can decide between Mr. Church and myself who is right. We have plead and we say that when a litigant comes into Court and tries to give to the Judge favors and gifts of the sort demonstrated by this evidence, not only directly but through every officer of the Court, that is relevant. He says it isn't, I say it is. And I think the appellate court will say it is. The litigant can't come in and smother the officers of the Court with favors and the Court just sit by and watch it. This is so flagrant it

00278

has to be brought out on the Judge's qualification.

THE COURT: Well, I will let you attach those to your bill of exceptions merely for the purpose of showing what you would attempt to show, but that is the only purpose.

MR. SMITH: All right, Mr. Reporter, you may attach these as Bill of Exceptions Exhibit No. 1. For identification, these are the papers I attached as Exhibit "C" to the motion for disqualification.

(The same were so marked, and are herein contained at the appendix of exhibits.)

MR. SMITH: And we do want to ask the witness one or two questions about the documents.

MR. CHURCH: And we would renew our objection again, because the Court has ruled that it is irrelevant and immaterial, and the only purpose of additional questions is just his curiosity and not for the purpose of evidence on his bill. He has the documents in -- the Court allowed that. And now we object to any further interrogation. The record shows what the matter pertained to, shows my objection, and shows the Court's ruling. Therefore we again object to him asking any further questions.

MR. SMITH: I want to ask the witness if he

signed these three documents, your Honor.

MR. CHURCH: I think they speak for themselves. They show whether he did or not.

MR. SMITH: Well, I want to ask him if he affixed his signature on them.

THE COURT: In order to prove it up, I will let you ask that question.

MR. CHURCH: Note our exception even to that.

Q Did you, Mr. Manges?

A As far as I know I did.

Q As far as you know you did?

A Yes, that's right.

Q At the time you sought to have Mr. Bates appointed as a director of that bank you knew, did you not, that he was the Receiver of M. Guerra & Son in this case?

MR. CHURCH: We object again to the interrogation of this witness regarding this matter which is not relevant or material to the disqualification of Judge Carrillo.

THE COURT: Sustain the objection.

MR. SMITH: We would like him to answer under the bill of exceptions.

THE COURT: I am going to refuse that. We are getting too far astray here.

MR. SMITH: Note our exception, please.

MR. SMITH: Now, your Honor, we are going to have some questions on this matter of Mr. Manges loading the Board of Directors of this bank here in Rio Grande City with officers of this Court.

MR. CHURCH: We object to the reference to "loading" the board. If he wants to say elected, all right, but I don't think he should characterize it as loading.

MR. SMITH: I will be glad to accommodate Mr. Church, your Honor.

THE COURT: Re-phrase your question.

Q Mr. Manges, I believe Mr. Nye testified this morning that you had discussed with him his election to the board.

A I don't recall just when. I probably did.

Q Did you have any particular reason for wanting Mr. Nye on the board?

A Sure did. He is well known in this community, and we were trying to get all the politics out of the bank, have both sides in there.

Q At the time you talked to him about it, you did know, I believe, that he was a special attorney for the Receiver in this case?

A That had nothing to do with it. I just wanted somebody to represent the bank who was well known over here.

Q That had nothing to do with it?

A Absolutely not.

Q I believe Mr. Dennis Hendrix has been on the board?

A Yes, sir.

Q Did you have any special reason for wanting him?

A Sure did, he is well qualified to serve on the Board of Directors.

Q Where does he live, do you know?

A In Edinburg.

Q You knew at the time you asked him to serve that he was the attorney for the Receiver in this case, did you not?

A Sure did.

Q And Ramiro Carrillo, who has been appointed on the board, I believe you have heard the testimony that he is the brother of Judge Carrillo?

A Yes, sir.

Q Did you discuss his appointment to the Board with him, with Ramiro?

A No, sir.

Q Well, as owner of the majority - - -

A Mr. Richmond had the proxy on it. I didn't discuss it with him, though.

Q You gave your proxy to Mr. Richmond?

A Yes.

Q Is there any reason why you are not serving on the Board?

A Yes, sir.

00282

Q Why not?

A The Comptroller of Currency asked me not to until we got this straightened out whether or not I was qualified to serve.

Q You generally discuss the matter with people who are prospects for the Board?

A Very seldom. I really don't. I let Mr. Richmond run the bank there.

Q Would you care to state what the problem is with the Comptroller of currency?

MR. CHURCH: I don't think that has any bearing whatsoever on whether or not Judge Carrillo is qualified.

THE COURT: I don't think so.

MR. CHURCH: And I object to it.

Q I believe Senator Bates, the Receiver, was elected to the Board this January. Did you discuss that with Senator Bates?

A Sure didn't.

Q Do you have any particular reason why you wanted Mr. - - -

A I didn't say I had discussed it with him. I said I did not.

Q I believe the minutes read here, concerning the election in January of 1971, reflect that you made the motion for the election of Judge Carrillo and the others who were elected then?

A Probably did. I don't recall. Whatever the minutes said.

THE COURT: What date was that?

00283

MR. SMITH: In 1971, January.

A Whatever the minutes reflect.

Q Now, back to this house and the bank stock. You have been in the real estate business for some time, have you not?

A Sure have.

Q When did you first go into the real estate business?

A I don't recall.

Q What is your present age?

A Forty-eight.

Q And how many years would you say you have been - - -

A I don't recall.

Q Would it be as much as ten years?

A Could be.

Q Could it be more than ten years?

A Could be.

Q Well, is it?

A I couldn't tell you off-hand. I don't remember when I got my first license.

Q Do you have a license at this time?

A I think so. I don't recall if I have kept them in effect or not.

Q But you have dealt with real estate?

A Yes, sir.

Q Buying and selling both?

A Yes, sir.

Q As a matter of fact you probably bought and sold more than where you acted as an agent?

A I wouldn't attempt to decide that now. I would have to check each trade I ever made.

Q Now, I believe you own ranch property in Duval County?

A Own a corporation that owns some property up there.

Q When did you acquire that ranch?

A I don't recall exactly.

Q Could you tell me - - - could you give us an idea how many years ago?

A Within the last three or four years.

Q Do you recall what you paid for the property?

A No, I don't.

Q Have you dealt in real estate enough in Duval County and Starr County to know the value of ranch lands there?

A I have my own opinion.

Q You are able to form an opinion about value?

A I have my own ideas about value.

Q Have you formed any opinion about the value of the land you actually purchased?

A I had a pretty good opinion, or I wouldn't have bought it.

Q How about the residence property, that has the house on it in Benavides?

A What do you mean?

Q What is the value of that?

A I don't know off-hand. I would have to have it appraised.
I know very little about houses.

Q The value of the sixty-nine hundred dollars plus ten shares
of stock, is that right?

A That's what I gave for it.

Q What value did you put on the - - -

A Ten shares of stock and the difference on the car.

Q What value did you put on the bank stock at that time?

A Cost.

Q What was your cost?

A I don't recall.

Q Would the bank records show?

A I'm sure they would. I don't have any idea off-hand.

Q Did you have the house in Benavides appraised?

A No, sir.

Q The truth of the matter is, Mr. Manges, you were more
interested in buying a house from Judge Carrillo than
you were in getting a place to live, isn't that right?

A Certainly not. I wanted a house.

Q But you haven't moved in it?

A I intended to.

Q And you don't know what it cost?

A It was worth ten shares of stock and the difference on
the car when I bought it.

Q But you don't know what the stock was worth?

A Cost.

Q But what was it worth?

A I don't know. That's three or four years ago now. I don't keep that in mind constantly. And according to you I deal all over the country.

Q But you know what you paid for the bank stock, don't you?

A I don't have any idea. I am sure my records show that.

Q The bank records wouldn't?

A Not necessarily. I don't know.

Q Well, unless I can get the information from you, I wouldn't know where to get it.

A I wouldn't either.

Q And I think it is important on this particular - - -

A Mr. Church can probably get the cost of it for you. I just don't recall now.

Q Did Mr. Church handle the purchase of the bank stock for you?

A I don't remember how that was handled, Mr. Smith. There were two or three different purchases, and I don't remember how they were handled.

Q At the time you bought the house in Benavides, did you get a guaranteed title policy?

A I don't know. Mr. Hendrix can tell you -- he handled it.

Q He has your authority to let us see the guaranteed title.

00287

policy, if there is one?

A As far as I know. He can give you information on the house.

Q Now, going to the lease with Judge Carrillo. Do you have a copy of that lease?

A I don't know if one was ever drawn up or not. Mr. Hendrix handled that too.

Q Do you recall whether it was oral or written?

A We discussed it with Mr. Hendrix and asked him to draw it up.

Q Do you recall if you signed one?

A I don't think I did. I don't recall signing one.

Q Who initiated the negotiations about the lease, you or Judge Carrillo?

A As I recall at the time, Mr. Smith, I ran into Judge Carrillo here in Rio Grande City, and he asked if I was grazing the property I bought. I said no, that I intended to clear it all and put it in permanent grass. He said he had cattle up there, and it was very dry and he wanted to lease some of it for them.

Q Did you make a short-term lease at that time?

A I think on one tract of about fourteen hundred acres, I let him have it for two or three weeks. Then I had a chance to sell that, and I went and told him. He said he was in a bind with the cattle, because it was so dry

up there. So I said I had five or six hundred acres on what they call the Jackass Flat country that I could lease him. I mean five or six thousand.

Q On that first lease, what did you charge him for the

A I think for that I just let him use it as a courtesy. I don't recall.

Q Did he accept your proposition on the larger tract of five thousand acres?

A Yes, sir.

Q And is that what you made your lease arrangement on?

A Yes, sir.

Q Am I correct that it was a lease for three years?

A Yes, sir, three years, or when I got to the point of clearing it.

Q And how much acreage?

A Five or six thousand acres, as I estimate it.

Q And what was the consideration? Was it per acre?

A Yes, sir, as I remember it was. Mr. Hendrix will have that. We discussed it in his office.

Q How was the rent payable?

A I could take it in money when I got the land cleared -- in cattle or in money.

Q What was the date of the beginning of that three-year period?

A I don't recall. Mr. Hendrix will have that.

- Q And the term would, of course, would be three years after the beginning date?
- A Or sooner if I needed it for clearing.
- Q You have a condition in there - - -
- A If I needed it, he would give possession.
- Q On request?
- A On request. That was the understanding with him. I don't know if it was put in the memorandum or not.
- Q And I believe you said he would pay you in money or in cattle?
- A Yes.
- Q What arrangement did you make about appraising the value of the cattle?
- A I'm sure it would be market value. It wasn't discussed. Whatever they would bring at the time.
- Q Who would select the cattle? Would you select them, or would he cull them out?
- A That point I wasn't concerned about at the time. We could settle that when the time came.
- Q What was the dollars and cents value, say per month, or per year - - -
- A Mr. Hendrix will have the terms on that memorandum.
- Q You don't have any recollection of it at all?
- A I think it was a dollar an acre per year, I'm not sure. That was two or three years ago.

Q But that is the best of your recollection?

A Yes, sir.

Q You didn't have any kind of arrangement whereby if you had any disagreement as to the cattle - - -

A Oh, that's nit-picking. I would hate to have that kind of agreement.

Q In other words, you didn't have any of those things in the agreement?

A No.

Q No agreement of any kind in the lease as to how you would choose the cattle, if you took cattle as a consideration for the lease?

A No.

Q Have you made any other leases of any ranch lands with any other parties?

A Yes, sir.

Q Any in Starr County?

A Yes, sir.

Q Who were some of those made to?

A One man, I think, is Garza. I don't remember exactly. I think he was a dollar an acre, and I think possibly it could have been written, I don't remember exactly. Some man was leasing it at the time, and I let him stay on.

Q In other words, he was an existing tenant?

A Yes. And then a guy named Steve, I let him have some.

- Q A new tenant?
- A Yes, sir.
- Q What were the terms with him?
- A I don't remember exactly the details. I would move him out when I got to clearing also.
- Q That same condition?
- A Yes, sir.
- Q Were there any other leases?
- A Yes, I think one or two more verbal deals. I think a Mr. Gonzalez, he had some cattle on there.
- Q What were the terms of his lease?
- A I think the same way -- when I wanted to clear it, he would give possession.
- Q Would that be written?
- A No, sir.
- Q Would Mr. Hendrix have that?
- A No, sir.
- Q You made that direct?
- A No, sir, my brother did, up at Freer.
- Q That would be - - -
- A Don.
- Q He is the one named Don, and there is one named Dan?
- A Yes, sir.
- Q Which was the oldest brother?
- A Dan.

Q Which one is a director of the bank?

A Both of them are now.

Q Could you give us a description of approximately where this lease is to Judge Carrillo, this five or six thousand acres?

A All I know it by is Jackass Flats. Mr. Hendrix will have the description.

Q Where is it located?

A Would be northwest of Rio Grande City.

Q About how many miles?

A I imagine twelve, fourteen, fifteen miles. I don't know exactly.

Q Does Judge Carrillo have any adjoining land?

A I couldn't tell you.

MR. SMITH: Your Honor, I believe that's all. But I think we would like, while Mr. Richmond is here, to see if he knows what the value of that bank stock is.

MR. CHURCH: You don't have any more questions of Mr. Manges?

MR. SMITH: No, we pass the witness.

A I don't know whether - - - Mr. Smith, I think we will have to get that from my accountant. I truthfully don't remember.

MR. SMITH: Mr. Richmond, do you know?

MR. RICHMOND: I don't know, no, sir.

(Witness excused.)

DENNIS HENDRIX,

Called as a witness by the defendants, being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q State your name, please?

A Dennis Hendrix.

Q And you are a practicing lawyer with your offices in Edinburg?

A Yes, sir.

Q And you are a partner with Senator James S. Bates, the Receiver in this case, are you not?

A Yes, sir.

Q And you are attorney for the Receiver?

A Yes, sir.

Q Mr. Hendrix, I am going to try to ask you the questions that Mr. Manges fielded to you. You being a lawyer, you can probably expedite things by giving full information on them without too much detailed cross examination. First, on this house transaction, where he bought the house from Judge Carrillo -- I would like for you to state, in your own words, the nature of the transaction, how the house was - - - how the transaction was handled, whether by guaranteed title policy, examination of abstract, and whether or not it was on a written contract

00294

of sale.

A Well, there was no written contract of sale. There was an agreement between Mr. Manges and Judge Carrillo for the exchange of the house in exchange for the transfer of ten shares of stock in the First State Bank & Trust Company of Rio Grande City, and payment of the difference due in the trade-in of an automobile. The instrument of conveyance is the deed, which was executed in October, as I remember, of 1970. And the stock was transferred to Judge Carrillo on December 10th, 1970. And the payment of the consideration on the automobile was as reflected by the check, I think some time in January.

Q Was a guaranteed title policy issued?

A No, sir, I examined the records in the Courthouse of Duval County. So we didn't have a title policy.

Q No?

A No, sir.

Q Did you give a written title opinion?

A Yes, I believe so.

Q Do you have that?

A No, sir, not with me. I don't have the file on that.

Q Would you let us inspect a copy of your title opinion?

A Yes sir.

MR. SMITH: And we would reserve the right to offer it in evidence if we think it is pertinent, your

Honor.

THE COURT: Is that agreeable?

MR. CHURCH: Would be agreeable, yes. But I presume the Court is going to make a decision on it. I am saying if he thinks it is pertinent. I haven't seen it, and I wouldn't know whether to object at this time or not. If there is evidence - - -

A I don't have the opinion with me, your Honor. However, my recollection is, if I am correct in this, that it showed no objections, no liens on the property.

Q Did Judge Carrillo and Mr. Manges discuss the matters of the values with you, the value of the house as respects the value of the bank stock, for instance?

A I don't recall, sir. The values, of course, on the stock, were set at cost.

Q Do you know what that value was?

A I don't remember. I probably have a notation in my files, but I don't remember.

Q Was it seven hundred and fifty a share?

A I don't remember.

Q Is that close?

A I don't really remember, Mr. Smith. I would assume that would be somewhere in the ball park, but maybe fifty or a hundred dollars off one way or the other.

Q All right, now go to the lease. I believe Mr. Manges had

you were to have drawn up a written lease on it. Did you do so?

A No, sir, no written, formal lease agreement was ever made, either drawn up or executed.

Q Is your memory on the situation the same as his, that he asked you to draw up a written lease, but you didn't get to it?

A I don't remember if he did or not. I just remember they verbally agreed for the lease of this Jackass Flats for five thousand dollars a year, payable at the end of the term, either in cash or cattle. I don't recall drawing it, and I don't think there was a written, formal lease agreement ever made.

Q Did they point the land out to you on a map?

A No, sir, I think it was just referred to as Jackass Flats.

Q Did you ever hear it referred to by any other name?

A Not that I recall.

Q Did Mr. Manges at any time, if you remember, present you with a legal description of the acreage he was leasing to Judge Carrillo?

A No, sir, I think it was just referred to as between Judge Carrillo and Mr. Manges and myself as Jackass Flats.

Q Well, you couldn't have drawn a very good lease, just describing it as Jackass Flats, unless there was a map reflecting - - -

00297

A Well, I knew what they were talking about when they were speaking of Jackass Flats. It was an area of the land. Had I drawn a written lease, I could have picked it off the map and described the land.

Q But you didn't understand the instructions that were given to you by Mr. Manges and Judge Carrillo, to be that you were to draw a written lease?

A No, sir, I didn't understand it at the time.

Q Did either one of them ever ask you if you had such a lease prepared?

A No, sir, I don't believe either of them ever asked me about it again.

Q When did they call this matter to your attention and go over it with you?

A I'm not sure I understand you?

Q When did this conversation take place, that you were a party to, where you discussed this matter?

A I really don't remember the date. It would have been - - - I don't know. I really don't remember.

Q What I am trying to get at is the term of the lease. Mr. Manges said he didn't know when it started. He agrees that it stops three years from there, if he doesn't terminate it sooner by getting it ready to clear. He said you would know.

A I remember making a notation in my file, but I don't have

it with me and I don't want to have to rely on just my memory.

Q Could you give a date within a month or two?

A No, sir, but with the Court's permission I can call my office and have my girl pull the file and look at it and tell me what my notes say.

Q Well, I believe Judge Carrillo stated in his answer that his recollection was that the lease - - - that he made the lease sometime after he had approved this conveyance of roughly forty- thousand acres, which, according to your report, was February 19th, 1971. Would that be within a month or two of when it happened?

A It seems as though it was a few months after that, which probably would have put it in May or June of 1971. As I remember, it was right at the beginning of summer time, so I would say probably June is when it started.

Q I think for the purpose of this matter that is close enough. It was somewhere between February and May or June?

A It would be either May or June.

Q Now, where did this discussion take place -- in your office, or Mr. Manges' office, or Judge Carrillo's office?

A I don't know. We had, it seems like, a couple, and if I am not mistaken I believe it occurred here at the bank at Rio Grande City, in the coffee shop or something.

Q Did they discuss price, that is, price per acre, price

per year, or - - -

A On the lease?

Q Yes, sir?

A I think it was just five thousand dollars per year, which, according to the acreage, would have approximated a thousand dollars - - - I mean a dollar an acre a year. But the price for the lease was five thousand dollars per year.

Q In other words, a lump sum figure?

A Yes, sir.

THE COURT: The price was what?

A Five thousand dollars per year.

Q And when was it payable?

A At the end of the three year term.

Q Was there any provision made for Judge Carrillo to pay interest during that three years?

A No, sir.

Q Was there any limit made on the number of cattle he could graze on the land?

A I don't recall that.

Q Do you recall any discussion of how many cattle he in fact would be grazing there?

A Well, there was some discussion about it, but not being familiar with cattle, it didn't make a whole lot of sense to me. I didn't pay much attention to it.

Q Mr. Manges, there has been the statement made here by the

attorney for Mr. Manges that Mr. R. R. Guerra and the other Guerras have agreed to the order that was entered by the Judge under the terms of which he sold to Manges, or under deed the Receiver conveyed to Manges, roughly forty thousand acres of land. You do know, of course, that Mr. M. A. Guerra didn't sign that?

A Yes, sir.

Q And that Mrs. Jeffries didn't sign it?

A Yes, sir.

MR. SMITH: I would like to have this instrument marked for identification, please.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 5.)

Q Mr. Hendrix, I have had the Clerk prepare a copy from the official records of this case, of the Application for Order Authorizing Sale and Conveyance of Partnership Lands in Partial Distribution and Dissolution of M. Guerra & Son, which shows to have been filed on the 11th day of February, 1971.

MR. CHURCH: Well, Exhibit 5 is the order?

MR. SMITH: Is the application.

Q And now I will hand you a similar copy of the order authorizing and directing the Receiver to sell and convey partnership lands in partial dissolution and distribution

of M. Guerra & Son, which by the file mark here also was filed on February 11, 1971, although it bears the date of February 9th, 1971.

MR. SMITH: And I believe I will ask the reporter to mark that one for identification as our Exhibit No. 6.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 6.)

Q Now I will hand you first the application, and I presume that as attorney for the Receiver you prepared that application, is that right?

A I believe both Mr. Nye and myself prepared this application.

Q All right, now I refer to page 12, and I will ask you to read that sentence where there has been some additional language inserted and initials on the margin by all parties.

MR. CHURCH: Which exhibit are you to be reading from?

MR. SMITH: From Exhibit 5, and that is the application.

A You want me to read the whole sentence?

Q I believe you will have to read the whole paragraph, really, to connect it.

A (Reading:) "Wherefore, your Receiver prays that no notice

"being necessary herein with all parties joining in this cause, that on a hearing of this application, your Receiver be authorized and directed to sell and convey the above described real estate to Clinton Manges free and clear of all liens and encumbrances of whatever nature in consideration of the cancellation of the debts due the said Clinton Manges by M. Guerra & Son, and/or its partners, and for the further consideration of the sum heretofore agreed upon between the owners and Clinton Manges, as shall be shown in the report of sale and of the distribution to the said Clinton Manges of his proportionate interest owned in and to the said real estate by reason of the partnership interest acquired by him in M. Guerra & Son, all of which is in the best interest of the receivership estate and of all parties to this cause."

Q Now, I want to emphasize this added portion in here. The initials here, the "J. S. B.", I presume that is the Receiver, James S. Bates?

A Yes, sir.

Q And below that, "H. P. G.", that would be H. P. Guerra?

A Jr., yes, sir.

Q And under that. V. H. Guerra?

A Yes, sir.

Q And R. R. Guerra?

A Yes, sir.

Q And "J. C. G."?

A J. C. Guerra.

Q And they have also signed under the paragraph designated "Joinder," on page 12?

A Yes, sir.

MR. SMITH: And I will hand this also to Mr. Church.

Q Now, I presume that it is that joinder that is the basis of the Receiver's contention and the Court's impression that the parties had all agreed to the order entered, authorizing the conveyance to Mr. Manges. Do you know of any other joinder by the parties to the conveyance to Mr. Manges?

A To the conveyance to Mr. Manges?

Q Yes, sir?

A Yes, sir, they all joined in the deed, in the instrument of conveyance itself. They also joined in the report of sale, and the - - - well, the application, the report, and the instrument itself.

Q Well, let's stick to these documents right now.

A Well, you asked for any other joinder.

Q Yes. Now, this provides that, "and in further consideration of the sum heretofore agreed upon _ _ _" well, just a minute. Yes, here -- "further consideration of the sums heretofore agreed upon between the owners and Clinton

"Manges, as shall be shown in the report of sale, and of the further consideration of the distribution to the said Clinton Manges of his proportionate interest owned in and to the said real estate by reason of the partnership interest acquired by him in M. Guerra & Son."

Now, the order of sale here, does it anywhere show the items that are referred to here, "the sums heretofore agreed upon between the owners and Clinton Manges," which is supposed to be part of the arrangement under which Clinton Manges was to get his property?

MR. CHURCH: Please the Court, actually what we are getting into here is the trial of quite a different matter than the purpose of this hearing. On his cross examination he is asking about whether or not there was a contract between Mr. Manges and these people, which is proper at the time of and when the Court did hear the objections to the final accounting of the Receiver, but I can't see how this has any bearing on whether or not Judge Carrillo is disqualified in this case.

MR. SMITH: I think I can answer that. I will concede I think this will be pertinent on the merits, but the statement was made this morning that because these parties had agreed to a conveyance to Mr. Manges, therefore - - - well, that the agreement in some way affected the qualification. That was represented to the Judge. We

simply refute this by saying they did not agree to the order that was entered, because it didn't carry out the terms that they agreed to. It didn't set out what Manges owed, or any of the other terms. We say this simply did not agree with that agreement. But anyway, that is not material here, because they cannot waive the disqualification of the Judge. But we do want to point out that they did not agree to the order.

MR. CHURCH: Your Honor, he has made statements here about what they agreed to. He did not say what they signed or what they did not sign, but it still doesn't bear on the question of whether Judge Carrillo is disqualified to act here. It is perhaps pertinent to the objections to the Receiver's report and to his cross action, but not now as to the qualification of Judge O. P. Carrillo. If he can show that it is material on that, then I will have no objection.

THE COURT: I assume you introduce it only for the purpose of showing that there is still something to be decided?

MR. SMITH: That's right. And as a matter of fact, it is introduced partly in rebuttal to that assumption they make that they agreed to the order - - -

MR. CHURCH: Your Honor, if I misstated the - - - I simply said they agreed to the whole matter. Whatever

has been signed has been signed, and whatever has not been signed, has not been signed.

THE COURT: Let the record show that I am not here for the consideration of any final report, or any objections to it, but only for the purpose of determining whether the Judge is disqualified or not. That will be the limit of this hearing. But if any of this is pertinent to that particular thing, I will permit it to go in for that purpose, and that purpose only.

Q Mr. Hendrix, I believe you and your firm are also attorneys for the First StateBank & Trust Company of Rio Grande City, is that right?

A No, sir.

Q You are not?

A No, sir.

Q Did you or your firm draw the mortgage papers with respect to - - - well, I believe it was three hundred and some thousand dollar loan to Judge Carrillo?

A Yes, sir.

Q Do you know what the interest rate was?

A I don't remember.

Q Do you remember approximately?

A I don't remember.

Q All right, you just don't remember.

MR. SMITH: Your Honor, I would like to estab-

lish that point. Since Mr. Richmond is still here, I wonder if I might - - - could you give us the interest rate on that, Mr. Richmond?

MR. RICHMOND: Yes, sir, eight and a half per cent on the real estate loans.

MR. SMITH: And how much on the other notes?

MR. RICHMOND: They varied, as the prime rate changed.

MR. SMITH: To give him the prime rate?

MR. RICHMOND: No, sir.

MR. SMITH: What range of interest was that?

MR. RICHMOND: That ran approximately two per cent above prime.

MR. SMITH: What is the term of the real estate loan?

MR. RICHMOND: One year.

MR. SMITH: All right, I believe that's all, your Honor, relating to this.

(Witness excused.)

MR. SMITH: Now, your Honor, I think under the circumstances it will be necessary that we have Judge Carrillo's testimony, because Mr. Mangos does not know what the deal was, and Mr. Hendrix doesn't know what the deal was, so if Judge Carrillo doesn't remember the record

will be incomplete on this grazing lease. I would like to accommodate everybody on the time - - - if he could come here this afternoon perhaps we could - - -

THE COURT: Well, he is holding Court for me down in Edinburg. He said he could be here in thirty minutes. That may be cutting it a little fine, really.

MR. CHURCH: What he is asking for, he has already introduced. He has asked the Judge about all this in his interrogatories, and he has them before the Court, and in his answers he states exactly what the arrangement was. So what he is saying he needs evidence on is the very same thing he asked in the interrogatories.

MR. SMITH: Well, we want more than that. We would like to know if the lease was written, and if so we would like to have a copy of it. If not, we want his interpretation of its terms.

MR. CHURCH: I believe he states all that in his answers to your requests for admissions.

MR. SMITH: He doesn't say when it started and when it ends. And he doesn't say whether it was an oral lease, or written.

MR. CHURCH: Well, you didn't ask him.

MR. SMITH: No, I didn't. It's one of those things I just - - - I should perhaps have made the requests for admissions a little longer, but on a request for ad-

00309

missions it's kind of hard to ask what was the date of the lease.

THE COURT: Well, I don't think we could get him here this afternoon.

MR. SMITH: Well, I don't know what your schedule may be - - -

MR. CHURCH: Your Honor, I came here from San Antonio to try this motion to disqualify. I would say this -- from his admissions, and whatever objections you may want to make as to the term of the lease and so forth, there is still no showing by any of that that Judge Carrillo had any pecuniary interest in this cause of action. I don't think that would change this one bit. Whatever you want to do - - - assume that the term of it is three years, that it is written, that it is not written, or that it is payable as he said -- I still say that it does not show any interest necessarily, under the cases, to show a disqualification. But if the Court wants to get him here, he can.

MR. SMITH: I don't like to leave this big a hole in the testimony, your Honor. He has indicated that these things are not important, but we still flat don't have a date for that lease, or for the termination of the lease, except perhaps at the pleasure of Mr. Manges.

THE COURT: Well, that may be the lease, I

[0032]

don't know.

MR. SMITH: Well, we are glad to have Mr. Manges' memory of it, but he says that isn't worth anything much. He says he doesn't really know what took place.

MR. CHURCH: Well, if Judge Carrillo can come up here, could we wait for him? I suppose it would take him an hour, at least.

MR. SMITH: Or if he wants to, I would be glad to go with everybody back to Hidalgo County, and ask him down there.

THE COURT: Well, I really think it should be done up here. It might be better just to recess this hearing until it will be convenient for Judge Carrillo to get here. And I don't know when I can get back here, either. Right now - - - well, in my Court alone I have asked for another Judge to come down and help me for the next three weeks.

MR. SMITH: Well, if we could get to a telephone and have an extension 'phone, we could let the Court and the reporter talk to him and ask him these questions. And we could let Mr. Church and I listen, if he wants to. We just want to know when the lease started, and when it will end.

THE COURT: Well, I'm afraid that would be a

little bit out of order.

MR. SMITH: And also we have that house deal that nobody has given any accurate information on. It's all very vague. The type of deal that actually was could be very relevant. I think we probably should have his testimony.

THE COURT: I think you're right. I think it would be better to have his testimony.

MR. SMITH: Yes, sir, I do think so.

MR. CHURCH: Could we phone him now and get him to come on up? I would like to finish this up if we could. He could probably get here by - - -

THE COURT: Well, we will be in recess for a few minutes, and you can put in a call to him and see if he can come on up.

(Whereupon the Court was in recess for a few minutes, following which the hearing was resumed as follows:)

THE COURT: Gentlemen, I think we should recess this hearing until we can contact Judge Carrillo. And it may be he would want to come and testify, I don't know. But I think we should extend him that privilege, if he wants to.

MR. CHURCH: Oh, very definitely. We would certainly have no objection if he wants to.

THE COURT: And for that reason I don't think we could get him here in time to do anything this afternoon. He is down there I think selecting a jury, either for me to try a case tomorrow, or a couple of Judges from Cameron County to come up and try one, I don't know the situation. So I am going to recess this hearing until we can confer with him and see what he would like to do.

MR. CHURCH: Does the Court have in mind any length of time? I mean, I am just trying to find out what the Court will - - -

THE COURT: Well, I don't know if I can get somebody to take care of my docket down there - - - but anyway, I have enough on my docket for the next three weeks to keep two Judges busy. We talked with Judge Laughlin about coming down, and his brother had had a heart attack and he didn't feel that he could. And we are trying also to get Judge John Miller.

MR. CHURCH: Do you have any idea what length of time you are talking about in his testimony? I mean if we could get Judge Carrillo in Edinburg at the lunch recess - - -

MR. SMITH: Of course you can see the problem. If his memory is like that of the other witness and he doesn't know anything, it won't take long. But I do think he should have an opportunity to clear up this confusion,

00313

where the other end of the transaction don't seem to know what it's about. I think the Judge in this record should have that opportunity, and I think it would put him in a bad light if he doesn't have that opportunity. I might say that Judge Carrillo did answer the requests for admissions, and I don't think he was at all evasive. But on requests for admissions, you can't ask a question, but you are limited to stating a fact and asking that it be admitted. And I didn't have the least idea when that lease started and when it ended. But the record should not be left vague like this.

THE COURT: However vague it may be, I think Judge Carrillo should be given the opportunity to testify, if he wants to.

MR. CHURCH: Oh, absolutely.

THE COURT: And to make any statement that he wants to. In other words, some very serious accusations have been made. Of course if he doesn't want to, then we can leave it as it is. So I think we will stand recessed, and I will get with you attorneys and set another date for the continuation of the hearing. I will do it as soon as I possibly can.

MR. CHURCH: If you would contact Mr. Dennis Hendrix, he can get in touch with me right away on the arrangements for a setting date.

THE COURT: So we will stand recessed until we can get together and see what Judge Carrillo would like to do.

MR. SMITH: Incidentally, I would like to make this statement, partly for Mr. Church and partly for the Court's benefit -- we have notices out to take depositions, and he has a motion for protection, and I would like to have time to take care of that before we have any setting on the merits. And that could not possibly be before next Tuesday.

THE COURT: Well, but we still have the question of the Judge's disqualification. Any hearing on any of that will depend on whether or not he is disqualified.

MR. SMITH: Oh, and one other thing I wanted to put in the record, and that is this Appendix "A", which is the Canons of Judicial Ethics, as our Exhibit No. 7. I suppose there is no objection? It is a publication that we are all familiar with.

MR. CHURCH: It's attached to the motion?

MR. SMITH: It's attached to the motion.

MR. CHURCH: Then I don't think it would need to be offered in evidence.

MR. SMITH: But we would rather have it in the record here.

MR. CHURCH: Then I would object, because it does not, under the constitution, set out rules of disqualification of a Judge in the State of Texas.

THE COURT: I think that is correct.

MR. CHURCH: The constitution itself says whether he is disqualified or not.

MR. SMITH: Well, I think it has some pertinence here.

THE COURT: Well, I will permit you to introduce it, but it's not controlling.

MR. CHURCH: No, sir. It goes more to recusing, more than disqualification.

(Such exhibit was, by the reporter, marked as Defendants' Exhibit No. 7, and a true copy thereof is contained in the appendix of exhibits hereto.)

MR. SMITH: Oh, and before we leave I want to offer in evidence Exhibits 5 and 6. They are part of the Court's records, and I suppose there is no objection.

THE COURT: Okay.

(Some were received in the evidence, and true copies thereof are contained in the appendix of exhibits hereto.)

HEARING RECESSED.

MARCH 30th, 1973.

AND BE IT FURTHER REMEMBERED that on the 30th day of March, 1973 the Court reconvened, with appearances of counsel as previously captioned, and the hearing of such motion was resumed as follows:

MR. SMITH: Your Honor, the purpose of the hearing this morning was to hear Judge Carrillo's testimony on some of the loose ends of the case. Also we, to make the evidence complete, need to get some additional information from the bank's records. I have talked to the gentleman from the bank this morning, and we have agreed that he could send somebody over with the copies. We have him subpoenaed, but he can't come himself this morning.

MR. CHURCH: We will bring Mr. Anderson himself, principally because he is familiar with the meetings, and he could present it better. The subpoena was served on Mr. Anderson to bring the stock records of the bank for the Court's use, but they also subpoenaed all minutes of the Board and of the stockholders of the bank since January 1st, 1968. We take the position that the meetings of the Board on internal management matters, the examinations by the F D I C and the Banking Commission.

all involve other people who are not involved here, not even as witnesses, and are confidential, and therefore we would, as to any minutes, ask the Court to require Mr. Smith to show the need for a specific bit of information. We are not trying to withhold any information, and we would supply it any time he shows a need for a specific and particular thing. We just can't turn loose the minutes of the bank to the Court and have Mr. Smith examine the whole record. If it pertains here, bears on any issue here, and he has a need for it, we will produce those particular matters.

THE COURT: Mr. Smith, what do you want specifically?

MR. SMITH: Of course it is pertinent to have - - - we have a situation here where the owner of a controlling interest in the bank has made the Judge and three officers of the Court participating in decision making in this receivership, directors of that bank. The thing we are interested in from the minutes are every action or motion that is made by any of these directors, who are officers of the Court and involved in this case, especially in the matter of approving loans to each other and to the Judge. The presence of those directors at those meetings is highly significant. Also, the reason for asking for the stock transfers is, and we will ask the

00318

Court in two motions to take judicial notice of the records in the case, but the bank stock that was in the name of M. Guerra & Son that has been transferred to Mr. Manges was in custodia legis, and still is, and has never been - - - there has never been any approval of the Court for the transfer of this stock, with the exception of that one forty shares, which was transferred February 1st, 1971. So we want to show exactly how much bank stock was placed in custodia legis on October 11th, 1963, and what has happened to it since, without the receiver ever taking charge of it, without any approval of the Court. This is very pertinent to the disqualification proceeding.

MR. CHURCH: We differ with his statement as to the stock Mr. Manges acquired, other than the forty shares, because it did not belong to M. Guerra & Son but to individuals. We purchased it individually, paid for it individually, and therefore to go into that would take two or three days. We don't really mind, but it was not in custodia legis. Although an order was entered by Judge Laughlin, there was not any receivership in this case until Mr. Smith and his clients dismissed a Federal proceeding in Brownsville after all matters were settled, and then there was a receivership. So there was never anybody to take charge of any assets during this period of

time. In fact, I think there was a supersedeas bond filed at the time they went to the Supreme Court in this case. So it was not in custodia legis. If he wants the stock record books, we will bring those and Mr. Anderson will testify to those matters he is entitled to. The specifics we are talking about are the minutes, and there we feel he would have to specify what he wants from the minutes, pertaining to a need in this case. We have no objection to that, and when the time comes we will have Mr. Anderson up here.

THE COURT: I don't think the bringing of any of the minutes is necessary, except what might pertain to this law suit or the parties in this law suit. Because the general public - - - after all, the Court is not interested in that.

MR. SMITH: I might explain that the only reason we can't tell the Court exactly which records we want is that we have sought to take the deposition in order that we could give you that information, and ask for the specific information. Mr. Church has filed a motion for protection, and they have refused to let us have that information. We have to proceed this way under circumstances where we have not seen the minutes.

THE COURT: From what time do you want those minutes?

MR. SMITH: I think the pertinent date is from October 11, 1968, when the property went into custodia legis. As to the part of his statement that it wasn't the property of M. Guerra & Son, we know of course there was some that wasn't, but the bank transfer records are the best evidence.

MR. CHURCH: Certainly we will bring those. As Mr. Smith says, we did file a motion for protective order. He wants to do the same thing there, is go through the minutes of the bank, which I say he cannot show has anything to do with this law suit, and so he assumes to criticise our motion. Anything that is pertinent to any one of these issues, certainly we will bring the records. And Mr. Anderson will testify to the loans. If he wants that, let him specify it, but not just generally go all through the minutes of the bank, which I don't think is pertinent, and is highly irregular. That is all confidential matter.

THE COURT: Yes, I can see the position of people who might be borrowing money from there, that they wouldn't want the public to know about it, anything like that.

MR. SMITH: Of course his objection is kind of silly, because we haven't asked about anything of that kind. We want to know about these officers, and which of

them was present at the Board meetings and approved these loans.

MR. CHURCH: Well, now he is getting specific, but these subpoena asked Mr. Anderson to bring all records from January 1st, 1968.

MR. SMITH: Do you take the position we are not entitled to discovery?

MR. CHURCH: I take the position that we will furnish the information he wants, your Honor, but we don't want Mr. Smith ranging through all the minutes of the bank as pertaining to something he has no connection with, and has no business knowing. It is all confidential.

THE COURT: Well, bring the minutes with reference to the officers and directors of the bank, and especially Judge Carrillo, and the minutes pertaining to this here.

MR. SMITH: And we also want any loans made to the Receiver and the attorney for the Receiver, or the two attorneys for the Receiver, and Ramiro Carrillo, the brother of the Judge.

MR. CHURCH: Well, we will bring all of those records. We have offered that before.

THE COURT: All right, then let's get forward.

MR. SMITH: I think probably it would be better to have Judge Carrillo now, if he is here.

THE COURT: He is here, and waiting.

MR. SMITH: And I would like to accommodate him, as far as time is concerned. But perhaps we will hear this other first, and hear him later on - - -

THE COURT: No, let's go ahead and hear him. He may have other business, I don't know.

- - O - -

O. P. CARRILLO,

Called as a witness by the defendants, the swearing of the witness being waived, testified as follows, to-wit:

THE COURT: Do you waive the oath?

MR. SMITH: Yes, your Honor.

MR. CHURCH: And we would, for the record, also.

EXAMINATION BY MR. SMITH:

Q For the record, you are O. P. Carrillo, the Judge of the 229th District Court?

A That is correct.

Q Judge Carrillo, at the last hearing there were several matters involved in the transactions here, where the information was confused, and we wanted to clear some of them up.

A Yes, sir.

- Q One of them was the acquisition of bank stock in the First State Bank & Trust Company in Rio Grande City. First I will ask generally if you have ever approved any of the transfers of bank stock from M. Guerra & Son to either F. E. Butler, Clinton Manges, or any other person - - - I realize you were not the Judge, but the transfers were made subsequent to October 11th, 1968, when the receivership was instituted, but since the Receiver was appointed -- have you approved any such transfers since you became Judge?
- A I really have no knowledge. I might have. We are talking about transactions here in the Court?
- Q Yes, sir. I have checked the records, and I found an order of January 1st, 1971, which approves the transfer of forty shares of stock from M. Guerra & Son to Mr. Manges, but I haven't found any other order approving any other transfers.
- A I don't recall of any. There might be. Any orders that were entered in relation to any matters in this particular case, I insisted that all of the parties approve of the transactions. And up to now, as I can remember, every single partner or party to this law suit has joined in and agreed to any of the orders I have entered and signed.
- Q In other words, you did require that all parties agree before an order was entered?

- A Before any transaction, or any order has been approved by me, I have insisted that all of the parties to this partnership agree to it, and then I sign it. And if they don't, we have to hold a hearing on it. And as far as I know, everything that has been done in this case has been in complete agreement of all parties involved.
- Q Now, did the receiver, or anyone connected with the case, advise you that the stock acquired from M. Guerra & Son by Mr. Manges, was in custodia legis subsequent to the appointment of the Receiver on October 11th, 1968, and the transfers had not been approved by the Court at the time you came on the bench?
- A No one has advised me about that.
- Q Did you know that the stock, the M. Guerra & Son stock, or the stock owned by it in October of 1968, was in custodia legis and no Court order had been entered approving the transfer out of M. Guerra & Son subsequent to the appointment of the Receiver?
- A No, sir, I have no knowledge of that.
- Q With respect now to the bank stock that you acquired - - - well, let's see, let's go back a bit. Take the date the deed was given by J. C. Guerra and V. H. Guerra, on March 31st, 1969, which purported to convey the entire ranch property from M. Guerra & Son to Clinton Manges, did the

Receiver or anyone advise you those conveyances had been made, or had been attempted, as between parties who had asked for the receivership during the time the receivership was pending, and while the property they purported to convey was in custodia legis in this matter?

A Not to my knowledge. You know, I came on the bench on January 2nd, I think, 1971, and I have no knowledge, and I have not checked the file or anything to check into this case, or any particular case. I just take them as the orders are presented to me.

Q Did the Receiver or any of the attorneys for the Receiver advise you of the possibility that these conveyances of property which was supposed to be in the Receiver's hands, without the consent of the Court, could be in contempt of Court?

A No, sir.

Q No contempt matter was ever brought before you in that connection?

A No, sir.

Q The Receiver did ask you to approve some conveyances to Manges, I believe in January or February, 1971?

A Well, like I say, after I became Judge, as I recall every order that was presented to me for my signature, was in complete agreement by all parties involved. And some orders have been presented to me. I have no knowledge

what they are at this time. I know I have approved certain orders, but I don't know what they are.

Q Now, when the order was presented for the conveyance of substantially somewhere between thirty-nine and forty thousand acres of land, in February of 1971, the application was that you approve the conveyance to Manges free and clear of any liens. Did you realize at that time that the Receiver was not requiring Manges to pay the full purchase price of the land he was withdrawing from the receivership estate?

A No, sir.

Q Have you read the final report of the Receiver, on file now, that indicates that as of today, according to the Receiver's report, Mr. Manges still owes ninety-four thousand dollars on that property?

A No, sir.

Q Did you realize that Mr. Manges, within two weeks after that, withdrew that free of lien - - -

MR. CHURCH: Please the Court, we object to counsel testifying. He can ask this witness questions, but he is now testifying, and not under oath. He is making statements as being fact statements, which have no basis whatsoever. If he wants to prove it, and has facts on which to base it, I have no objection, but I do object to him asking these questions which he says are facts.

THE COURT: I never consider what the attorneys' question is as evidence. I consider only evidence from the stand.

MR. CHURCH: But for the record, Mr. Smith is making the statement, and he is testifying when he is not under oath - - -

THE COURT: Well, I am not considering it as testimony.

MR. CHURCH: All right, but you will please note our objection and exception for the record.

THE COURT: Well, I will expect him to prove it up, if he is going to.

MR. SMITH: In order to clarify this, how this question has been raised, our testimony reflects other evidence which will be introduced, showing a deed from Mr. Manges to F. E. Butler, Trustee, and I think they will stipulate he was trustee for Vannie Cook. The deed is dated February 25th, 1971, just less than two weeks after the conveyance to Manges. The consideration recited there is over two million dollars -- there is a two million dollar lien in the deed, so this deed proves this much, anyway. We will show on the merits here that that is the consideration the deed reflects. But I am asking the Judge here if he knew that he had this arrangement to sell this twenty-two thousand acres to Mr. Cook

for over two million dollars, which would represent a purchase price of over a hundred dollars an acre, as against the fifty-four dollars Mr. Manges paid.

Q Did you know that?

A No, sir.

Q No one told you?

A No, sir.

Q Did you know, or did you learn in connection with your membership on the Board of Directors of the Rio Grande City bank, that the two million dollars which Mr. Manges raised in this transaction, was used by him to pay on his note to the Bank of the Southwest, or one of their corporations, that he was acquiring funds from to acquire stock of the Groos National Bank?

A No, sir.

Q Now, the application of the Receiver, I believe, shows that the other parties who were withdrawing land, that is, Ruben Guerra, J. P. Guerra, Jr., and Virgil H. Guerra, were also to be permitted to withdraw their lands from the partnership, also free and clear of liens -- did anyone advise you that that arrangement had been worked out with the Receiver?

A No, sir.

Q Now, when they finally arranged the conveyance from the Receiver to these other partners, which was consummated

I believe around August 20th, 1971, did you realize that apparently the Receiver and Mr. Manges had welched on the arrangement which would have permitted Ruben Guerra, H. P. Guerra, Jr., and Virgil H. Guerra to withdraw their lands at the same time Manges, free of liens, and he did require Virgil, Ruben and H. P. Jr. to put up in cash money the difference between what they owed the partnership after withdrawing the land, and put a lien against their land in order to accomplish that?

A No, sir.

Q Did you know that was involved in the background?

A No, sir.

Q If you had known that, would you have approved that transaction?

A Whenever an order - - - you know, orders are presented to me in many cases. I can't recall every order I have entered or signed. I can't recall the facts around it. Lawyers come to me and present an order, and I look it over, and if everything looks all right, I sign it. Like I say, in this particular case I insisted all parties involved approve or join in all of the transactions. I could be in error, but I doubt it very seriously, but as I recall every single order presented to me for signature in this case was in complete agreement of all the parties. I could be mistaken, but I doubt it seriously. Like I

say, goodness knows how many orders I have signed since I became a judge, and I can't remember every one of them. This case is just another case on my docket.

Q Part of the problem here, Judge, is that what the Receiver is asking you to approve the sale of now, is an undivided one-half of the minerals standing in the name of M. Guerra & Son, which minerals were reserved to the partnership in all of these settlement agreements made with Manges and the other partners. They are asking that these minerals now be sold to pay the Receiver, and Court expenses. Now, part of those minerals are owned by M. A. Guerra, and part of them are owned by Mrs. Virginia Jeffries, who reserved those minerals when they sold their interest in the partnership to Mr. Manges, and neither one of them, according to the records I have examined, signed any orders or approved any orders authorizing any of these conveyances, or any other settlement. And they are now asking your Honor to approve a sale of these minerals to cover expenses they never approved and never had anything to do with. And that is part of what the argument is about. The parties necessary to the thing never signed it.

A If that is the case, and it ever gets to that point in the trial, it will be looked at fully, and I will rule according to what is there. I can't tell you what I will do or not do. This case is pending.

- Q Did the Receiver or his attorneys advise you that there were two of these parties that owned interests in these reserved minerals, that had not signed any of these agreements?
- A No, sir.
- Q Now let's pass to the leases that you have from Mr. Manges on some of the land once owned by M. Guerra & Son. Mr. Manges - - - well, to put this in perspective, I believe you were elected Judge in November of 1970?
- A That is correct.
- Q And you took office then in January, 1971?
- A Yes, sir.
- Q Those dates are correct?
- A Yes, sir.
- Q Now, Mr. Manges testified, I believe, that you were in sort of a jam at one time on grazing land for some cattle, and he permitted you to graze on from a thousand to thirteen hundred acres, or some substantial acreage. Could you begin at the beginning, the first grazing lease you had with him, and tell us about it.
- A Yes, sir. After Mr. Manges acquired this land, as far as I knew there were several grazing leases. Or he was just letting people graze on his property, I don't know the exact facts as to other people. I approached Mr. Manges about getting a grazing lease from him.

Q Do you remember the approximate time you first discussed it with him?

A No, I don't, I'm sorry.

Q Would it have been before or after you became Judge?

A No, I was already Judge. I was already Judge, as I recall. So we arrived at a rental fee of a dollar per acre, and I moved into - - - I don't remember what they call this particular tract, but anyway it was about twelve or fourteen hundred acres, on the highway out toward La Gloria from here. And one of the understandings that Mr. Manges and I had was that if he ever decided to sell, or if he decided to clear any of that property, that he would give me - - - I think it's about ninety days, something like that, notice to vacate. Subsequently I believe Mr. Manges sold that to the Senator's father.

Q Do you recall how long you grazed that land?

A About two or three months. I was there when Mr. Manges decided to sell that property, and then we made arrangements for another tract of land and I moved my cattle over there, approximately five thousand acres.

Q Going back to this first tract of twelve or fourteen hundred acres, you had it about two months, and that is the first lease you had after you became Judge?

A That is correct.

Q Do you recall whether it would have been, say, within six

months after you took office, or a year, or how long?

A I don't remember. It must have been around April, I would guess, something like that. As I recall, I think we moved into the other pasture around June, so it must have been around April.

Q About how many cattle did you have grazing on this land?

A Possibly a hundred and something, I guess. I don't know for sure.

Q Where were you grazing those cattle at the time you moved them to this ranch?

A Well, I own several pieces of property in Duval County. I also had a lease from Mr. William Bodine in Duval County, and I also had another one from Mr. Vannie Cook over in Duval County.

Q How much did you pay Mr. Bodine for leasing his land?

A Two thousand dollars.

Q How much would be the figure per acre?

A About a dollar.

Q Did you pay in advance, or at the end of the term?

A I don't know whether it was in advance or not. I know it was paid by cashier's check, because it just happened I looked it up a couple of weeks ago. That's why I recall the exact amount.

Q How much did Vannie Cook charge you?

A No, there was no charge there.

Q Now, how much did you actually pay Mr. Manges for the twelve or fourteen hundred acres?

A Well, we have an agreement I am paying a dollar an acre, and we have a three year grazing lease - - -

Q Now, that applies to the five thousand - - -

A No, it applies to everything. As far as I am concerned, we went from the agreement on the twelve hundred acres lease to a five thousand acre lease, but it's one transaction. We moved in from one pasture to another, but the agreement is that I will pay a dollar an acre for a twelve month period. If I use twelve hundred acres for twelve months, it would be - - -

Q Are you saying, then, that Mr. Manges' testimony at the hearing of February 20th was false -- that his testimony was not correct when he said that he let you have this twelve or fourteen hundred acres as a courtesy? I believe that's what he said, with no charge.

A I don't know how he is considering it. I know how I am considering it, and I know we have an agreement at a dollar an acre on a grazing lease, and I will honor that understanding.

Q And have you paid him anything on the fourteen hundred acres yet?

A No, sir, it's a three year lease, unless he decides to sell or to clear the property, and then he will give me

approximately three months' notice so I can move my cattle. And Mr. Manges is trying to acquire cattle, and our agreement is that at the end of that time period, I will either owe him the approximately fifteen or sixteen thousand dollars, whatever it is, and he will take them in cattle, if we can agree on the figure, otherwise I will pay him the amount in cash. That is our understanding that we have.

Q Now, in the answers to your interrogatories, to Interrogatory No. 6, you say with respect to that lease, that it was agreed you would pay for such at the rate of five thousand dollars a year, payable at the end of the lease in cash or in its equivalent in cattle, whichever Mr. Manges, at his option, elects. Now, is it a flat five thousand dollars, or exactly a dollar per acre?

A Well, as far as I know this pasture I have is approximately five thousand acres. We are taking it on a five thousand acre tract. It could be more or less, I don't know. But it will be a dollar an acre, approximately five thousand dollars per year.

Q And you pay nothing until the end of the three years?

A Yes, sir, three years. Or if I have to move out before, whenever we terminate the lease.

Q Now, is that lease in writing, or oral?

A No, sir, it's an understanding Mr. Manges and I have.

Q Just an oral agreement?

A Yes, sir.

Q And do you have any understanding orally as to the beginning date of the lease?

A Well, like I say, as far as I know it would be in April, when we moved into this twelve hundred acre tract, and in June we moved into the five thousand acre tract, so there would have to be an adjustment of those two or three months on the twelve hundred acres to go onto the five thousand acre tract.

Q Have they cleared or sold any of the tract of five thousand acres as yet?

A No, sir. They have cleared some adjoining what I am using, but haven't cleared any that I am grazing.

Q About how many cattle do you have grazing on that land?

A In this particular one I have approximately two hundred and fifty head, more or less, I don't know for sure.

Q Now, Judge Carrillo, let's go to the matter of the loans from the bank, from the First State Bank & Trust Company of Rio Grande City. Were you a customer of that bank prior to becoming a director?

A No, sir. As a matter of fact, I hardly visited Starr County before I became a director, or became a District Judge.

Q What bank were you with before you came to the Starr

00337

County bank?

A First State Bank at Alice, and First State Bank in San Diego.

Q Now, the records show that from time to time since becoming a director, and since becoming Judge, you have had loans from the First State Bank & Trust Company of up to thirty-eight thousand dollars, I believe was the highest balance of your loans based on your financial statement. Would that be substantially correct, according to your memory?

A Could be, I paid approximately ten thousand dollars back last month. Let me put it this way -- I bought three thousand acres of land adjoining my property in Duval County, and I borrowed the money to buy this ranch from First State Bank & Trust.

Q On that point, the land you bought, would you say it was comparable land to the lands of M. Guerra & Son estate?

A I would say the land I bought is much better land than the M. Guerra & Son land.

Q It is located in - - -

A Located in Duval County. As a matter of fact, it's about two hundred yards from my residence, right across the fence from my property.

Q You live on a ranch, do you?

A I have a house at the ranch. And I try to live there when

I can. I don't usually have much chance to stay there.

Q Where is your main residence, in Benavides?

A In Benavides.

Q I believe the records of the bank show that you borrowed against that land, some three hundred and six thousand and maybe some odd dollars?

A Yes, sir.

Q And that would indicate you paid around a hundred dollars an acre for it, for three thousand acres?

A No, it's three thousand acres, and the cost of the three thousand acres would be over a hundred dollars an acre, because it's going to be approximately three hundred and seventy-five thousand dollars, something like that.

Q In other words, you paid around seventy-five thousand down?

A Something like that.

Q From whom did you purchase it?

A Mr. Viggo Gruey, from Hebbronville.

Q Have you done anything by way of further developing the property?

A I am clearing the whole three thousand acres completely, to put it in cultivation.

Q Was any of the money you borrowed for the purpose of clearing the land?

A This other thirty-eight thousand dollars you talk about, I am using this money to improve the land. And I might

say I have already had an offer of a hundred and seventy-five dollars an acre on this particular tract of land, and I haven't considered parting with it.

Q Now, with respect to the house, or the property I believe, that you traded to Mr. Manges in Benavides - - -

A Yes, sir.

Q In your own words, tell us how that trade developed, and what was involved. You know pretty well what we are driving at.

A Yes, sir, and I have got the deed here so I can better check on the dates and all for you. This is the original, and I have a photostatic copy of it, certified. And Mr. Manges moved into Duval County some time in 1970, became a resident of Duval County, and he was looking for a house. I happened to own several houses in Benavides, and I own approximately two hundred lots in the town itself. So he was looking for a house, and we negotiated. At the time I was asked if I would consider serving on the Board of Directors of the First State Bank & Trust Company, and we had to have ten shares of stock to qualify for a directorship. The shares of stock I believe at the time were \$773.00 and a few cents. I had also - - - or I was also in the process of trading my automobile. And Mr. Manges agreed to pay the difference for my trade-in, and to sell me the ten shares of stock of First State

Bank & Trust, which made it an approximate value of around \$14,600.00 for the trade for this house. It is a two-story house with three bed rooms, a living room, kitchen and dining room and two baths. It's a big house.

Q Were you living in that house at the time?

A No, sir, that was one of my rental units.

Q Was it rented at the time?

A It had been rented the year before. The football coach lived there.

Q What make and model was your trade-in?

A '69 Cadillac.

Q How much bank stock do you own at this time?

A I own ten shares. I still own the same ten shares.

Q Now, I believe in 1972 the stock was increased from one thousand to seven thousand?

A Yes, sir.

Q Did your ten shares then multiply up to seventy shares?

A No, sir, I just kept the ten shares.

Q What adjustment did you make with Mr. Manges with respect to that reduction in value of your ten shares, with the additional stock which was issued?

A None.

Q Now, you were - - - who handled the legal work on the house transaction?

A Mr. Dennis Hendrix.

Q Was he representing you, or Mr. Manges?

A Representing me, I guess.

Q Did you give a title policy, or abstract of title?

A He checked the title of it, and I gave him this deed right here.

Q In other words, the deed was all you gave, a warranty deed?

A That is correct.

Q Now, have you conveyed any other property in Benavides, or any other property, to Mr. Manges?

A No, sir, this is it.

Q That is the only land transaction?

A That's right.

MR. SMITH: Your Honor, we would like to offer this deed. The Judge has provided a xerox copy of it, which we can offer.

A Yes, sir, it is certified.

MR. SMITH: It is certified, and we accept that in lieu of the original, if that is acceptable to everybody. We would like to offer it as the defendants' exhibit.

THE COURT: Is there any objection.

MR. CHURCH: No, sir, I have no objection.

(Such exhibit was, by the reporter, marked for identification as Defendants' Exhibit No. 7-A, and a true

00342

(copy thereof is contained in the appendix of exhibits hereto.)

Q Judge, while you have the original deed there in your hand, just read the description of the property into the record here, for the purpose of description.

A Okay. "All of Lot 9 in Block 18, Original Townsite of Benavides, Duval County, Texas, according to the map or plat thereof on file and of record in the office of the County Clerk of Duval County, Texas, to which reference is hereby made for all purposes."

Q Now, you are familiar generally with the original townsite of Benavides, and you do know that is the correct description of the property you conveyed?

A I'm sure it is. I don't think there would be an error. Might be, I don't know, but I doubt it very seriously.

Q Since you own some two hundred vacant lots, I believe you said, I suppose you know about what a vacant lot in Benavides would sell for by itself, without improvements?

A All depends on where it is located.

Q Well, take one in the general area of this, say in the same block, Block 18 of the original townsite.

A There isn't a vacant lot in this block. The house I live in is right next door to it. And then my sister owns the property over on the south side of it, and my uncle owns the half block completely, to the west of it. I do own

00343

about three lots right across the street from there.

Q Do you have a price put on them?

A Well, it's about a block from the school house, and the property is quite large, and I would say the way things are right now I rather think I wouldn't sell it for under five thousand dollars, if I considered selling it for that price. It certainly wouldn't go for less than five thousand dollars.

Q Are your two hundred lots there for sale -- do you have them listed, offering them?

A I sold some up to about a couple of years ago, and then I found I was really, by the time I sold it and paid income tax on it, I wasn't getting much. I have had several people wanted to buy some but I haven't sold any, and unless the figure is real attractive I don't believe I will move any of them at this time.

Q Do you know about what the tax rate in Benavides is, with respect to the market value? Is it about fifty percent, sixty percent?

A I don't know. I think you will generally find properties are listed 'way below what they are actually worth, on the tax rolls. I think that is the practice all over.

Q That is true generally, but generally the tax authorities have some percentage of market value they use, and I was wondering if you knew what rule of thumb they use in

00344

Benavides and Duval County?

A The City of Benavides doesn't collect any taxes at all. The school and the County does. But I would even hate to guess. I don't know. I'm not trying to evade your questions, I just don't know.

MR. SMITH: I believe I'll pass the witness.

MR. CHURCH: We have no questions, your Honor.

THE COURT: Okay. Judge, do you have anything else you would like to say?

A No, sir. I appreciate the fact I was given an opportunity to say something.

(Witness excused.)

-- o --

W. T. GUERRA,

Called as a witness by the defendants, being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q Would you state your name, please?

A W. T. Guerra.

Q And you live in Rio Grande City, or Roma?

A Roma.

Q How long have you lived there?

A Thirty years.

Q And what business are you in?

A In the lumber business, and cattle business, and insurance business.

Q Mr. Guerra, I would like to hand you what has been introduced in evidence as Defendants' Exhibit No. 7-A, and ask you to check that description as against this deed here. I believe you have seen that before, have you not?

A Yes, sir.

Q Is the description the same?

A Yes, it is.

Q Both of them refer to Lot 9, Block 18 of the original townsite of Benavides?

A Yes, sir.

Q Have you, at my request, gone to Benavides and examined Lot 9, Block 18 of the original townsite?

A Yes, I have.

Q Did you take any pictures of it?

A I have one picture.

Q What did you find to be the condition of that lot?

A I found that that lot was a vacant lot, and as far as I could tell there never had been anything built on it.

Q Was there any brush on the lot?

A Yes, there is, trees and brush.

Q Did you say you had taken a picture of it?

A Yes, sir.

Q Do you have it with you?

A Yes, sir.

Q What was the date you made this examination?

A The date was March 27th, Tuesday.

Q And are you sure you examined the correct lot?

A Yes, sir, I checked the maps. I found out where this lot was, and I checked the maps at the City office, and also checked the maps at the C P & L office, and they are both the same map, and I had people, local people from Benavides, guide me to the lot.

Q And you have the picture there?

A Yes, sir.

MR. SMITH: I will ask the reporter to mark this as an exhibit for us.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. S.)

Q And you state that that is a picture of Lot 9, Block 18 of the original townsite of Benavides?

A Yes, sir.

MR. SMITH: Your Honor, we offer the picture in evidence.

MR. CHURCH: Your Honor, I would like to have him on voir dire before I state any objection.

THE COURT: All right, go ahead.

VOIR DIRE EXAMINATION BY MR. CHURCH:

Q For the record, Mr. Guerra, you are the son of Ruben Guerra, is that right?

A Yes, sir.

Q And he is one of the moving parties in the motion to disqualify Judge Carrillo?

A Yes, sir.

Q Now, at the time you went to Benavides, did you have a surveyor with you?

A No, sir.

Q Did you go to the County records in San Diego to determine this?

A It was the same map, yes, sir.

Q I am asking, did you go to San Diego, to the Courthouse, and look at the plat of this?

A No, sir, I didn't. I did go to the town - - -

Q What records did you check, the map in the C P & L office?

A And the map at the City Hall.

Q Did you find Mr. Clinton Manges' name on this lot?

A No, sir.

Q Did you find his name on another lot over there?

A No, sir.

Q Under oath you are testifying you didn't find Mr. Manges'

name as the owner of one of these lots?

A Right, sir. Except on the deed records I did.

Q On the deed records you did, and on the City records of Benavides, and on the C F & L records?

A No, sir.

Q There is no record of Mr. Manges owning a lot with improvements, that you found?

A No, sir. Of course, I was checking on this lot.

Q Let me ask you this -- does Mr. Manges own a lot over there with improvements?

A I don't know.

Q And next to what you say is Lot 9 - - - you say somebody showed you this lot, who was that?

A The people at the school told me exactly where this is. The tax collector of the school told me exactly where this is, and told me how to get there. And the service man at C P & L told me where the lot is, and how to get there. And the City the same thing.

Q The tax records show that Mr. Manges owns a lot with improvements, or did you check that?

A It doesn't show.

Q Do you know whether or not there is improvements next door to this, or did you - - -

A It doesn't have. It's Lot 10.

Q Did you make a plat to show what it was you found?

A No, I don't have one.

Q As I understand it, you found the lot without anybody taking you out there?

A Yes, sir.

Q Do you have any experience in surveying?

A Just the general experience of checking maps.

Q Did you do anything pertaining to finding this lot, as to corners?

A Yes, sir, I can tell you the street. This lot joins on what they call Humble Road.

Q And what is the name of this street?

A I couldn't tell you right now.

Q You don't know what street it is?

A No, sir.

Q And it adjoins what, Humble Road?

A Humble Road.

Q And is this in the area that Judge Carrillo testified to?

A Not where his residence is, no. It's not near his father's residence, which I also know where it is.

Q Are there any rent houses there?

A No, sir.

Q None whatsoever?

A No, sir.

Q And as I understand, nobody told you how to get there, showed you?

A That's right.

MR. CHURCH: I have no further questions.

THE COURT: Is there any objection to the introduction of the picture?

MR. CHURCH: I have no objection. I just can't tell whether it is or not the lot.

(Witness excused.)

MR. SMITH: Your Honor, in addition to the picture, we would also now offer in evidence a tax statement from the Tax Collector of Duval County with respect to Lot 9, Block 18, and we ask that that be marked as our Exhibit No. 9.

(Such tax statement was, by the reporter marked for identification as Defendants' Exhibit No. 9.)

MR. SMITH: And we now offer in evidence the picture, No. 8, and the Tax Statement, No. 9.

MR. CHURCH: We have no objection, your Honor.

(The same were received in the evidence, and true and correct copies thereof are contained herein in the appendix of exhibits.)

MR. SMITH: And if I didn't do so, we offer the deed, as our Exhibit No. 7-A.

THE COURT: Well, I believe it was offered.

MR. SMITH: Fine. Now for the record I would

like to read from this statement that it does apply to Lot 9, Block 18 of the Benavides townsite. That the taxes are delinquent going back to 1939. That the property has never been rendered. It has been assessed in the name of Maria Inez H. Saenz, and that the tax value shown for 1971 is \$330.00.

MR. CHURCH: I would like to just point out to the Court that apparently there is an error, because it never shows in the name of O. P. Carrillo at any time.

MR. SMITH: All we can go on, or course, is the only thing we can find. And this is the deed. Maybe there is an error, but I think the burden shifts to them to show what the error was.

Your Honor, I believe we are at the point now where - - - there are two things we need -- we want the bank evidence on, and then we have two motions for the Court to take judicial notice of certain matters. We can take them up first, or we can call the banker now.

THE COURT: Well, let's call the banker. We can take a little recess until he gets here.

(Whereupon the Court was in recess for a few minutes, following which the hearing was resumed as follows:)

MR. SMITH: Your Honor, we would like to recall Judge Carrillo for just a few questions. Mr. Church wants

to put him on to clear something up.

- - o - -

O. P. CARRILLO,

Recalled to the stand by the plaintiff, the oath being previously waived, testified as follows:

EXAMINATION BY MR. CHURCH:

Q For the record, please state your name?

A O. P. Carrillo.

Q Judge, you are the same O. P. Carrillo who testified here earlier?

A Yes, sir.

Q In connection with this lot in Benavides, when you made the sale to Mr. Manges, where was the lot located that you intended to sell him?

A It's across from the driveway from the home where I live, right across from the driveway.

Q And how did you get the description of the lot you conveyed to him?

A I called Mr. Crowley at the school district office and advised him of the property, told him what was the property we were talking about, and he gave me a description of it.

Q And after you got the description, what did you do with

that description?

A I think I gave it to Mr. Hendrix.

Q Do you recall whether the description in the deed which we have in evidence here today, is the same as they gave you from the school district -- do you know whether or not it is the same description?

A No, I don't. I got a description from that office, and I do know the property. Like I say -- - could I draw you a diagram?

Q Yes, sir, go ahead.

A And show you the property that was conveyed, or that I intended to convey, anyway. (The witness draws diagram on paper provided by counsel.)

Now, this is the block there in town. No. 1 here is where I live, right here, and this is the garage. This is a driveway, comes from a street over here, and there is a street comes in here and comes right straight into the driveway.

Q What street is that?

A I'm sorry, sir, we don't have names over there. Let's put it this way -- there are names given to the streets, and they have been there for several years, I guess, but the signs have never been put up. We have to go to the postoffice to get our mail because there is no delivery, no street addresses. But this is the street where I live,

and it comes right into the driveway to the garage. Then this is the house. It is a two-story house and it has, like I said, four rooms down stairs, a kitchen, dining room, living room, and a bedroom, hall and bath down stairs, and then three bedrooms and a bath up stairs, with a hall. And this is the house here. And this is sister's house over here, and this other half of this block here belongs to my uncle, Mr. J. A. Heras, and he has the house here on the corner. And then a little rental property here on the corner.

Q Judge, would you just date that at the top, and put your name on it, so that we can offer that as an exhibit?

A (The witness complies.)

MR. CHURCH: Garland, would you like to look at it? I would like to offer it, which is the diagram the Judge just made.

MR. SMITH: The only thing, I would appreciate it if you would put an arrow on there to show north.

A (The witness complies.)

MR. SMITH: All right, that arrow shows that direction at the bottom to be north?

A Yes, sir.

MR. SMITH: We have no objection.

(The same was, by the reporter,
marked for identification as Plain-

(tiff's Exhibit No. 1, was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

Q Judge, do you know a Maria Inez H. Saenz?

A Yes, she is my cousin. She is my uncle's daughter, only daughter.

Q And if the record shows that she was the owner of Lot 9, Block 18 in the town of Benavides, then would you have conveyed away to Mr. Manges property that did not belong to you — did you intend to do so?

A No, the property I intended to convey to him is the house I have owned for years. And Maria Inez H. Saenz was the — — — or maybe her father has deeded it to her. It belongs to my uncle, but maybe they have deeded it to her. This particular block was bought by my father and my uncle 'way back — — — in fact, I was the last one that was born in my grandfather's house. My brother that follows me was born in this house on the corner there. So it goes 'way back when my father and my uncle bought this property, and they divided it and my father took the eastern half of this block and my uncle took the western half. And Maria Inez H. Saenz is my cousin.

Q So actually, if Lot 9, Block 18 is a vacant lot, there was an error in the deed?

A Like I stated before, it might be. If there is an error there, it will be correct, because the intention I have and that Mr. Manges had, and the agreement we have, is the particular house right across the driveway from the house where I presently live.

MR. CHURCH: No further questions.

- - o - -

EXAMINATION BY MR. SMITH:

Q What is the present condition of that house next door to you, the one you intended to sell? It is next door, is it not?

A It's across from the driveway.

Q Oh yes, I see. It's not quite next door. We have several lots in there.

A But you mean across right here - - -

Q I was trying to make it across the street.

A No, it's in the same block.

Q What is the condition of that place at this time?

A I haven't been there. It's there.

Q But you do still live next door?

A I still live next door.

Q Are there any tenants in it at this time?

A No, sir, it's vacant.

Q How long has it been vacant?

- A Since Mr. Manges got it. Like I say, the high school football coach lived there before Mr. Manges acquired it, and it's vacant at the present time.
- Q And the deed is dated October 12th, 1970?
- A Yes, sir.
- Q Was it vacated at the time you gave the deed to Mr. Manges?
- A No, it was vacant at the time I gave him the deed.
- Q So the football coach would have moved out earlier than that, say in September, something like that?
- A I guess so, sometime in there.
- Q So it has been vacant since?
- A Yes, sir.
- Q Is it being maintained, the grass mowed and the house kept painted?
- A Well, the house is painted. What Mr. Manges is doing with his house now, I am not even going to try to tell him how to run his property. This is his house.
- Q If the doors were knocked out and the vandals had broken windows and the like, would you notice it, being right next door?
- A Oh, yes, I guess I would, if there was any burglary or anything. However, I might be very proud to say that we are very low in burglaries and break-ins in our little community. As a matter of fact I don't think we have had a lock on our house for twenty years.

Q I have patent reference, of course, to vandalism. Kids just like to break out windows.

A That's what I mean.

MR. SMITH: All right, sir, no further questions.

MR. CHURCH: I have no further questions.

(Witness excused.)

MR. CHURCH: I want to put Mr. Hendrix on briefly, your Honor.

THE COURT: All right.

- - o - -

DENNIS HENDRIX,

Called as a witness by the plaintiff, being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. CHURCH:

Q Please state your name?

A Dennis Hendrix.

Q Where do you live, sir?

A Edinburg.

Q What is your occupation or profession?

A I am an attorney.

Q And how long - - - are you a licensed attorney under the laws of the State of Texas?

A Yes, sir.

Q How long have you followed that profession?

A About seven years now, I guess.

Q In October, 1970 were you practicing law?

A Yes, sir.

Q Where were you practicing?

A In Edinburg.

Q Did you have any, in October, 1970, have any dealings with Judge O. P. Carrillo in connection with the preparation of a warranty deed covering property in Benavides, Texas?

A Yes, sir.

Q What exactly took place?

A Well, I don't remember exactly how it came up, except that Judge called me one day and said he had made a trade with Mr. Manges for some property in Benavides, and he said it would probably be a good idea for me to check the title for Manges and prepare the deed. That's all I remember about the conversation.

Q Did you get the legal description from Judge Carrillo?

A As I remember, yes.

Q Did you go to Duval County and make an inspection of the records?

A Yes, sir.

Q And from that inspection of the records, did you find the

title to the property covered by the description that Judge Carrillo gave you, in him?

A Yes, sir.

Q And what did you do thereafter in preparation of the deed?

A I drew the deed from Judge Carrillo to Mr. Manges.

Q You heard the testimony this morning that it is a vacant lot in the name of Mrs. Saenz. In your examination of the title to this lot, did you find any Mrs. Saenz as the owner?

A No, sir. I won't say it was this lot 9, Block 18 that I examined. Whatever I did examine showed the title in Judge Carrillo. It may have been Lot 9, Block 18, I don't know.

Q Could there possibly have been an error in drafting the deed, though?

A Oh, certainly. I don't know where Lot 9, Block 18 is, have no idea at all. All I know is that Judge Carrillo said -- if this is the description he gave me, and I don't remember that -- he said he was conveying a house and lot in Benavides to Mr. Manges, and gave me the description, and I checked it.

MR. CHURCH: No further questions.

EXAMINATION BY MR. SMITH:

- Q Mr. Hendrix, I will hand you the deed, which is marked Defendants' Exhibit No. 7-A, and ask you to examine it and state if that is a correct copy of the deed you prepared, as far as you can tell?
- A As far as I can tell, it is, sir.
- Q I will hand you now Defendants' Exhibit No. 9, which is the tax statement on Lot 9, Block 18, and ask you if, in connection with that sale, you checked the taxes to determine if the taxes on the property were paid?
- A I don't remember that I did. But I normally would, and I assume that I did at that time, but I don't remember specifically.
- Q Did Mr. Manges ask you to get him a guaranteed title policy, or did you have an abstract - - -
- A No, sir, just checked the record at the Courthouse in Duval County.
- Q So obviously, if there has been a mistake, you would have checked the records on another piece of property, and between the time you did that and the time you drew the deed, another description got in there?
- A That is the only thing I can assume, that perhaps I transposed the number, and got the wrong lot or the wrong block.
- Q Did you get from the tax authorities, any tax certificates on the property that was to be conveyed, showing all taxes

paid through the preceding year?

A I don't know. I normally would, yes, sir. I don't remember that I did.

MR. SMITH: All right, that's all.

MR. CHURCH: That's all we have.

(Witness excused).

MR. SMITH: Now, Your Honor, the banker is here and we would like to put him on now.

- - o - -

FRANK ANDERSON,

Called as a witness by the defendants, being first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q Let's see, your name is Frank Anderson?

A That's right.

Q And you are President and Executive Officer of the First State Bank & Trust Company of Rio Grande City?

A Yes, sir.

Q And as such you are in charge of the records, the minute books, stock transfer books and records of that nature?

A Yes, sir.

Q Do you have the stock transfer book with you?

00363

A Yes, sir.

Q First, Mr. Anderson, let's begin on October 11th, 1968, and as of that date just tell us what the stock ownership was there. I believe that there were very few owners?

A All right, sir. May I have that red folder over there?

THE COURT: What was that date?

MR. SMITH: October 11th, 1968. That was the date the Receiver was appointed.

MR. CHURCH: Please the Court, Mr. Smith refers to October 11th, the date the Receiver was appointed, but there was a supersedeas bond, and that appointment never became effective until after they got out of Federal Court. So an order was entered, but was stayed after October 11th, so there wasn't a receivership. Mr. Smith says custodia legis is his arguments, and receivership, but there wasn't any, because it went all the way to the Supreme Court, and the supersedeas kept the matter from becoming effective. There was no custodia legis.

MR. SMITH: There will be a legal question on that. We have cases to the effect that the property is in custodia legis the minute a receiver is appointed, and once he is appointed the parties are to leave the property alone until the Court acts on it. The fact that there is an appeal and other proceedings in other courts don't make any difference. But that is a question of law.

00364

THE COURT: Do you have the date of the Supreme Court decision?

MR. CHURCH: No, I don't, your Honor. That is completely another file, and I didn't bring it. But the mandate should here, have at least the date it came back. But by that time, you see, we were in the Federal Court. We never did have the receiver until 1971, I presume. The record would show when he qualified, and when he qualified was the first time he could qualify, after the parties agreed on a settlement.

MR. SMITH: He wasn't a party to the receivership case. We will stipulate, or course, whatever the correct date is, when we find it in the record.

THE COURT: All right, I want the date he qualified and so forth. Go ahead.

A It is difficult to give you this with the stock certificate book I have here. There is some outstanding on certain
- - - what did you want to know?

Q If I could I would like to know who the stockholders were on October 11th, 1968, and then we will get into the transfers that were made thereafter. Handle it the way you can do it the easiest.

A As of October, 1968, Mr. J. C. Guerra was a stockholder.

Q How many shares?

A I will give you those -- there are different amounts.

Here is one, 94 shares.

M. Guerra & Son, 10 shares.

Demetrio Garcia, 50 shares.

J. C. Guerra, 90 shares more.

H. P. Guerra, III, 10 shares.

J. C. Guerra again, 10 shares, and 188 shares.

Frank Anderson, 10 shares

V. H. Guerra, 10 shares.

M. Guerra & Son again, 94 shares, and 300 shares.

Charlotte O. Barrett, 3-1/3 shares.

Betty O. Vindenharm, 3-1/3 shares.

W. B. Osborne, Jr., 3-1/3 shares.

Mrs. Jewell Osborne Storey, 10 shares.

J. A. Garza, 10 shares.

M. F. Garcia, 10 shares.

M. Guerra & Son, 200 shares.

R, R. Guerra, 10 shares.

A. V. Margo, 10 shares.

H. P. Guerra, Jr., 10 shares.

Estate of Victoriano Hinojosa, 2 shares.

Medardo Hinojosa, 2 shares.

D. G. Tijerina Estate, 4 shares.

Mrs. Elena E. Montalvo, 20 shares.

Estate of Vicente Guerrero, 100 shares.

This is difficult to give, because some of these went in

00366

and out. All right, now what?

Q Well, I think we have probably gone over, have exceeded the total. Let me see here - - -

THE COURT: Now, what is the date of this?

A Should be as of October, 1968. Or November?

MR. CHURCH: October 11th, 1968, he said.

A Yes, October 11th, 1968.

Q Well, I have 1164, which is 164 shares over.

A Let's see, you have M. Guerra & Son down there?

Q I have them for 94, 300 and 200.

A That 200 will come off, because that was included in that 300. Like I say, some of them are consolidated in various certificates.

Q Well, take that off, then that leaves us about 36 shares short. The main thing I am interested in, though, are the shares that were owned by M. Guerra & Son. I guess the 10 shares, the 94 and the 300 would be correct for them, is that correct?

A Let's see -- yes, 300, 94 and 10.

Q Which would be 404. Now, I believe that some of these shares in the names of some of the Guerra may have been owned by M. Guerra & Son, but put in the names of some of the partners in order that they might serve on the Board, is that correct?

A There were some transfers made back and forth from M.

Guerra & Son to various ones. What the agreements were I don't know, I just transferred them on the book.

Q In other words you don't know - - - well, here is J. C. Guerra. We have here 194 plus 188, would be 282 shares in the name of J. C. Guerra, and you don't know whether he was holding those as personal property, or in trust for M. Guerra & Son?

A What is the amount, now?

Q 282 shares.

A Well, J. C. Guerra, 188 shares were transferred to him from stock owned by a Southwest Texas corporation, and then ten shares from the same account. And 90 shares in the name of J. C. Guerra was transferred from F. D. Guerra, and then 94 shares were transferred to J. C. Guerra from M. Guerra & Son.

Q What was the date of that transfer?

A February 21st, 1968.

Q Okay, sir. Then let's be sure of these two -- in other words J. C. Guerra then had 94 plus 90 plus 10 plus 188 - - - let's see, that would be 382 instead of 282, I believe.

A See, this corporation up at Uvalde owned 198 shares, and when he transferred those, there was one certificate for 188, and one for 10. And then Fred Guerra had two certificates of 6 and 84 shares, total 90. And 94 was trans-

ferred from M. Guerra & Son.

Q Okay, that's the significant part. I want to check now, first when any conveyances of this stock was made by J. C. Guerra, and when any transfers of the 404 shares was made by M. Guerra & Son -- the dates of the transfers out of those two. The rest of them we can ignore.

A Up to 1968 - - -

Q Well, beginning in 1968 and thereafter.

A Then February, 1969, J. C. Guerra acquired fifty shares from Demetrio Garcia. On the same date I transferred 12 shares to J. C. Guerra from the estate of Alberto Gutierrez. Then on March 5th, 1969, there was - - - M. Guerra & Son, 94 shares were transferred to J. C. Guerra in two certificates of 74 and 20.

Q What was the date of that?

A March 5th, 1969.

THE COURT: How many shares from whom to who?

A March 5th, 1969, from M. Guerra & Son to J. C. Guerra, two certificates, 74 shares and 20 shares. Then March 11th, J. C. Guerra to V. H. Guerra, 10 shares.

Q That was 1969?

A Yes, sir. And in May, May 21st, 1969, there were 310 shares transferred to F. E. Butler, Trustee, from M. Guerra & Son in two certificates of 300 shares and 10 shares.

Q And that was May what?

A May 21st, 1969.

Q And that was out of M. Guerra & Son?

A Yes, sir. And June 19th, 1969, there was transferred from J. C. Guerra, out of a certificate for 188 shares, 90 shares, 50 shares, 74 shares and 20 shares, transferred to F. E. Butler, Trustee, totaling 422 shares.

Q What was that date again?

A June 19th, 1969.

Q Do you happen to know who F. E. Butler, Trustee was acting for?

A I don't know for sure, no.

Q Okay, and then next?

A All right, then on July 11th, 1969, the 422 shares were divided, 402 shares back into F. E. Butler, Trustee, and 10 shares to F. E. Butler and 10 shares to Vannie E. Cook, Jr.

Q And that date again?

A July 11th, 1969. Then November 24th, 1970, F. E. Butler, transferred 10 shares to Clinton Manges. All of these until I tell you differently bear the same date, November 24th. All right, J. C. Guerra transferred 10 shares to Clinton Manges. H. P. Guerra, III transferred 10 shares to Clinton Manges. V. E. Cook, Jr., transferred 10 shares to Clinton Manges. V. H. Guerra transferred 10 shares to Clinton Manges. V. H. Guerra transferred 12 shares to

Clinton Manges. F. E. Butler, Trustee, 310 shares and 402 shares. On November 27th, 1970, from M. Guerra & Son, was - - - sorry, that's from M. Guerra, Jr., was transferred to Clinton Manges 4 shares. From Medardo Hinojosa, same date, was transferred 2 shares to Clinton Manges.

Now, on December 10th, 1970, Clinton Manges transferred 10 shares to Max L. Jones. The same date, 10 shares to O. P. Carrillo. 10 shares to H. P. Guerra, III. 10 shares to M. F. Garcia - - - wait a minute, this is February 9th, 1971, 10 shares to M. F. Garcia. On the same date, 10 shares to M. F. Garcia. On the same date, 10 shares to Dennis Hendrix, and 10 shares to Frank R. Nye, Jr. Those came out of the certificate he was holding for 714 shares, and a new certificate issued to Clinton Manges for the difference, 694 shares.

Q Okay. Now, I believe - - - well, let's go ahead and follow the transactions.

A Then March 18th, 1971, there was transferred to R. R. Guerra, 10 shares recorded in the name of M. F. Garcia, and transferred by Bates, Receiver.

Q And signed by Bates, Receiver?

A Yes, sir. On the same date there were 30 shares transferred from H. P. Guerra, Jr., A. V. Margo 10 shares and R. R. Guerra 10 shares. Those certificates were endorsed

by the individuals by Bates, Receiver.

Q And that was on March 18th?

A Yes, sir. And then March 26 there were 10 shares transferred from Clinton Manges to Bob Richmond. That was out of a certificate for 694, and 684 shares were transferred back to Mr. Manges.

Q All right, and the next transaction.

A Now, when I said this 684 went back to Clinton Manges, that was on April 8th. That 694 shares was divided into two certificates to Mr. Manges for 684 and 10 shares.. Then on October 22nd, 1971, there was 10 shares transferred from R. R. Guerra to Clinton Manges. On January 13th, 1972 there were 10 shares transferred from Clinton Manges to R. Richmond. The same day, January 13th, 1972, the following transactions took place:

10 shares out of a 30 share certificate to Pedro Diaz from Clinton Manges.

10 shares to Ramiro Carrillo by Clinton Manges out of the same certificate.

10 shares to Pedro Garza, and 10 shares to Don A. Manges, all from Clinton Manges, and all on the same date.

Q All right, sir, what next?

A Those were the total shares outstanding when our Board voted to increase the capital stock of the bank, and of course new certificates were issued at that time.

Q Okay, what was the date of that increase in the capital structure?

A January, 1972, when it was approved. Of course it took a little time.

Q And it was increased from a thousand shares to seven thousand?

A Yes, sir.

Q In other words, seven times the original shares?

A Yes, sir.

Q For each one share the stockholders got seven shares?

A Yes, sir.

Q Okay. And at that time - - - at the time those were issued, how many shares were issued to Clinton Manges?

A 5617 shares.

Q How many to O/ P. Carrillo?

A 10 shares.

Q How many to Dennis Hendrix?

A 10.

Q And how many to Frank Nye?

A 10 shares.

Q How many to Ramiro Carrillo?

A 10 shares.

Q Now, these people I have just named, Judge Carrillo, Dennis Hendrix, Frank Nye, Ramiro Carrillo, each owned 10 shares and you had over a thousand shares out. Do you know how

they happened to come up with 10 shares after the increase, instead of 70?

A When we notified our stockholders of the increase in the stock, we furnished them forms where they could take their stock and sell it, or whatever they wanted to do with it. They authorized us to issue them the shares, and the difference to Mr. Manges.

Q Was any arrangement made to pay them for the 60 shares they lost in the transaction?

A Between Mr. Manges and them?

Q Yes?

A I don't know about that.

Q Now, have there been any transfers of stock into James S. Bates since this time?

A The transfers for the increase in the capital stock was completed on February 25th, 1972, and since that time, on January 10th, 1973, 10 shares of stock were transferred from Mr. Bob Richmond to Mr. James S. Bates, Sr.

Q Let's see, Mr. Bob Richmond, I believe, also had 10 shares of stock prior to the increase in the capital stock. Do you know whether he kept just ten shares, or got his 70 shares?

A He got 10 shares.

Q Did he have 10 shares left after the conveyance to Jim Bates?

- A Well, before then he had purchased some stock. On - - -
- Q How much did he own prior to the increase in the capital structure? If he acquired 10 shares, and I believe that you did show he acquired 10 more shares in January, 1972 -- acquired 10 shares in March, 1971 and then 10 more shares, which would mean when the capital was increased it would seem he should have received 140 shares?
- A He purchased from the estate of Vicente Guerrero and Eleno Montalvo and Elena Guerra, their shares prior to the issuing of the stock in the increase, and from those he acquired additional stock.
- Q How many shares were issued to Bob Richmond at the time of the increase in the capital structure?
- A From stock he owned?
- Q Yes?
- A 10 shares.
- Q In other words, he just got 10 shares?
- A Yes, sir. But he had purchased them from these individuals - - - he received - - - well, Vicente Guerrero - - -
- Q How many shares?
- A They had a hundred shares.
- Q That was new stock?
- A Yes, sir. So he received 600 shares - - -
- Q Who was that from?
- A Bob Richmond.

Q Oh, he received 600?

A Yes, sir.

Q And it was out of that 600, then, that he transferred the 10 shares to James S. Bates?

A If you want a breakdown on that, on the 25th of February, 1972, Mr. Richmond received 200 shares from the estate of Vicente Guerrero, after the increase. Another 200 shares, the same date, another certificate for another 200 shares. Another certificate for 200 shares, of which 100 came from the balance of that Vicente Guerrero certificate. And 20 shares from Eleno Montalvo. Then there was a certificate issued to Mr. Richmond for 110 shares, which is the balance from the Montalvo certificates, plus 10 shares from J. A. Garza, plus the increase.

Q All right, what happened next, now?

A Then is ten shares that he originally owned. Again 10 shares.

Q The 10 original?

A Yes, sir.

Q Okay. Now what next?

A Well now, R. Charles Richmond - - -

Q Well, R. Charles Richmond and Bob Richmond are the same?

A No, sir.

Q Are they related?

A Charles is the son of Bob.

Q Does he work for the bank?

A No, sir.

Q Okay?

A Then Mrs. Jewell Osborne Storey received 71 shares, the increase. And Ina G. Tijerina received 29 shares from the increase.

Q Okay. Now, were there any other transfers of stock from any parties, to either Judge Carrillo, the Receiver, Jim Bates, or James S. Bates, Sr., Dennis Hendrix, Frank Nye, or Ramiro Carrillo?

A I didn't get that?

Q Were there any other transfers of stock from anybody to O. P. Carrillo, Dennis Hendrix, Frank R. Nye, Ramiro Carrillo or James S. Bates?

A Not to my knowledge, that have been recorded.

Q Now, we are also interested in knowing what the loans are to the - - -

THE COURT: Gentlemen, how much longer will it take with this witness?

MR. SMITH: Well, I think if we can get the loans, we will be through.

MR. CHURCH: I will just have a couple of questions about the stock transfers.

THE COURT: All right, do ahead.

MR. CHURCH: Mr. Anderson, do you recall, some-

00377

time in the year 1970 or 1971, testifying in Federal Court down in Brownsville? Do you remember?

A Yes, sir.

MR. CHURCH: And do you remember Mr. Smith was one of the attorneys of record there? Do you recall that, or not?

A I recall he was.

MR. CHURCH: And do you recall you testified to all of these transfers of these shares of stock, up to whatever date your testimony was, gave all this evidence then? I mean Mr. Smith at that date, in 1970 or '71, knew the shares of stock had all been transferred as your records showed up to that date?

A I took these records to the Court and presented them.

MR. CHURCH: Whatever the date of your testimony was, whatever your record there shows as of that date, Mr. Smith knew at that time?

A It appeared in the record. Whether he knew or not I don't know.

MR. CHURCH: Whether he listened or not you don't know? Okay, that's all.

THE COURT: All right, go ahead.

Q Now, you mentioned that with respect to this reduction from the 70 shares they would be entitled to receive from their original 10 shares, to the 10 shares of the new, that

you got an authorization from the parties authorizing that reduction. Did you have such a written authorization from Judge O. P. Carrillo?

A Well, here is my notation. I said that the holders of Certificates -- and I listed the numbers -- assigned their options to purchase 60 shares each to Clinton Manges. The holder of Certificate 5319 failed to exercise their option -- that was the Hinojosa estate. They failed to exercise their option to purchase 12 shares, and the directors assigned them as follows - - -

Q I am interested mainly in O. P. Carrillo first. Did you have anything in writing from him authorizing the bank to issue him only 10- shares instead of the 70 he was entitled to receive?

A Yes, sir, we have this - - -

Q His certificate is listed among those?

A Yes, sir.

Q Were they having to pay anything to get these extra 60 shares that you are saying they released their option on?

A Yes, sir. Yes, they could buy additional shares at \$100.00 a share.

Q Anyone who wanted those additional 60 shares would have to pay a hundred dollars for each additional share, or an additional \$6,000.00?

A Yes, sir.

Q But they were surrendering their original 10 shares?

A Yes, sir, and having it re-issued if they didn't want to exercise the option.

Q And they were paid nothing for not exercising the option?

A That's right.

Q But if they got the extra 60 shares they would have to pay roughly \$6,000.00 to get it?

A Right.

Q Now moving on to your loans, let's begin with the Receiver, James S. Bates, Jr.; do you have the record of loans to him with you?

A Yes, sir.

Q All right, let me get the date and the amount of the loan, and what it was secured by.

A The notes - - - this note originated in August, 1972, for \$3,300.00

Q Secured by?

A Secured by Title Certificate on an automobile. The balance is now \$2,200.00.

Q All right, sir, next?

A The next one is a real estate loan, which originated in June, 1971, for \$70,000.00. The balance on that is now \$46,500.00.

Q Okay?

A January 8th, 1973, a real estate loan was made in the

00380

amount of \$22,500.00.

Q Okay, that is secured by real estate?

A Yes, sir.

Q Where is it?

A In McAllen.

Q Is it town property, or ranch, country property?

A Country property. Except the real estate, the home - - -

Q It had a home on it?

A Well, the original loan was \$70,000.00.

Q Oh, is this \$22,500.00, is that a renewal of the other?

A No, an additional loan.

Q And I suppose the principal balance on that is still due?

A Yes, sir.

Q \$22,500.00. What is the rate of interest on these loans?

A Eight and a half percent. On this \$22,500.00 loan it's eight and a half, and I think it's eight on the other real estate loan.

Q Now, do you have any loans to Dennis Hendrix?

A He is on the note with Bates on this \$22,500.00.

Q And is there anything else for Dennis?

A No, sir.

Q How about Frank R. Nye?

A Mr. Nye is indebted to us for real estate of \$9,000.00.

Q What is the date of that one?

A That originated in May, 1970.

00381

- Q Okay, any others to Mr. Nye?
- A We have - - - other than his real estate, he is indebted to us for \$5,318.81. The principal portion of that is an automobile, and personal loans.
- Q The personal loans are included in that?
- A Yes, sir.
- Q And is that one date, or on a series of dates?
- A A series of dates.
- Q And is that all?
- A Yes, sir.
- Q All right, now Ramiro Carrillo?
- A All right, Ramiro Carrillo is indebted to us for \$8,849.00, which originated April 13th, 1972 at \$13,000.00.
- Q Secured by?
- A His financial statement.
- Q Okay. Now as - - -

MR. SMITH: I forgot, your Honor, I do want to find out which of these officers of the Court were present and participated in Board meetings, beginning with the time they were first appointed, which it appears was around October, 1970. That may take us a few minutes. It would be in the minutes, and he can go through the minute book and tell us which of these officers were present at the Board meetings and what participation they had in the making of the loans - - -

MR. CHURCH: Your Honor, does he want to know who took part in authorizing loans, or who was present at the Board meetings? Maybe Mr. Anderson can explain this for us. Any of these named persons, were they present when you approved the loans, or take part in the approval of the loans?

A Our Board policy is, where a director is involved in a loan application, they excuse themselves from the meeting where it is discussed. The record will indicate that he was in attendance at the meeting, but it is our policy that they will step outside the room while that particular loan application is being discussed.

Q Do you know from memory, or would you have to look at the books to find out - - - I am interested in O. P. Carrillo, James S. Bates, Frank Nye and Dennis Hendrix, if they were present at all board meetings since their appointments, appointments as directors, and as such participated in the approval of loans to others?

A Yes, sir.

Q They have all had a good attendance record?

A Yes, sir.

Q And they have abided by the bank's policies with respect to approval of loans to other directors. You understand with respect to real estate loans the bank is not supposed to loan more than a certain percentage of the value of the

00383

real estate. What is that percentage?

A I think the regulation has not been changed and you can go to seventy percent. But our regulation is sixty percent, we won't loan more than that.

Q Judge Carrillo testified that he received a loan of \$306,000.00 he was buying for \$375,000.00, and the loan of \$306,000.00 would be more than sixty percent. Do you have any explanation about what reason was given for making an exception to the policy in that case?

A According to our appraisal - - - well, it might be sixty-one, sixty-two percent, but not exhorbitant. You go usually to fifty-nine, sixty-one percent.

Q In other words you would have an appraisal in your file that would be in excess of what he paid?

A Yes, sir.

Q And the loan of \$306,000.00 - - -

A Because we have had examiners in our bank at least twice since that loan, and it didn't receive any criticism from the banking department, indicating that we have the proper support.

Q Now, Bob Richmond - - - is he related to Mr. Manges?

A Mr. Richmond is Mr. Manges' brother in law.

Q He is married to Mr. Manges' sister?

A No, Mr. Manges is married to Mr. Richmond's sister.

Q I believe the Receiver's son, James S. Bates, Jr. is work-

ing for the bank?

A Yes, sir.

Q What is his salary?

A I don't have those figures. I don't know.

Q What was his experience before coming with the bank?

A He didn't have any banking experience before coming with us.

Q About what is his age?

A Jim must be around twenty-three, twenty-four.

Q Did he have his college degree in Business Administration, something like that?

A I don't know if he has his degree or not, but he did attend college, did have some training.

MR. SMITH: All right, I believe, your Honor, that will satisfy us.

- - o - -

EXAMINATION BY MR. CHURCH:

Q Mr. Anderson, the loan to Judge O. P. Carrillo, the loan of \$306,000.00, did any other bank participate with the bank in that loan?

A When this application was presented to us we told them we would have to sell his paper, because it exceeded our loan limits. In obtaining someone to participate, his loan was based on that. The bank in Laredo agreed - - - and also

we told them the interest rate would depend on what we could find the participation for. The bank in Laredo took \$106,000.00 and set it at seven and a half.

Q And what do you charge Judge Carrillo?

A This one is seven and a half percent.

Q In making these loans by the bank, was any preference given to any of the directors as such, any unusual preference?

A No, sir, because we try to eliminate any future criticism from any supervising authority, and try to maybe be a little rougher on them just to eliminate any criticism. We have just received both of our examination reports back, and none of the paper of any of the directors had any criticism.

MR. CHURCH: I have no further questions.

MR. SMITH: That will be all, thank you.

(Witness excused.)

THE COURT: All right, gentlemen, we will stand recessed until one-thirty.

(Whereupon, at 12:20 PM the Court was recessed until 1:30 PM, at which time the Court convened and the hearing was resumed as follows:)

MR. SMITH: Your Honor, I have three other matters to present here. We have filed, since the last hearing, a second supplemental motion for disqualification, which I can explain to you.

THE COURT: All right.

MR. SMITH: We have alleged three additional reasons. First is we are entitled to the disqualification of this Judge under the due process provisions of the 14th amendment to the constitution of the United States, under the theory that a litigant is entitled to a trial before a fair and impartial Judge. The second reason is, we are entitled to a fair and impartial Judge under the due process provisions of the 5th amendment to the constitution of the United States for the same reason, and we adopt as a basis for this motion all evidence and pleadings and we have on file as to our other motion. And the third reason is an allegation that we are denied equal protection of the law under the 14th amendment if we are tried by this particular Judge. Now, we have filed that, and I presume we have leave to file?

THE COURT: Yes, I will give you leave to file it.

MR. SMITH: And now we have two motions suggesting that the Court take judicial notice of matters in the pleadings and also some matters of common knowledge. I

00387

will just read the first motion, and I don't know that there will be anything in here that is controversial. As I read each of them, Mr. Church can state whether or not he has any objection.

(Reading:) "Defendants, R. R. Guerra and M. A. Guerra move the Court to take judicial notice of facts which constitute part of the record in this case, as follows: 1. That the order appointing James S. Bates Receiver in this case was entered on the 11th day of October 1968." Is there any objection to that?

MR. CHURCH: Oh, that's the prior one.

MR. SMITH: Yes, sir. and then, "2. That on March 31, 1969, J. C. Guerra and V. H. Guerra, purporting to act for M. Guerra and Son, executed a contract to sell to Clinton Manges, the ranch lands of M. Guerra & Son, reserving an undivided one-half of all minerals owned by M. Guerra & Son, and all town lots in Roma and Rio Grande City, and lands owned in Goliad County." Those dates are in the record in the receivership proceedings which went to the Supreme Court. We could get them out and prove them. I don't think that necessary, but I think the fact of when they were executed is important here.

THE COURT: In what capacity did they purport to act in executing the deed?

MR. SMITH: Purported to act for M. Guerra &

Son. They are two of the partners. And they purported to convey to Manges all the properties of the partnership except the minerals and those excepted lands.

Then the third paragraph: "That on the same day, March 31, 1969, J. C. Guerra and V. H. Guerra executed and delivered to Clinton Manges a deed purporting to convey to Clinton Manges the ranch lands of M. Guerra & Son, reserving an undivided one-half of the minerals owned by the partnership, the town lots in Roma and Rio Grande City and lands in Goliad County." That's just following out the contract, the same terms.

Fourth, "That the said contract and deed were made at a time when the ranch lands of M. Guerra and Son were in custodia legis, and neither said deed nor contract contained any recitation that it was subject to this receivership proceeding." On that point, I know we have an argument on the law.

MR. CHURCH: The record will disclose that Mr. Smith's client filed a supersedeas bond in this case, to prevent the receiver from taking over any of the assets. He says he wasn't in that law suit, but he was. And he knows there was no receivership at that time. They filed a supersedeas bond and prevented the custodia legis of this property. They went to the Court of Civil Appeals and to the Supreme Court, and the mandate from the Supreme

Court was dated November 6, 1969. In addition, the Receiver did not take charge after that, because Mr. Smith and his client filed a petition in the United States District Court at Brownsville. They filed that petition for a reorganization, and they were there approximately a year's time before the Present Receiver actually took charge of any property. During that period of time the property was not in custodia legis. His clients had property in their control, and did what they wanted with it. And it was never in custodia legis. We will admit that during this time no one had control of the assets of M. Guerra & Son.

MR. SMITH: That, of course, is a legal argument that will have to be thrashed out. The case he was in was in the Federal Court. I don't recall that he ever appeared in the State Court, in this case. When Mr. M. A. Guerra was the client he represented in Federal Court, and H. P. Guerra, Jr., M. A. Guerra was the last of those to agree to a dismissal of his case, and that was in December, 1970.

MR. CHURCH: 1971, isn't it?

MR. SMITH: No, December of 1970, and the Receiver then qualified immediately thereafter.

MR. CHURCH: In 1972.

MR. SMITH: The contract with M. A. Guerra is

00390

attached to our motion for disqualification, and it is dated December 8, 1970. Now, it was January 15, 1971 when we closed the deal by executing certain deeds and so forth that M. A. Guerra gave Mr. Manges.

MR. CHURCH: January, 1971, and the Receiver took charge afterward.

MR. SMITH: The Receiver was placed in possession, he is correct, of the properties of M. Guerra & Son some time after M. A. Guerra made the settlement of December 8th, 1970, and I think it was in January, 1971, before he took charge. It was January or February, the record will show. And we do have an argument on that point, whether not the parties are free to convey partnership property when a receiver has been appointed and an appeal taken. Our position is that the property goes into custodia legis when the receiver is appointed, and doesn't have to wait until he qualifies. Otherwise the Court would be doing a useless thing -- he could delay qualifying and the parties convey everything away.

Now paragraph 5: "The Receiver at no time prior to filing the application to sell said land to plaintiff, Manges, on February 11, 1971, filed any motion or other pleading inviting the Court's attention to this interference by Plaintiff, Clinton Manges, and defendants J. C. Guerra and V. H. Guerra, with the assets of the M.

Guerra & Son thus placed by the Court in custody of the Receiver. The Receiver, in his application for sale of said lands to plaintiff Manges filed on February 11, 1971, recited the fact of the said contract and deed of March 31, 1969 by J. C. and V. H. Guerra to Clinton Manges, and represented to the Court that such deed conveyed said lands 'subject to this receivership proceeding.' That is simply not so, because it is a mitigating circumstance as far as that contract. There is nothing in the contract or in the deed that says it is subject to the receivership.

MR. CHURCH: I think the contract would be the best evidence. We are just going far afield of the disqualification question.

THE COURT: I was just thinking about that myself. This, whatever it was that happened, happened before Judge Carrillo went on the bench - - -

MR. SMITH: That is true, but when the Judge came on the bench, nothing had been done with this property. This deed had not been approved, and it was in contempt of the Court that was presiding in this receivership proceeding.

THE COURT: Well, we discussed that a good deal the last time we were here. I am not so much interested in that as I am in what was done with the present Judge,

whether or not the Judge was disqualified at the time he approved this. That is the big question.

MR. CHURCH: In that regard, the Judge testified, I think, that without question every time one of these orders was presented to him, it was by agreement of all parties, including R. R. Guerra and M. A. Guerra - - - well, no, not him, but R. R. Guerra. And it was presented to the Court, and the Court never entered an order that did not have the agreement of all parties.

MR. SMITH: That is exactly, your Honor, where the Court became a party to this whole thing. He got right in the middle of this, and he says, "No one moves a hand until everybody agrees," and that means Manges too. And they wouldn't agree to anything more until August - - -

MR. CHURCH: He is making that up out of whole cloth, your Honor. Some parts of it may be true, but in general - - -

MR. SMITH: The whole thing is true, and he knows it.

MR. CHURCH: What he is saying, he says this is not by agreement. But he can't in one breath say it was, and in the next say it wasn't. Whether the order was by agreement or whether it wasn't, Judge Carrillo said he wouldn't enter it unless it was by agreement.

As to Mr. Manges controlling the whole thing, I don't know how that can be said, when they agreed.

THE COURT: Gentlemen, I don't care to go into the merits of the Judge's decision. My purpose here is to determine whether or not he was disqualified to enter the order. Now, Judge Carrillo was elected in 1970, was he not?

MR. SMITH: Yes, sir.

THE COURT: At the general election?

MR. SMITH: Yes, sir.

THE COURT: Did he have an opponent at that time? Was he opposed, or not?

MR. CHURCH: I do not know that, Judge.

MR. SMITH: Your Honor, this is Starr and Duval County.

MR. CHURCH: Well, I think the Court - - - what Mr. Smith is saying is that in January, when the first order was entered, a party could come in and agree and then the Court entered the order two years later, and then he comes back and says he wasn't qualified - - - or if he was disqualified by reason of interest, he can make that claim although the party himself approves the Judge's order.

THE COURT: Well, that is something to be determined.

MR. SMITH: That is a matter of law, and we do have a case on it.

MR. CHURCH: It's not so much a question of law as of fact. If he agreed, how could he say two years later, "You were disqualified to enter an order I approved of"?

THE COURT: As I understand the cases I have read, if the Court is disqualified, his order is absolutely void.

MR. SMITH: And you can't agree to it and make it good.'

THE COURT: The agreement wouldn't make any difference. It's just void, and would have to be subject to review again. Of course that would depend - - - if I should hold he is disqualified, that matter would come up and it would be up to the Judge that hears it. I don't know who might hear it, but I probably won't.

MR. CHURCH: But when you asked Mr. Smith, "When do you believe he became disqualified?" I am saying that under the constitution he would have to show he had a financial interest in the proceedings which, under the constitution, would disqualify him. But there is no proof here that he had a financial interest in the proceedings we have before you today. That has been my contention from the very beginning.

THE COURT: I know that. Well, go ahead, what else do you have there?

MR. SMITH: The next is No. 6. "The proceedings herein do not reflect that the Receiver, James S. Bates at any time made objection to the Court concerning this act of plaintiff, Manges, and defendants, J. C. and V. H. Guerra, in thus disposing of the principal asset of the Receivership Estate (the ranch lands) nor did any prior judge or Judge Carrillo take notice of this interference with the assets in custodia legis, or take any action concerning these acts in manifest contempt of Court." That is just to give the background of what is going on, and Judge Carrillo admitted that nobody called it to his attention that these things had been done. That is mitigating circumstances as far as the Judge. But nevertheless it is a fact.

MR. CHURCH: Please the Court, he is testifying rather than presenting a motion. He is trying to get the Court to take judicial notice of facts which don't exist, and he is testifying to them. If he wants to testify the Court should put him under oath. He is stating what he calls facts, which don't exist.

THE COURT: Well, go ahead with your motion.

MR. SMITH: I think maybe I have something here that Mr. Church will agree to. "7. The Receiver qualified

00396

"and took possession of the assets of M. Guerra & Son on February 1, 1971 and pursuant to orders of Judge Carrillo on February 9, 1971 conveyed to plaintiff Manges 40,899 acres of land, more or less, out of the M. Guerra & Son ranch lands, at the price of \$54.30 per acre as set in said contract and deed of March 31, 1969. Said deed to Manges was given by the Receiver free and clear of all liens, although plaintiff Manges did not at that time, nor has he to this date, over two years later, paid the balance he owed therefor, over and above the recited partnership obligations assumed by him."

"8. That on February 9, 1971 Judge Carrillo approved the sale to plaintiff, Clinton Manges, as requested by the Receiver and deed to said 40,899 acres, more or less, of ranch lands of M. Guerra & Son was given by the Receiver to plaintiff, Clinton Manges promptly,"

"9. Plaintiff, Clinton Manges was not required to pay to the Receiver the full purchase price of the land so delivered to him by said deed, and the Receiver's final report filed herein shows that Plaintiff, Manges still owes \$94,447.21 of the purchase price, two years later. The final account filed by the Receiver does not reflect that Manges is to pay any interest on this balance."

MR. CHURCH: Please the Court, at this time we still object to his reciting what he calls facts, which do

not exist. I realize he is asking the Court to take judicial knowledge of facts, but these are facts which do not exist. Mr. Hendrix handled the receivership after January 1, 1971. As I understand it, when they report the sale originally, that recites the sales price. But Mr. Manges had advanced funds on behalf of the partnership, and as I understand it that report shows there wasn't anything due by Mr. Manges at the time he got the deed. But what he is saying is entirely different. He recites a fact which does not exist. That's what I complain about. He is making up the facts, and wants the Court to take judicial notice of them.

MR. SMITH: We don't have any objection to putting in there the pleading that shows that. It's about half an inch thick. All we want to show from it is that he didn't pay for it when he got it.

MR. CHURCH: But it shows in the report that he paid all these other items. He says he didn't pay anything. No, he paid it before, maybe a year before. But he doesn't want to tell the Court exactly what is correct.

MR. SMITH: I have told the Court he assumed partnership obligations and that he still owes a balance, and I take that information from the report of the Receiver.

MR. CHURCH: He tells the Court that Manges paid nothing, and now he says he "assumed." And there wasn't

anything due for two years, like he says.

MR. SMITH: Well, we will offer the pleading in evidence, if the Court wants it.

THE COURT: I expect you had better.

MR. SMITH: All right, we will offer the final report - - -

MR. CHURCH: You are talking about getting the Court to take judicial knowledge things in January, 1971. That's the report you want in evidence. That's the one you - - -

MR. SMITH: What we are offering is the final report of the Receiver, showing Manges still owes some \$94,000.00.

MR. CHURCH: We will stipulate that he owed, or owes, \$94,000.00, but it didn't come from the purchase price - - -

MR. SMITH: Of course the land is the only thing he purchased. We will offer a copy of that report as a Court exhibit.

Now No. 10. "Although Judge Carrillo on March 17, 1971 signed an order authorizing and directing the Receiver to sell real estate and convey partnership lands in partial distribution and dissolution of M. Guerra & Son, specifying that the conveyance of certain lands to defendant R. R. Guerra 'be made free and clear of all liens and encumbrances against same,' R. R. Guerra was delayed until August 20,

"1971 and required to raise the cash difference to pay the Receiver the full purchase price in cash (over and above allowances due R. R. Guerra from the partnership.)" Now this, your Honor, is one of the things we complain of in not having a fair and impartial Judge. Manges did not have to come up with the \$94,000.00 to get his. But they sweated R. R. Guerra for six months, and then made him turn up with the money. We will show the amount he had to raise after that delay to get his land. That's in the record.

MR. CHURCH: The record will speak for itself just fine. Now, he says Mr. Guerra was delayed. He has had possession of his acreage since 1968, before we ever filed this suit. He has had it in his possession from the very beginning. The Receiver never stepped foot on his acreage, and yet he says the Judge was partial by giving a deed to Manges and wouldn't give one to this man at the same time.

MR. SMITH: I say he was not impartial because he made the requirement of the parties, yes, and then after all parties agreed they would let Manges have his, then Manges welched and wouldn't agree they get theirs. They sweated them for six months more.

MR. CHURCH: I think the record will show what happened. First he says Manges did pay something, and

then he says he didn't. Mr. Manges paid his money out before they ever got to this deed. These people didn't pay anything before they got their deeds. I think the Receiver's report will show the reasons for the delay.

THE COURT: Well, I'll look the report over.

MR. SMITH: Your Honor, every one of these partners who withdrew land assumed certain partnership debts, and got credit -- Manges did, R. R. Guerra did, H. P. Guerra, and I think Virgil Guerra also. The Receiver's report will show that.

THE COURT: The Court can take judicial notice of papers in the case, what the reports show - - -

MR. CHURCH: I didn't want this - - - I just didn't want to be in the attitude of agreeing to what Mr. Smith says are facts, and are not facts.

MR. SMITH: Well, I will stay here until I get every paper that will prove these things. If there is any doubt in the Judge's mind, we will stay - - -

THE COURT: Well, there is no use to put them in evidence. If they are filed, they are a record in the case, and the Court will take judicial notice of them.

MR. CHURCH: If they exist in the record, and not as Mr. Smith says. That's all I ask.

THE COURT: Well, it will be up to me to look them over.

MR. SMITH: All right, that concludes our first motion. Now the second motion is that the defendants ask the Court to take judicial notice of the following:

(Reading:) "1. That the stock in the First State Bank & Trust Company of Rio Grande City standing in the name of M. Guerra & Son, or in the name of any of the partners for the benefit of the firm, as of October 11, 1968, constituted a part of the assets of M. Guerra & Son placed in custodia legis when this Court appointed a Receiver on October 11, 1968." I see no reason for us to argue that all over again. We say they were in custodia legis, and he says not.

MR. CHURCH: I don't agree that they were owned by M. Guerra & Son. They may have been in that name, but - - - I would like to ask Mr. Smith to take the stand and testify about Mr. Anderson's testimony in Federal Court - - -

MR. SMITH: I will make a statement on that. First, I believe he is trying to mislead the Judge on the date of that. That did not happen in 1971. We had a hearing in Federal Court, and it was about six months, I guess, before the end of 1970, and I really think it was actually 1969. No one ordered a record in that case. It was oral testimony. Frankly I thought I had notes on that, and I searched the file, and if I ever took notes, I didn't keep

them. But when we settled for M. A. Guerra it had been, I thought, six months, maybe a year since the last hearing in Federal Court. Frankly, I don't question that Mr. Anderson testified to that. But I did not have it in my files, and the only way to get it before this Court was for him to testify.

Now No. 2. "Except for the approval on or about February 1, 1971 of the transfer of 40 shares of stock in said First State Bank and Trust Company to Clinton Manges, the Court has not approved the transfer of any other stock in said bank so held by M. Guerra & Son, or for its benefit, to Clinton Manges or any other person." Now, that is asking the Court to make a negative finding, which is from the records. I searched the record through, and find absolutely no order where the Court approved any transfers of stock from the name of M. Guerra & Son except for those 40 shares.

MR. CHURCH: I think we can stipulate that. The Receiver says he got 40 shares, and sold 40 shares. I don't think he ever had any other shares.

MR. SMITH: Now the rest of these are matters of common knowledge. I will just read it to the Court.

"These defendants further move the Court to take judicial notice of matters and facts which are common knowledge, as follows:

"3. That the government of Starr County is now and has been for more than a decade, controlled by a political machine."

THE COURT: Well, I don't believe I can take judicial knowledge of that.

MR. CHURCH: And we would object to 3, 4 and 5 of that section, because they are not matters of common knowledge. They are not facts

THE COURT: Well, let me read them for myself and see what they are.

MR. CHURCH: Well, it's just a smear against Starr County.

(Such motion was handed to and read the Court.)

MR. SMITH: I think these are matters of common knowledge. Everybody who is in a law suit here knows it, everybody on the streets in this town knows it, and Bill Church knows.

MR. CHURCH: I will plead ignorance. I don't know it.

THE COURT: Well, I will have to overrule you on common knowledge of 3, 4 and 5.

MR. SMITH: Note our exception, your Honor. I think it is known by everybody in the Rio Grande Valley, known to the appellate Courts, I know it, lawyers know it,

00404

Aunt Susie knows it, and I think the Court judicially knows it, and we take our exception.

THE COURT: I don't know it, myself.

MR. SMITH: Now there is one other question that is up in a cloud here, and we may have to call Mr. Manges on it. Maybe he can give us a few answers.

THE COURT: All right, put him on.

- - o - -

CLINTON MANGES,

Plaintiff herein, called as a witness by the defendants, being previously sworn, testified as follows:

EXAMINATION BY MR. SMITH:

Q You were here this morning and heard Mr. Anderson's testimony?

A Yes, sir.

Q Excuse me, you are Clinton Manges, the plaintiff in this case?

A That's right.

Q And you have been previously sworn in this case?

A Yes, sir.

Q When that increase in the capital structure of the bank came about in February, I believe, of 1972 - - - is that

when they increased the capital?

A Whatever the date was. I don't recall.

Q All right, whatever he stated. The number of shares was increased from one thousand to seven thousand shares, is that right?

A I think that's right.

Q Frankly, here is what I want to clear up, and maybe you can answer it. Mr. McKinney and I had a different interpretation of what Mr. Anderson said. We didn't know whether he testified that you had a seven to one stock split without adding any additional capital to the bank, or whether you just sold six thousand new shares at a hundred dollars a share?

A I'll clear it up. The Banking Commission wanted us to increase the capital over there, is what I understand they said. At the stockholders meeting everyone agreed to increase the cash capital. They voted to increase the cash capital, and everyone who held stock could have six additional shares for it if they wanted to exercise their option. Only two or three did exercise their option. If they didn't buy it, the other stockholders had a right.

Q There were quite a few of them who assigned their options to you, according to his testimony, and from what you have said, when those stockholders decided not to exercise their option and released their option to you, you would be ob-

ligated to pay an additional hundred dollars for each share you took under those options?

A That's right. And I didn't have to take it, and if I didn't, anyone else had a right to.

Q But on the ones you did take, did you put up an additional hundred dollars for each option share?

A As far as I know I did. I think it was a hundred dollars for the increased cash capital.

Q Was there any objection to that from people who owned the original shares and who did not exercise the option?

A I don't know whether there was any objection or not.

Q Were you at the Board meeting where this matter was decided?

A No, I wasn't. This was at the request of the Banking Commissioner.

Q I understand. We just didn't understand how this was done. Do you recall how much total cash you put up for the options you bought?

A No, sir, sure don't. I don't know how many shares I bought.

Q Can you give us an approximation?

A No, sir, I wouldn't attempt to.

Q I believe the records indicate you now own something like fifty-six hundred and some shares, something like that?

A Whatever the record shows.

Q For each of those shares you now own, you would have put up a hundred dollars a share, except for the roughly one-

seventh, is that right?

A As far as I know, that was the price.

Q The way I figured it out, if you owned 560 shares, that would have run roughly about \$360,000.00. Does that refresh your memory?

A No.

Q You don't have any idea?

A No, sir.

Q Now, Judge Carrillo testified, and you didn't seem to remember, that he considered the value of the 10 shares he bought at the time he made that lot transaction with you, as being \$743.00 a share. Does that refresh your memory?

A Whatever price I paid. I don't know.

Q Would you say that was close to the book value at that time?

A I don't have any idea what it was.

Q You wouldn't have any reason to believe Judge Carrillo was giving any false information?

A None whatsoever.

Q There was nothing about that figure that shocks you as being out of line?

A I'm not shocked at anything.

Q That figure is in the ball park, you would say?

A Could be, as far as I know. I don't have any idea.

MR. SMITH: Well, I believe that's all, your Honor.

MR. CHURCH: I have no questions.

(Witness excused.)

- - o - -

THE COURT: Is there any further testimony?

MR. SMITH: I believe that's all the testimony, at least at this time, your Honor.

MR. CHURCH: We have nothing, your Honor. We close.

MR. SMITH: Your Honor, there is one other thing we may want to present. We may want to find the - - - first, the information as to the property that Judge Carrillo actually intended to convey to Mr. Manges in exchange for this property. We came prepared on the only thing that was on the records, which is the only things we could find for a clue. And now since it has turned out to be a different property, we do want to look at the property that was actually conveyed. We will get the information on that and submit it to Mr. Church, and maybe we can stipulate what it was.

MR. CHURCH: I will be glad to show him a deed that Judge Carrillo says he intended to convey, covering other property. I will be glad to get him a copy of a corrected deed.

MR. SMITH: Fine. And we will want to inspect the property to see what it's worth.

MR. CHURCH: Fine.

THE COURT: Okay then. Do you want to recess the hearing?

MR. SMITH: Well, maybe we can stipulate on what it's worth. I think we may want to take a picture of it, maybe even get an appraisal made.

MR. CHURCH: I have no objection. Anything he wants to do.

MR. SMITH: Well, we want to make sure he owns it.

MR. CHURCH: He seems to question even the veracity of the Court. So if he wants to test that, let him. He can have at it. We will get a deed, show him where the property is, anything he likes. It was an error in the draftsmanship -- Mr. Hendrix admits that, and the Judge admits it.

THE COURT: Well, when can we wind this thing up, gentlemen?

MR. SMITH: We will try not to waste any time on it. We want somebody who knows values in Benavides to take a look at the property. The whole thing was very loosely handled, any way you look at it.

THE COURT: Well, I don't want to limit anybody

on what you can put on. Just so it's pertinent.

MR. SMITH: Well, I think this is. Maybe we will be entirely satisfied when we look at the property, but we may want to put on some evidence.

THE COURT: Well, would you say we should recess the hearing?

MR. CHURCH: Fine. We will get a copy of the deed to him as fast as Mr. Hendrix finds the correct description.

THE COURT: And you might do this while we are waiting -- you might go through these records, and whatever pages of instruments you think will be pertinent, either make a notation where they are, or make copies of them, whatever it is, so the Court can consider it, and I won't have to thumb through a voluminous file.

MR. CHURCH: Fine. They are not really in sequence, of course.

MR. SMITH: It is a very complicated case, complicated for the Clerk and everybody. Your Honor, why don't we wait, say, two weeks from now and see if we can stipulate on it, and if there is anything we can't settle between us - - -

THE COURT: All right, let's set it for Monday, April 23rd.

MR. SMITH: Now, your Honor, I didn't put copies

of our motions in the record. I would like to offer those motions as our Exhibits 10 and 11.

(The same were marked by the reporter, respectively, as Defendants' Exhibits Nos. 10 and 11, were received in the evidence, and true copies thereof are contained in the appendix of exhibits hereto.)

MR. CHURCH: Now do I understand, Mr. Smith, that except for the deed to the property over in Benavides, we are closed? We are not going to start over?

THE COURT: I wouldn't imagine so.

MR. SMITH: Well, we will have to dig out these matters from the records.

MR. CHURCH: Oh, that's not bothering me. I just don't want to come back for another contested hearing.

THE COURT: I think this is probably all.

MR. SMITH: The one thing, conceivably, we might want testimony on, we might want an appraiser to testify on that property. Of course after we get the description of that other lot, we might want to try to find out how this mistake was made, anyway.

MR. CHURCH: Well, Mr. Hendrix will be glad to testify right now that he made a mistake.

HEARING RECESSED.

00412

APRIL 23RD, 1973.

AND BE IT FURTHER REMEMBERED that on the 23rd day of April, 1973, pursuant to setting at recess, with appearances of counsel as hereinbefore first captioned, the Court reconvened and the hearing of such motion was resumed as follows, to-wit:

MR. SMITH: Your Honor, part of the reason for this hearing was to permit the attorneys for the plaintiff to put on evidence concerning the mistake about the conveyance of land. I suppose that should be put on first. And then we will have some additional evidence that I have compiled, what I think is the information for the Court to take judicial notice of under our motions, and part of that will be introduced under our bill of exceptions. But probably it would be better to let him put his evidence on now.

MR. CHURCH: We have no objection. May it please the Court, counsel for the plaintiff and the defendants have agreed and stipulated, and we would offer in evidence a photocopy of a certified copy of the correction deed from O. P. Carrillo to Clinton Manges. Let me get that marked, please. And for the record, I would like to offer it in evidence.

(The same was, by the reporter, marked for identification as Plaintiff's Exhibit No. 2, was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

MR. CHURCH: And I would like to point out to the Court that the lot and block numbers are the same as in the original deed, but the description as to the subdivision is different.

THE COURT: All right.

MR. SMITH: Now we would like to call Mr. Dennis Hendrix to the stand.

- - o - -

DENNIS HENDRIX,

Called as a witness by the defendants, being previously sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q Mr. Hendrix, I will hand you a deed which is a certified copy of a deed from Celia Carrillo Ramirez, a widow, to O. P. Carrillo, dated April 9th, 1973, recorded at Volume 175, Page 480 of the deed records of Duval County. I will ask you to examine that and ask if that is part of the

chain of title to the property you examined in the transaction between Clinton Manges and Judge Carrillo?

A I don't remember ever having seen this deed. It covers the same description as the correction deed I prepared, and on that basis I would assume it is part of the same chain of title.

MR. SMITH: I will ask the reporter to mark this, please.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 12.)

Q Next, Mr. Hendrix, I will hand you what purports to be a chain of title prepared by the abstractor, and ask you if that appears to be the same chain of title you examined in connection with that same transaction?

A I couldn't be sure. Apparently it covers the same description, the same property as described in Defendants' Exhibit 12 and Plaintiff's Exhibit 2.

MR. SMITH: I will ask the reporter to mark that as our Exhibit No. 13.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 13.)

Q Now I will ask you, Mr. Hendrix, to check that chain of title and to answer the hypothetical question, presuming

that is a correct chain of title, who was the title to that property in on October 10th, 1970?

A On what day?

Q October 10th, 1970 - - - correction, that should be October 12th, 1970.

A Assuming this is correct, the record title would show in Celia Carrillo Ramirez on October 12th, 1970.

Q Let's see, Mr. Hendrix, I hand you again the exhibit which has been marked Defendants' Exhibit No. 12, which is the deed from Celia Ramirez, and ask you if you prepared that deed?

A No, sir.

Q Did you know that on April 9th, when you prepared the deed from O. P. Carrillo to Clinton Manges, that title on that date stood in the name of Celia Ramirez?

A No, sir.

Q Then that deed was prepared by someone else?

A Yes, sir, it wasn't prepared by me.

Q Now, in your prior testimony you indicated you had checked the title to the property that Judge Carrillo was conveying to Mr. Manges, and that the title was good in Judge Carrillo. Was there any explanation made to you at that time as to how title was in Judge Carrillo when the record title stood in the name of Mrs. Ramirez?

MR. CHURCH: Please the Court, we will object

to that. We don't believe the proof will show that the record title was in Mrs. Ramirez. He has never offered that in evidence or given me a chance to object to it. He is now presuming these supposed facts. If this is supposed to be a hypothetical question, let him answer a hypothetical question, but this is based on facts which do not exist, and we object.

THE COURT: I believe I will sustain the objection. I don't believe there is any proof exactly where the title is.

MR. SMITH: We will now, your Honor, offer these three documents in evidence, and offer to prove that is a correct chain of title. We will have to bring in the abstracter. We anticipated that the parties would admit the status of the title. It's their burden to show that they had title to convey the property, but we can bring the abstracter over here to testify.

THE COURT: When can you get him?

MR. SMITH: Well, we will have to call Duval County. We have a run sheet here from a reputable title company - - -

MR. CHURCH: Well, get him over. I can't tell whether this is correct. I don't say the deed is correct, either. It's something I haven't seen, and he is asking me to stipulate to something I haven't even heard of.

MR. SMITH: Instead, I think we will subpoena Judge Carrillo. Is he available?

MR. CHURCH: I have no idea.

THE COURT: I couldn't tell you.

MR. SMITH: This is something that should be in the record, and we had not anticipated this sort of technicality. We understood they would show us where they got some title to convey. We offer those in evidence, and I think we would ask for a bench subpoena for Judge Carrillo, and we will call him and see if we can get him here. I don't think we have to put up with this foolishness.

THE COURT: Can;t you get the abstractor over here rather than the Judge? He is probably busy.

MR. CHURCH: We would object to it, because there is no basis laid for any of this. We have no knowledge of the instrument. Mr. Smith had three or four weeks to have all this, or he could have given this to me and asked if I would admit it. But this is the first time I ever heard of this run sheet. I was never given a copy before we got to Court, and I have never seen it.

MR. SMITH: This whole hearing today was to permit Mr. Church and the Judge to show they owned some property he conveyed. They had last time we were here a deed covering a piece of property the title to which was

in a different party, and now here again is a deed to a piece of property the title to which is in a different party. I don't think it's our duty to prove their title, it's theirs.

MR. CHURCH: Please the Court, we offered in evidence the correction deed, because there was a mistake in the description in the original deed. We have offered that, and now this is all matter that Mr. Smith has brought up. We made a mistake in the original deed, we had a correction deed prepared and executed, and we had told the Court we would get Mr. Smith a copy of it, and we did.

THE COURT: Well, go ahead with what you have.

MR. SMITH: We have a further deed, your Honor, showing a conveyance of title into Mrs. Ramirez, and I will now offer that to counsel for inspection, and then I will offer it in evidence.

MR. CHURCH: Well, here again, your Honor, it is a certified copy of what purports to be a deed recorded in Volume 60, Page 492 of the deed records of Duval County. I don't know whether it's even the same piece of property. All I know about was the deed I offered in evidence. I still would object to it, because I don't know if it's the same piece of property. Until somebody testifies under oath, and gives me a chance to cross examine him, I just don't know.

THE COURT: Let me see the original deed that was introduced here, please.

(The same was handed to the Court.)

THE COURT: Well, the first deed, I believe, said it was all of Lot 9, Block 18 of the original townsite of Benavides. And this exhibit, Plaintiff's Exhibit No. 2, says it's the north half of Lot 9, Block 18, Benavides West Side Addition.

MR. SMITH: That apparently is the correction that was made.

THE COURT: Yes, that is the correction deed. Now this other deed that you have - - -

MR. SMITH: All right, your Honor, let me have the reporter mark it first.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 14.)

THE COURT: Now, Exhibit 14 calls for all of Lot 9, Block 18, Westside addition to the town of Benavides.

MR. SMITH: And that is the same property, your Honor, that is described in the correction deed.

MR. CHURCH: Mr. Smith is not testifying from his own knowledge, and he is not qualified to testify and is not under oath, and we object to any statement from him as to whether it is or is not the same property. Nobody

can swear under oath that is the same property. We just don't know.

MR. SMITH: I wasn't testifying to it. That's just what I read.

THE COURT: Are you introducing this?

MR. SMITH: We intend to, yes, sir.

MR. CHURCH: We object to it on the basis that there is no evidence whether or not this is the same property. There is no testimony, no sworn evidence, whether or not this is the same property.

THE COURT: Well, I will over rule that, and permit it to be introduced for whatever it's worth.

MR. CHURCH: Note our exception, please.

(Such Defendants' Exhibit No. 14 was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

Q Now Mr. Hendrix, I will hand you now Defendants' Exhibit No. 14, which is a deed from D. C. Chapa to Celia Ramirez, and ask you to check that as against the run sheet, and see if it is one of the deeds that is shown in the chain of title on the run sheet?

A Yes, sir, it appears to be the third entry on the run sheet.

Q And what is the date of that deed and the entry on the run sheet?

A The date of the deed is April 3rd, 1947.

Q In your examination of the title to that tract of land, did you find a deed out of Celia Ramirez prior to the deed given on April 9th, 1973, which has been introduced here in evidence -- that is Celia Carrillo Ramirez?

A Well, I would assume so, but that's two and a half years ago, and I don't remember.

Q In checking the run sheet there, do you see any deed from Celia Carrillo Ramirez to any other party?

A There is one, the last entry on the run sheet, is the deed from Celia Carrillo Ramirez to O. P. Carrillo.

Q And what is the date of that?

A April 9th, 1973.

MR. SMITH: Your Honor, we submit that title having been shown in Celia Ramirez under this deed of April 3rd, 1947, from D. C. Chapa and wife, that is introduced in evidence as Defendants' Exhibit No. 14, that the burden of proving this matter now shifts to the plaintiff to show some conveyance of that property into O. P. Carrillo, because the fact that the deed into Mrs. Ramirez stands as a proven fact - - - well, it does stand as a proven fact until someone shows something to the contrary. The only thing to the contrary is a deed which has been introduced here, indicating that she did, on April 9th, 1973, convey to Judge Carrillo. The burden shifts to Mr. Manges to

show us when she got title.

MR. CHURCH: I didn't understand that this is in the nature of a title suit. We offered the deed in evidence, the correction deed to Mr. Manges. But I never did know that title was questioned here, and I don't believe it is involved in what is before the Court. The question was whether or not Judge Carrillo, in 1970, gave a deed to Mr. Manges conveying property which had a house on it. Apparently there was an error in the description in the original deed, and we have furnished now the correction deed. But I know nothing of the title. If I had known that this was going to be a title suit, I would certainly have gone about it in a different way.

MR. SMITH: I don't believe he has any real confusion about this being a title suit. I thought he knew this was a law suit to show that the whole thing was a sham. He has to show some title in O. P. Carrillo on October 12th, 1970, and he hasn't. That's not a title suit.

MR. CHURCH: We still get away from the whole concept of Mr. Smith's motion, which is a motion to disqualify the Judge. It's not to convict him of bribery. This is not the forum for him to make his accusations against the Judge that Mr. Smith makes in his brief and his statements. If he has all this information and brings

this sort of accusations, he goes to a grand jury with it. His whole brief is based on gifts which he accuses the Judge of accepting, and he cites the bribery statute. Certainly this Court in this proceeding can't pass on whether a person is guilty or innocent of a crime. All this is conjecture, no proof. He is just saying all this is a sham, and therefore the Judge should be disqualified. He is not saying the Judge is disqualified under the constitution, but just that he took valuable gifts. If this is all true, it's a matter of crime, and he should take his accusations to a grand jury. The man has a right to be heard before a grand jury, and tried before a Court on a proper proceeding, not for this Court by summary proceeding to say to him, "We know you are disqualified, because you took a gift."

MR. SMITH: Your Honor, we have the abstractor on the phone at the moment, and it appears that he doesn't drive. The title company is owned by Lloyd & Lloyd, of Alice. So all he could do is give us certified copies of the documents reflected by his run sheet. It looks as though the best way to handle it would be to have Judge Carrillo come in and testify what the trouble is here.

THE COURT: Gentlemen, I would like to wind this up one way or the other. I hate to have it just to rock along, one thing after another.

MR. SMITH: I do too, your Honor.

THE COURT: So as I say, I would like to wind it up one way or the other. I am going to permit these to be introduced for what they are worth, and let it go at that.

MR. SMITH: Well, I think that is satisfactory. We would like to reserve the right to have a certified copy of an abstract, just to be submitted to the Court for his - - -

THE COURT: There is a question whether she had title or not, whether this party who conveyed to her had title. You would have to go back to the sovereignty of the soil, I guess, to see who has title.

MR. SMITH: We don't as far as Mrs. Ramirez. As far as this record is concerned, title is in her until somebody puts on something to the contrary.

THE COURT: Well, my first thought on it is this -- here is a deed from Chapa to Mrs. Ramirez, whether he had title or just some claim of title, and then Mrs. Ramirez conveyed to Judge Carrillo. But whether that was to clear the title up, or whether she had title or not - - - there may be a question of estoppel by deed in there, I don't know.

MR. SMITH: There is a short answer to that. If she had not had title, they would not have made the correction deed.

THE COURT: Well, she may not have had title.

May have been just color of title.

MR. SMITH: And if there was any prior title into Judge Carrillo, his lawyers would know. If there was a defect of title that needed correcting, Mr. Hendrix would have been correcting that back in 1970.

THE COURT: Well, that's a matter to be weighed by the Court.

MR. SMITH: Well, I guess we will tell the abstractor to forget it. He could talk to Mr. Church over the telephone, or to your Honor, and certify this is correct - - -

MR. CHURCH: Well, that is highly irregular, and doesn't give me any opportunity to cross examine him.

THE COURT: Gentlemen, let's proceed.

MR. SMITH: We will ask the Court - - - we will tell the abstractor not to come, but we will ask the Court to make a finding of fact that title to this property was not in Judge Carrillo on October 12th, 1970 when he gave the deed he seeks now to correct. I think the record shows that. We would like the Court to rule in that way so as not to delay this. If there is anything they have to the contrary, we would like to see it.

MR. CHURCH: I still say I didn't know I was involved in a title suit. This is on the motion you brought to disqualify Judge Carrillo on the basis of in-

terest in this litigation. Mr. Smith has come far afield here, your Honor. I don't know what she owned between 1947 and October of 1970, or today. The deed that was presented by Judge Carrillo at the last hearing was incorrect. We do have the corrected deed showing that the property had the same lot and block number, but in another subdivision. I don't think we have any burden of showing title.

THE COURT: Well, gentlemen, I am not going to make a finding that he didn't have title, but I make the finding that the title was questionable. I can't find that he did or did not, from the evidence here. But there is a question. It certainly is not merchantable title.

Q Now, let's see, Mr. Hendrix, do you have a copy of the title opinion you wrote for Mr. Manges at the time you checked this title for him in October, 1970?

A No, sir.

Q How did you convey to Mr. Manges the information that the title was good? Did you do it by having a guaranteed title policy, or do it orally, or how did you convince him he would have good title to this property under a deed from O. P. Carrillo?

A Well, as well as I remember, he just asked me to check it, and said he didn't need a policy on it, mainly because we were dealing with Judge Carrillo, and beyond what we would

normally check on a title, we figured he was an honorable man.

Q There was a very close relationship between Judge Carrillo and Mr. Manges?

A No, sir. I don't know what the relationship between them was, if that's what you are getting at.

Q Well, but you were taking his word for it instead of a title policy?

A I don't know, from that standpoint, what Mr. Manges was thinking. He asked me to check it, and he said, "I don't need a title policy." And I told him later, verbally, that I checked it and it was all right.

Q How much did you charge him for examining the title to that property?

A I have no idea. I don't know.

Q Did you send him a bill, and itemize it?

A I don't remember, Mr. Smith. That has been two and a half years ago.

Q Did you do it for free?

A I doubt it.

MR. SMITH: All right, sir, that's all for this witness.

MR. CHURCH: I have no questions.

(Witness excused.)

MR. SMITH: Your Honor, considering the fact that the evidence before your Honor does not show beyond any doubt that Judge Carrillo had absolutely no title to this property on October 12th, 1970, we see no alternative but to call Judge Carrillo in and ask him to explain the situation. We didn't make these facts, and I don't know why they are trying to cover them up.

MR. CHURCH: Please the Court, I resent the insinuation about our covering up. I know nothing about it, and didn't know that this was going to be a title suit. I admit I have no knowledge of the title. If I had known it was to be a title suit, I would have gotten into it as a title suit.

MR. SMITH: I think Mr. Church knows we are not here to find out what Judge Carrillo could buy on October 12th, 1970, but what he could convey to Mr. Manges. We can call Judge Carrillo, if we can have a recess, and get him over here. I did not anticipate that there would be any question on this. That is really their burden.

THE COURT: Where is the Judge?

MR. CHURCH: I don't know, your Honor. But the Judge has showed that there was an error in the deed of October, 1970. Judge Carrillo said there was some error in the - - -

THE COURT: Gentlemen, we will stand recessed

for thirty minutes, and you can contact the Judge and see if he wants to come over, or if he is tied up.

MR. SMITH: Would your Honor prefer to call him, or rather we would?

THE COURT: I had rather you do it. We will stand recessed for thirty minutes.

(Whereupon the Court was in recess for approximately thirty minutes. And during such recess, counsel having contacted Judge O. P. Carrillo by telephone and that the said O. P. Carrillo dictated his statement for use in evidence in this case, and that this reporter, at the request of all counsel, did listen to such statement by telephone, and did faithfully and accurately report such statement in shorthand, and did thereafter correctly read the same for the record herein, as hereinafter appears. Whereupon the Court convened, and this hearing was resumed as follows, to-wit:)

MR. SMITH; Your Honor, I believe we have a

satisfactory stipulation here. The parties will stipulate that the deed we have presented here are correct copies of instruments that appear in the chain of title, and we will stipulate that Judge Carrillo, if he were present, would testify to exactly what he told Mr. Van Dresar over the telephone. We will let him read that to the Court.

MR. CHURCH: Yes, your Honor, we have agreed that Judge Carrillo's telephone conversation correctly states the facts as they exist, and we have objection to the offer of the exhibits, as to the deed, which are correct copies and a correct reflection of the records, with his explanation as given to Mr. Van Dresar.

THE COURT: Okay, that is agreeable to the Court. I will let Mr. Van Dresar read what Judge Carrillo said.

O. P. CARRILLO,

Testifying by means of a telephone conversation, as aforesaid, testified as follows, to-wit:

BY THE REPORTER (READING):

JUDGE O. P. CARRILLO: Now, this property was conveyed in 1947, with the house, the corner house, going to my sister, and this other house next to it going to me. And that was the intention my father had. I don't remember

the exact mechanics, but anyway, that was it. And since 1947 to date, I have always known and completely understood that this was my own property, and my sister also knew and understood that this was my property, and when it turned out, in checking the records to be otherwise, and it was discovered that an error had been made and the conveyance had not been completed to me, then of course my sister, in order to correct this, conveyed the property to me and then I went on and corrected the deed to Mr. Manges. But this property has been mine since 1947, and it was just a mistake in the recording of it, or the deed that was - - - where it was conveyed to me, was lost or something. But it was always known and understood, and I knew it was my property, and my sister knew it was my property. And the person who conveyed it, D. C. Chapa, or David Carrillo Chapa, was our father, my father and Mrs. Ramirez' father. So that is the way the whole transaction was. Now if you will read that to them, and if you need something else, I will be glad to answer it. I just wanted to make it perfectly clear that this was - - - that this property belonged to me, and had since 1947, and everyone here knew it belonged to me, and I had possession of it since 1947. I have made all repairs and everything that had to be done to the house, and I listed it as my own, and I rented it -- it was a rental house and I received the

proceeds from the rent and everything, up to the time I conveyed it to Mr. Manges.

MR. CHURCH: Your Honor, we would stipulate that is the conversation, and would be the testimony of Judge Carrillo if he were present.

THE COURT: Okay.

MR. CHURCH: Do you so stipulate?

MR. SMITH: Oh, yes. I thought I had announced that. If I didn't, I do so stipulate. And in light of that stipulation we would like to again tender these exhibits which have been marked for identification as Defendants' Exhibits 12, 13 and 14.

THE COURT: Okay.

MR. CHURCH: We have no objection, your Honor.

THE COURT: They will be admitted.

(The same were received in the evidence, and true copies thereof are contained in the appendix of exhibits hereto.)

MR. SMITH: Your Honor, we would like to call as our next witness, Tommy Guerra, and we have one more witness who is over at the lumber yard. He will be here shortly, by the time Tommy gets through.

THE COURT: Okay, call your witness.

W. T. GUERRA,

Recalled as a witness by the defendants, being previously sworn, testified as follows, to-wit:

EXAMINATION BY MR. SMITH:

Q State your name, please?

A W. T. Guerra.

Q And you are better known as Tommy Guerra?

A Yes, sir.

Q The son of Ruben, or R. R. Guerra, a defendant in this case?

A Yes, sir.

Q I believe you testified at the last hearing that you had been over to Benavides?

A Yes, sir.

Q And examined Lot 9, Block 18 of the original townsite of Benavides. Have you since that time examined the property described in the correction deed that was given by Judge O. P. Carrillo to Mr. Manges on April 9th, 1973? I will hand you the deed and let you look at it. The deed I am handing you in Plaintiff's Exhibit No. 2, which purports to be a correction deed from Judge O. P. Carrillo to Mr. Manges.

A Yes, sir. Yes, I have been there and I have examined the property.

Q All right, was anyone else with you when you made this inspection?

A Yes, sir, Mr. Octavio Gonzalez, from Roma.

Q What does Mr. Gonzalez do?

A He is manager of the lumber yard.

Q That is the lumber yard owned by your father in Roma?

A Yes, sir.

Q What are his duties as manager of the lumber yard?

A He is a salesman, and he figures contracts, builds homes. And also buyer. He is just general manager.

Q Does he estimate any costs of building?

A Yes, sir, does all the estimating on new jobs and on repairs.

Q Did you and he take any pictures of the property over at Benavides?

A Yes, sir.

Q And that is the property described in the deed there in your hand, Plaintiff's Exhibit No. 2?

A Yes, sir.

MR. SMITH: Your Honor, we had prepared an affidavit for this other witness, because we didn't know if we would have a hearing, or just present the information.

Q I will now hand you what appears to be some photographs, and ask you if you were present and assisted in the taking of those photographs?

00435

A I took the photographs.

Q What are they pictures of?

A Pictures of a house, the house described by Judge O. P. Carrillo.

MR. SMITH: I will ask the reporter here to
- - - although there are three pictures on that one page,
I will ask that they be identified by just one number.

(The same was, by the reporter,
marked for identification as De-
fendants' Exhibit No. 15.)

MR. SMITH: We would offer in evidence Defend-
ants' Exhibit No. 15.

MR. CHURCH: I can't hear you?

MR. SMITH: I said we offer Defendant's Exhibit
15 in evidence.

MR. CHURCH: We would object to it. There is
no proof offered here as to when they were taken. They
just say they are photographs, and don't identify them as
to time, where or what.

MR. SMITH: We will prove them up.

Q What was the date you took these pictures, Mr. Guerra?

A It was last Wednesday, I believe the 18th.

Q Of April?

A Of April. 18th of April, 1973 -- I believe it was the
18th.

Q And who was with you when you took them?

A Mr. Gonzalez.

Q What kind of camera did you take them with?

A A Polaroid.

Q So you got the pictures immediately?

A Yes, sir.

Q And the notations on there as to the views, are those correct notations?

A Yes, sir, they are.

Q And Mr. Gonzalez was present and saw you take them?

A Yes, sir.

MR. SMITH: Your Honor, we offer them.

MR. CHURCH: I have no objection.

(Such exhibit was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

Q Now, in order that the Judge can examine those pictures, I hand you a xerox copy of that same exhibit - - - well, the Judge is through with that, so you can testify from the original. I am now handing you Exhibit 15, and I will ask you to take the first picture there, shown at the top left-hand corner of that sheet, under which is the notation "Exhibit No. 1" and will you tell us what that shows with respect to the house?

A It shows the front and left side of the house.

Q And what conditions do you note with respect to the general maintenance and upkeep of the house?

MR. CHURCH: Please the Court, the pictures themselves are in evidence, and are evidence of what they depict. Now he is asking for an opinion from a man who has not qualified in the field of real estate. He is presuming to testify now as to what the pictures show, when the Court can look at them for himself and tell just as well as this witness.

THE COURT: Sustain.

Q Tell us what you saw at the house itself, from that view?

MR. CHURCH: Please the Court, the pictures show what he saw.

THE COURT: I believe he can testify what he saw there.

MR. CHURCH: Other than what the pictures show?

THE COURT: Other than what the pictures show, yes.

A On close examination you can see that the picture window in the front has been broken, and you can see some of the siding is cracked and broken. The outside walls of the house in a lot of places are cracked and broken. Some of these screens were off the hinges. The total picture is, the house has been in deterioration for quite a while.

THE COURT: Has been what?

A It has deteriorated.

Q How about the doors? Were they open, or closed?

A The front door was open when we arrived.

Q What about the yard? Was there a lawn, and grass?

A No, sir, the yard is just weeds. There is no garden, no flower plots.

Q Could you tell whether anyone was living in the house?

A No, sir, it was vacant.

Q Was there any evidence of it being recently occupied?

A No, sir. The floors were dusty -- in fact, it was very obvious that no one had lived in it.

THE COURT: I'm sorry, I can't hear you?

A It is very obvious there has not been anybody living in the house, not recently.

Q Now dropping down to the picture shown as Exhibit 4 on that sheet, testify what you observed about the house when you looked at it from that view?

A Exhibit 4?

Q Yes, sir, it's indicated as Exhibit 4 on that sheet, that Exhibit 15 that you have there.

A Well, we saw that the door was open. Which incidentally, we had been by the house before and had noted it being open two weeks prior, thereabouts.

Q Now pass to the exhibit at the bottom left there, the pic-

ture which is at the bottom left corner of that sheet, which would be from a different point of view. What do you - - - what did you see when you looked at the house from there?

A Well, we could see practically the same thing about the exterior walls being in poor condition, and the fence in front of it being knocked down.

Q Now, did you go inside the house?

A Yes, we did.

Q And what did you find inside?

A Vacant rooms.

Q Did you make a sort of plat of the floor plan of the house?

A Yes, sir, we did.

Q For the two stories of it?

A Two stories.

Q Did you make separate plats of the two floors?

A Yes, sir, we did.

MR. SMITH: I will ask the reporter to mark these two plats as our exhibits, please.

(The same were, by the reporter, marked for identification as Defendants' Exhibits Nos. 16 and 17.)

Q I will hand you first the copy of what appears to be a plat designated as Defendants' Exhibit No. 16, and ask you what that is?

A That is a sketch showing the ground level - - -

MR. CHURCH: Please the Court, may I have him on voir dire?

THE COURT: Go ahead.

MR. CHURCH: Did you make the plat?

A Did I draw it?

MR. CHURCH: Yes, sir?

A No, sir.

MR. CHURCH: I don't think he is qualified to testify until we find out who prepared it.

Q Who prepared it, and how was it prepared?

A My brother prepared it.

Q Were you present?

A Yes, sir.

Q Was he present when you drew the sketch of the floor plan?

A No, sir.

Q What did he draw the plat from?

A From the sketch we brought from Benavides, and our instructions how to draw it.

Q In other words, you told him how to draw it?

A Yes, sir.

Q And gave him the rough sketch?

A Yes, sir.

Q And he made one that is a little bit more presentable?

A Yes, sir.

MR. SMITH: We offer it in evidence as Defendants' Exhibit No. 16.

MR. CHURCH: I have no objection, your Honor.

THE COURT: Okay, it will be admitted.

(The same was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

Q Now, is what you have testified about the plat of the ground floor also true of the plat designated as Exhibit 17, which you have in your hand, purporting to represent the opper story?

A Yes, sir.

Q Was it prepared in the same way and under the same circumstances?

A Yes, sir.

Q What did you find on the ground floor when you went in?

A We walked in through a hall that goes straight to the stairway, and in front there is a living room, on the right, and a bedroom on the left. Then there is a kitchen behind the living room, and another bedroom on the left behind the front bedroom, and a bathroom in back of the hall in the staircase.

Q How about the cabinet work and the fixtures, what condition were they in?

A The cabinet work consisted of either an eight or ten foot cabinet, with one probably fourteen by twenty-two sink, and the whole kitchen cabinet was - - - it wasn't nailed to the wall, and it had been partially knocked down. The fixtures, well, they are old, the bathroom fixtures. We could tell they had not been functioning for some time. They are full of dust.

MR. SMITH: Now, your Honor, we would offer what purports to be the plat of the upper level as Defendants' Exhibit No. 17.

MR. CHURCH: I thought he offered them both at the one time.

MR. SMITH: No, I just offered the one.

MR. CHURCH: Well, we have no objection, your Honor.

THE COURT: All right.

(The same was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

Q Now, what did you find on the upper level?

A On the upper floor, we found three bedrooms and a bathroom, and a hall in the middle.

Q How was it finished inside? Was it paneling, paper?

A No, sir, the entire house was sheetrock.

00443

- Q Was the sheetrock finished, painted?
- A To us it looked like it was just stained from age. It was broken in several places.
- Q Was the same thing true upstairs?
- A Yes, sir.
- Q And downstairs?
- A Yes, sir.
- Q Now, Mr. Guerra, in your position with the lumber yard, I believe you are also in the insurance business?
- A Yes, sir.
- Q Tell us how long you have been in the insurance business?
- A I got my license to sell casualty insurance in 1964.
- Q Including fire insurance?
- A Fire, extended coverage, home owners, automobile. And I have been representing the company since they endorsed me and I got my license.
- Q And when was that date?
- A 1964.
- Q And I believe you also work for the lumber yard?
- A Yes, sir, that's right.
- Q What is the name of that lumber yard?
- A G & G Lumber Company.
- Q In Roma?
- A Yes, sir.
- Q And that is owned by your father?

00444

A Yes, sir.

Q What are your duties at the lumber yard?

A Well, just a little bit of everything.

Q Do you have occasion to figure costs and appraise property from time to time?

A Yes, sir.

Q Do you think you would be able to appraise property in Duval County?

MR. CHURCH: Please the Court, this man has not been qualified as an appraiser. He can't think what he is able to do, it has to be based on experience and knowledge. There has been no attempt at qualification of him, and we object to any question about whether he thinks he could or could not do.

THE COURT: Well, I assume he is trying to qualify him now.

MR. CHURCH: But the question is, "Do you think you could appraise it." That is my objection.

THE COURT: I will sustain the objection.

Q In your business, do you actually pass on the value of property your lumber yard is dealing with, and figure up the insurance - - -

Q Yes, sir, I do.

A Is it part of your job as an insurance agent to be certain you do not insure property for more than it is worth?

00445

A Yes, sir.

Q And does your company accept your opinion on it?

A They have since the beginning.

Q For how long have they been accepting your opinion on that matter?

A For nine years.

Q Are you familiar with values generally in Starr and Duval and Jim Hogg Counties?

A Yes, I am."

Q Do you have an idea of the value, as far as the house, as to the - - - well, make that exclusive of the house now, an idea of the value of the lot on which the house rests?

MR. CHURCH: Please the Court, we object to the witness testifying as to value, because I don't think he is qualified yet. I would like to have him on voir dire, to see if he is.

THE COURT: Well, go ahead, take him on voir dire.

VOIR DIRE EXAMINATION BY MR. CHURCH:

Q Mr. Guerra, what appraisal work have you done in Duval County?

A In Duval County I haven't done any.

Q Have you ever made a written appraisal on a piece of pro-

00446

- perty for anybody?
- A Not in Duval County, no, sir.
- Q You have never made a written appraisal in the past. In Starr County have you made a written appraisal?
- A Yes, sir.
- Q Have you ever had any education or training in appraisal work?
- A Practical training.
- Q What kind of practical training?
- A In our business. I have been associated with our business for maybe twelve years.
- Q Do you buy and sell real property?
- A I have, yes, sir.
- Q For your own personal use, or somebody else?
- A For my own use and for somebody else.
- Q How many pieces of property in Starr County have you sold for somebody else?
- A I mean I have been involved. I have sold approximately four or five lots on my own.
- Q Have you ever made any appraisals for any bank or financial institution?
- A Yes, sir.
- Q What bank?
- A First State Bank & Trust at Rio Grande City.
- Q Was that when you were working for them?

A No, sir.

Q That was before your family was in there?

A Afterward.

Q Do you belong to any association of appraisers?

A No, sir.

Q Do you have any kind of certificate as an appraiser?

A No, sir.

Q And you have never appraised any piece of property in Duval County in your life?

A No, sir.

Q And never sold one?

A No, sir.

MR. CHURCH: I don't believe he is qualified to testify as to the value of real property or improvements in Duval County. We object to the testimony.

MR. SMITH: I think the similarity between Starr and Duval County is such that it's really the same area.

THE COURT: I believe I will sustain the objection.

EXAMINATION BY MR. SMITH (Continued):

Q Did you go to the tax office to see what this was on the tax rolls at?

MR. CHURCH: I don't think that has any relation

ship to the fair market value.

THE COURT: Let's see what he is driving at first.

A Yes, sir, I did.

Q What was the value on the tax rolls?

A It was \$170.00.

Q That was the whole property, house and all?

A This \$170.00 would be on any lots in Benavides. That's what it stated.

Q Did you check the tax rolls on that particular lot?

A No, sir, I didn't.

MR. SMITH: Okay, pass the witness.

- - o - -

EXAMINATION BY MR. CHURCH:

Q Mr. Guerra, all of this testimony is based on your inspection of the property in April, 1973?

A Yes, sir.

Q You are not telling the Court you knew the condition of that property in October, 1970?

A That's right.

Q You don't know anything about what condition it was in then, or anything about it?

A No, sir, I wasn't familiar with it before this.

Q And your pictures are in April, 1973?

A Yes, sir.

00449

Q And they bear no relationship to its condition in October of 1970?

A That's right.

Q This is a five bedroom, two bath house, is that right?

A Yes, sir.

MR. CHURCH: That's all.

THE COURT: Any further questions?

MR. SMITH: No, sir.

(Witness excused.)

- - o - -

MR. SMITH: Judge, our other witness will be here shortly. Your Honor, you will recall that we asked you to take judicial notice of certain matters in the record. I have prepared here a document which I have called "Data to Support Motions of Defendants, R. R. and M. A. Guerra That Judicial Notice Be Taken." I have attached to it the copies of the pleadings and other documents in evidence that we ask you to take judicial notice of in our original motion. And I have listed in this the documents we ask you to take judicial notice of, and given it an exhibit number. For instance, here is the Exhibit 1 to the motion, and that would be a xerox copy of the application for the appointment of a Receiver in October,

00450

1968. I don't think there is any controversy about the documents, but we do submit this for your Honor's consideration on the request to take judicial notice. If there is any question on any of those, then of course we would like to put the documents in evidence. Then on page 7, under the heading "Common Knowledge," we submit under our bill of exceptions the information we would like to submit under our bill, since Mr. Church objected and the Court sustained him. That would be our bill to take up with the record on appeal. I think all of those matters are in the pleadings, except what I submit under the matter of common knowledge.

THE COURT: Have you seen this, counsel?

MR. CHURCH: Since I haven't been furnished a copy of anything, I don't know what he is talking about. I think as a matter of common courtesy, he should at least give me - - -

MR. SMITH: Yes, I have a copy here for you, Mr. Church.

MR. CHURCH: I don't know what it contains.

MR. SMITH: Page 1 through 7 is what we are concerned with. As to the common knowledge part, objection to that has been sustained by the Court. That is just matter submitted under our bill of exceptions, beginning on page 7. Now, your Honor, we submit also a brief on the

question of custodia legis, as the Court suggested we might -- when property goes into custodia legis. And also my brief on the question of common knowledge. I have handed Mr. Church a copy of those briefs.

MR. CHURCH: Needless to say, this is the first time I ever saw them. I can't say anything about them. I have been kept in the dark until this moment -- I don't know for what purpose.

MR. SMITH: I understood the Court to suggest at the last meeting that he would like to have a brief on those points. As a matter of fact, we just finished those Thursday, and I couldn't have gotten them to Mr. Church in San Antonio.

THE COURT: Well, looks like in order to go through this, I am going to have to sit down and do a lot of reading.

MR. CHURCH: Yes, sir, to find out what's going on. I don't know what he is talking about.

THE COURT: I think the Court will have to take this brief, and then give you an opportunity to file a counter brief if you desire.

MR. CHURCH: Yes, sir, I have to have some time to see what he is saying.

THE COURT: Yes, sir. I was in hopes we would be able to wind this up today, but it doesn't look like

00452

we can.

MR. SMITH: I think probably under the circumstances I should have that large exhibit there marked as an exhibit with the record, to show that from page 7 on it goes with the bill of exceptions. We will ask the reporter to mark this document, please.

(The same was, by the reporter, marked for identification as Defendants' Exhibit No. 13, was received in the evidence on defendants' bill of exceptions, and a true copy thereof is contained in the appendix of exhibits hereto.)

THE COURT: I am just wondering about - - - well, about this finishing of his testimony, and of course you have your brief yet. Do you want to come back here and have another hearing, present arguments on this, or do you - - -

MR. CHURCH: Please the Court, I will be happy to come back, but I see no reason for it if we have our briefs submitted.

THE COURT: That was what I was getting at, if I could render my decision from Hidalgo County, or whether I would have to come here.

MR. CHURCH: I don't think it would make any

00453

difference where the Court was. You are in this administrative district, and you can render your decisions from any place in the district. I just got through briefing that.

MR. SMITH: I would agree on that. I think it is perfectly all right to submit it on briefs. But we would like to have some type of rebuttal after he files his answer brief.

THE COURT: When do you think you could get your brief in, Mr. Church?

MR. CHURCH: I am in a peculiar position here Judge. For the first time I have one case pending, and two more in the Courts of Appeals to brief. One is going to San Antonio, and one to Corpus Christi. I don't know how long it will take. Two weeks at least, I would say. I will agree with the Court I will submit it as quickly as possible, because I don't agree with Mr. Smith's theory here. Mine will be brief and to the point of what our position is, and we won't go into any great detail as he does here, which is not evidence, it's the brief he is talking about. But we will submit a brief within two weeks, at least. Make it by May 7th, or prior to that time if I can.

MR. SMITH: And could we answer on May 14th?

THE COURT: Yes. Well, that will be agreeable

with the Court, now, is your witness here?

MR. SMITH: Yes, sir. We will go ahead and put him on.

- - 0 - -

OCTAVIO GONZALEZ,

Called as a witness by the defendants, being first duly sworn, testified as follows through the Clerk of this Court acting as interpreter, to-wit:

EXAMINATION BY MR. SMITH:

Q Would you state your name, please?

A Octavio Gonzalez.

Q And where - - -

A I want you to tell the Judge that I speak a little bit of English.

THE COURT: Well, if you want an interpreter all right, but if you don't - - -

A Well, I would like an interpreter.

THE COURT: Okay.

Q Where do you live, Mr. Gonzalez?

A In Roma, Texas.

Q What business or employment are you involved in?

A I am with the G & G Lumber Company.

- Q And that is located in Roma?
- A Yes, sir.
- Q What is your age, please?
- A I am sixty-three years old.
- Q When did you start working for the G & G Lumber Company?
- A In July, 1946.
- Q And have you worked for them continuously ever since?
- A Yes, sir.
- Q In connection with your duties, do you figure the cost of lumber going into construction?
- A All the work, and the contracts. Estimations, repairs and all.
- Q Did you, on or about April 18th, 1973, make an inspection of any property in Benavides, Texas?
- A Yes, my friend, Tommy Guerra asked me to go and make an estimate of a property in Benavides, Texas. He didn't tell me why, but I went over there.
- Q I will hand you, Mr. Gonzalez, what has been marked as Defendants' Exhibit No. 15. It has three pictures on it, and I would ask you to state if you know what those pictures are?
- A The house we went to over there. Mr. Guerra asked the neighbor about the house, and she gave him a name.
- Q What name did she give him?
- A Of aman - - - that it had been O. P. Carrillo's, and then

00456

a man called Manges.

Q And did you see those pictures taken by Tommy Guerra?

A Yes, sir, he took those pictures.

Q Are they a fair representation of what the house looked like?

A Yes, sir.

Q Did you make any effort to estimate the cost of replacement of that house with new lumber, under new costs?

MR. CHURCH: The Court please, I don't think that has any bearing on the cost of repairs. We are getting far afield - - -

THE COURT: I will sustain the objection. He can describe the condition of the house, but as to the cost of repairs, I don't know that that will be too important.

MR. SMITH: Note our exception.

Q What was the condition of the house as far as maintenance was concerned?

THE COURT: Just a minute. That cost of repairs, now, that might tend to show the value of it, what it would cost to put it in first class condition. I believe I will change my decision on that.

MR. CHURCH: Well, it wouldn't have any bearing on the value of the house in 1970. Conceding that it ran down from 1970 to 1973, that doesn't prove the value

00457

of it in 1970.

THE COURT: I guess you are right.

Q Describe the condition of the house?

A Well, the house was completely in a condition that it was uninhabitable. The doors were open, the picture window was broken, the kitchen cabinets are broken.

Q How about the screens?

A Well, they are bad. Some of them are torn up, some of them are hanging.

Q Was there any evidence of recent occupation of the house?

A I don't think so. The way the lot is, I don't think it was occupied recently.

Q By recently, would you mean six months, a year, two years?

A No, I couldn't say that. Just that the house is in a very bad condition.

Q Could you tell from observing the lumber and the fixtures in the house about how old it was?

A Well, there are houses that can be twenty years and look like they are fifty years old. I couldn't say how many years. It's an old house, though.

Q What were the walls made of on the outside?

A Siding, lumber.

Q Do you sell that type of lumber now adays?

A Well, looked to me like it had two kinds there, 105 and
- - - I didn't make just a close inspection of that, but

00458

it needed a pretty good repair.

Q How about the walls on the inside, what are they made of?

A Just plain sheetrock, in pretty bad condition.

Q Was it papered?

A No, it was sheetrock.

Q Was it painted?

A Well, it has been a long time ago.

Q What was the condition of the sheetrock?

A Well, in some places it has some holes.

Q Broken?

A Broken on the wall. Not on the ceiling.

Q Would you be - - - do you have an opinion about what the place is worth?

MR. CHURCH: Please the Court, this man certainly has not been qualified as an expert to testify to an opinion as to value, and we object.

THE COURT: Sustain the objection.

MR. SMITH: Note our exception. Your Honor, did you say we could ask him the replacement cost of the house?

THE COURT: Well, the thing of it is, that wouldn't show what the replacement cost was back at the time of the transaction.

MR. CHURCH: And it wouldn't have any bearing as to value. The cost of replacement, if the owner let

the property run down, would cost X dollars, but that is no sign that it would cost more to repair than the cost of replacement. Lots of times the cost of repairs to get a property in liveable condition - - - if it cost so much to repair it, it wouldn't be worth anything.

Q What would be the cost of replacement as of October, 1970?

A I can't say nothing for the past, just for the present. Right now, yes. I gave an estimate to him what the house was. If they are going to build a new house I can tell what it would cost right now.

Q Do you know what it would - - - what would it cost to build a house like that in 1970?

A Well, I mean on the basis the house is frame, and just a plain house, you don't go more than about \$11,900.00, something like that.

Q And that would be brand new, with new lumber?

A Well, yes, but the way I give prices on houses around here. And the way the costs are, and the construction they have. That's just a plain frame house.

Q Now, would the house you saw there justify being repaired?

A Well, yes, you can put one in. It's up to the customer on a house like that.

Q Do you know how much it would cost to repair it?

A I can just estimate it. \$6.50 to \$7.00 to \$7.50 a square foot. It would depend on what - - - I figured if they are

00460

going to make a loan to repair it, you have to go make the best loan you can.

Q You do pass on whether to make loans on some jobs, don't you?

A Yes, sir.

Q Would you state what you would be willing to approve as being a sound loan to bring that house into good condition?

MR. CHURCH: We object to that question, your Honor. I don't believe this man can actually qualify to answer that. He says he is working for the lumber yard, but he hasn't qualified as a lender, hasn't qualified as making loans on property. He is being very honest with the Court and counsel. I just don't believe he is qualified.

THE COURT: Sustain.

Q Do you do some contracting on your own?

A No.

Q Do you do some for the lumber yard?

A Only for the lumber yard. Not by myself, no.

Q When you make a contract, the lumber yard performs under the contract based on your decision?

A Right, like an F H A loan.

Q Do you actually make all the contracts for G & G Lumber Company?

A They have to be signed by the owners. But I deal with the

customer, and make all the papers to the loans, and they prepare the papers for the owner.

Q And you and the customer, the owner, agree on what the contract price is?

A Right, I give the price to build the house.

MR. SMITH: Your Honor, I believe this man is qualified to state what it will cost to repair this property.

MR. CHURCH: I don't think so. He makes contracts for cost of materials on properties here in Starr County. There is no objection to that. But as to appraising it as to fair market value, I don't believe he is qualified. He is qualified to make contracts for the building of houses and contracts such as that.

THE COURT: I think I will let him testify what in his opinion the cost to repair the house would be. I will let him testify to that. But as to his opinion what the house is worth, I don't believe he is qualified.

Q Do you - - - what would you estimate to be the cost to repair this particular house?

A Well, to put in new work, you go and do that, completely finished, you have to put from six to seven thousand dollars in it. I have to figure that.

Q So between six and seven thousand dollars?

A But there is another way - - -

00462

MR. CHURCH: I don't believe the man said that. He said between \$6.50 and \$7.50 a square foot.

Isn't that right, Mr. Gonzalez?

A Yes, sir. But there is different kinds of repair. If the owner wants to go and live there - - -

Q But I mean to repair it exactly as it is, sheetrock on the inside?

A There is too many ways to repair a house. To make that house stay like new, you have to put from the floor to the top, new siding, new roof, new windows, sheetrock, everything.

Q As a matter of fact, you have appraised property for the Small Business Administration, have you not?

A Well, yes, after the disaster people come by there, I make the estimates.

Q About how many estimates or appraisals have you made for the Small Business Administration?

A Estimates, I make more than five hundred. But I make the estimate. Well, some customers get loans, some don't. But I mean to help repair the house. Later on they send some appraisers to check the figure I make. They send two appraisers there and find if the thing is correct or not.

Q Did they ever reject an appraisal you have made?

A No, sir, not so far.

Q If they ever have you don't know about it?

00463

A I don't know. They don't let me know.

Q Now, would there be any difference in the value of property between, say, in this area of Starr County and in Benavides, the Benavides area and Duval County?

A Well, I gave some prices last year in Jim Hogg County. It has been a little higher than Starr County. I don't know for sure what the values of a house in Benavides are. I mean it's just about the same. But I don't say it for sure. They are just too much alike.

Q In other words, would you be willing to take a contract to build a house in Duval County?

A Anywhere that G & G wants to, and under the regulations of the town, plumbing and everything. We have talked with people of the town before, all the regulations they have. But I am ready to give prices on some other places.

Q These appraisals you have made for the Small Business Administration, how wide an area have you appraised in?

A Well it's some people from Grulla, back this way, Salineno, Roma, here in Rio Grande City. They go by there because he starts going to the houses and drawing a little plan. I get all of Mr. Guerra's - - - it's just to help fill this out. And later on the appraiser told me I don't have to draw a plan, just figure it out the way they told me, like replace the floor, repair of any rooms, and so forth.

Q The houses you have appraised for the Small Business Admin-

00464

istration, have they been foreclosed on, under a deed of trust?

A None of them went with us for contracts. I don't know if some of them are or not. They are free as soon as they get the specifications. Not just for me, but they go to somebody else.

Q In other words, you appraise loans for the Small Business Administration to make in participation with banks?

A Yes.

MR. CHURCH: I don't believe the witness said he appraises property. He goes out and figures what it would cost to make additions or repairs, and gives that to them for the purpose of getting an S B A loan. He has never testified he appraises property. He testified he goes out and figures it out, they make the loan, and then the appraisers check on him. He said all he had to do was figure the cost.

THE COURT: That's about what I drew from it.

MR. CHURCH: And he has not been an appraiser as Mr. Smith has lead us to believe, your Honor.

Q Mr. Gonzalez, when you make these - - - when you figure out what it is going to cost, do you concern yourself with the value of the land as well as the house?

A No, not on land.

Q You just figure the house?

- A Just the house. You mean here in Starr County?
- Q Anywhere?
- A Well, yes, in Starr County I can say I have to name the price of the land. The house is worth so and so, and the land is worth six hundred, a thousand. Or the house is - - - to get a title opinion, I mean, on a lot that cost more than eight hundred or a thousand dollars. But it's not in my capacity to do that. I don't say nothing about that. I'm not a real estate man.
- Q When the bank participates in a loan with the Small Business administration, based on the information you give them, that information covers the value of both the land and the cost of the building, doesn't it?
- A No, not for the S B A. No.
- Q What do you appraise for the S B A?
- A I just appraise the damage they had. On some other loans, yes, I carry the land.
- Q Have you done any appraisals for the F H A?
- A Well, just thirteen hundred dollars, a thousand dollars. They ask me sometimes what is it worth that land. When I find a lot, they go ahead and approve it for the full loan to the people. And sometimes the inspector asks me is that land worth - - - or some residence here, a thousand dollars, thirteen hundred dollars. I say, well, it's a low place, or it's high land, looks like to me it is worth

something. But that's all I can say.

Q When you make a contract, the contract you make to build a house is a contract to build on a particular lot, isn't it?

A Well, in that case I carry the price sometimes to the loan company, and I say the lot is worth more than a thousand dollars, or worth more than fifteen hundred dollars. And the same for the bank, the First State Bank -- sometimes the customer gets loans from the bank.

Q And when they make a mortgage, it covers the value of the house and the lot both?

A Yes. But in my capacity, not for real estate, people will ask me, like H. P. Guerra, III, is that land worth so and so, and I say no, it's not worth more than - - - but I mean, just for the attorneys for these people.

Q You do know how much you are willing to figure a cost of a lot in, when you make a contract for a house?

A Over there in Roma, yes. More or less, when they ask me my opinion, I say, "Well, you can go ahead, and the lot is worth so and so," because the bank only loans about sixty percent, not more than that. But I can't, in my capacity - - - which is just a simple opinion, and if they want that, okay. But I mean I figure out the houses here.

Q A lot of people depend on your opinion of value, don't

00467

they?

A Well, they consult me. They ask me if it's worth so and so, and I say, well - - - but I'm not - - - I feel in some way I help some people pay the right price. And some people come from California and ask me my opinion, and I say, yes, it will run around so and so.

MR. SMITH: All right, pass the witness.

- - o - -

EXAMINATION BY MR. CHURCH:

Q Mr. Gonzalez, this house in Benavides, do you know what it looked like in October, 1970?

A No, I can't say that.

Q You never had seen it before?

A No.

Q And it is a five bedroom, two bath house?

A Right.

Q Five bedrooms and two baths, living room, dining room and kitchen?

A Well, it's together.

Q The living room and dining room is together?

A Yes, and the kitchen.

MR. CHURCH: No further questions.

THE COURT: Do you have anything further?

MR. SMITH: No, sir, that's all.

(Witness excused.)

00468

THE COURT: Are you going to have any further evidence?

MR. SMITH: We rest on this issue.

MR. CHURCH: We have no further evidence.

THE COURT: Then I guess we will recess. Now, on your briefs, are you going to brief the whole question, or just this particular - - -

MR. CHURCH: When we got into this, it was a motion to disqualify, but I understand - - -

THE COURT: That's the only thing I'm hearing.

MR. CHURCH: We are getting very far afield by getting into this question of whether the property was in custodia legis or not. The question here is whether Judge O. P. Carrillo is disqualified in this case.

THE COURT: That's right. But if you want to submit briefs on this question, you can.

MR. SMITH: Well, of course the matter of custodia legis is very, very relevant - - -

THE COURT: If you feel it is, submit what authorities you want to.

MR. SMITH: Well, the brief points out the authorities, as does this material. When a Judge takes over property in custodia legis, he has an interest in the case. We are entitled to have a Judge try our case who is not entangled with one of the litigants. I am

not trying to injure Judge Carrillo. But we have one law suit up here, and we are entitled to have it tried by a fair and impartial judge. All we are asking the Judge to do here is to let someone who is not involved as he is with the plaintiff, try the suit. We are entitled to that. And I think it involves - - - his involvement with the plaintiff is such as to disqualify him. And I would answer two things that Mr. Church has indicated here. He mentioned something about bribery. Well, what is it when a Judge takes a lease for free on fifteen hundred acres? Of course the Judge has said he intended to pay Manges, but Manges has said it was a free courtesy. And when he takes a lease on five thousand acres for free for three years, until at the end of the term he pays a dollar an acre, unless, as Manges says, he cancels it before that. What sort of relationship is that to have with a Judge. And that land was in custodia legis certainly at the time this Judge took over the case. And the receivership had not been closed, and has not been today. I don't know what else to call it. I think the bribery statutes are involved, and I think the constitution is involved on interest, present interest and future interest. When a Judge takes this many valuable gifts - - - and incidentally, there has not been a single order of this Court approving a single transfer of stock

00470

in the bank into Manges until O. P. Carrillo took over, and I just looked at that order and I believe it was done in October, 1971. That was just forty shares. But Judge Carrillo got his shares in December of 1970, 10 shares. And there has been no approval of the transfer of that out of the receiver. And every officer of the Court that is involved in this thing, the Receiver, the attorney for the receiver, the special attorney for the receiver, the Judge himself, the brother of the Judge, have all accepted directorships in this bank. It just involves the Judge in so many interwoven transactions that we just say it disqualifies him in this case. We are not interested in upsetting the apple cart here in Starr County. We have just one case, and we want a fair Judge to try it. And it is significant that the only litigant here who does not want us to get him disqualified, is the plaintiff himself, who made all the gifts to the Judge. Those are the facts.

MR. CHURCH: The fact is, he filed a motion to disqualify the Judge under the constitution and the statute, and his accusations come by brief, by innuendo, by implication. I don't think it is fair. If he claims all this to be bribery - - - it's not a matter for disqualification for the Judge to accept a gift. I don't think there is any case he can cite where the disqualification comes from accepting gifts. It is the interest

in the litigation itself. It's not fair to Judge Carrillo, or to the County, to make those innuendos in a civil matter.

MR. SMITH: I think I have in my motion to take judicial notice, cited adequate authority. All the Judge has to do is look at the history of this judicial district to see that it would have been a waste of time to bring this matter before a grand jury in this County or in Duval County. The United States of America just this past week, in getting an indictment against Judge Parr, didn't come to Duval County, they went to San Antonio.

MR. CHURCH: Well, that's in Federal Court.

MR. SMITH: And besides that, it's not our job to prosecute the Judge if he took a bribe. It's just that we are entitled to have a fair and impartial Judge in a civil case, not only on - - - and if a bribe doesn't give a Judge an interest in the law suit, I don't know what does. No Judge would take the position that a bribe is not such a disqualification unless it's on the installment plan, with the last installment to be paid after the final ruling. No Court is going to say that a bribe is not an absolute and complete disqualification. Now, the Judge has grown up here in this County and this area. He hasn't seen any different judicial system. But the people

of Starr County are just as good as people in the rest of the State of Texas, and entitled to a fair and impartial Judge. That's what the Supreme Court of the State of Texas said in the Laughlin case. There is no question about it, we are entitled to a fair Judge, and the people of Starr County are entitled to a fair Judge.

THE COURT: Gentlemen, I will make my ruling when I get all the evidence and the case is complete. You get your briefs in and I will render a decision.

HEARING RECESSED.

00473

MAY 18TH, 1973.

AND BE IT FURTHER REMEMBERED that on the 18th day of May, 1973, pursuant to notice to all parties, with appearances of counsel as hereinbefore first captioned and the additional appearance of Hon. JAMES S. BATES, of Edinburg, Texas, the Receiver heretofore appointed in this cause, the Court convened and the hearing of such motion was resumed as follows, to-wit:

THE COURT: Gentlemen, I believe we have here a motion to reopen the case as to the hearing of the motion to disqualify Judge Carrillo.

MR. BATES: That is correct, your Honor, filed by me as Receiver for the partnership M. Guerra & Son.

THE COURT: Let me see, I think I was mailed a copy of that motion. Let me find it here. Do you have the original of the motion, Mr. Clerk? Yes, here it is. All right, gentlemen, I will hear you on the motion.

MR. BATES: Is the Court going to be hearing us on the motion, or the evidence?

THE COURT: On the motion first. If I grant it, which I am inclined to do - - -

MR. BATES: Well, if the Court is so inclined, I will make a brief statement to the Court. Certain in-

formation has been filed by Mr. Smith since the last hearing, and as a matter of fact it was handed to my attorney who was present at that hearing, and basically we are asking that this be reopened for the presentation of further evidence. There is certain misinformation in the so-called data to support the motion for the Court to take judicial notice. And there was certain information furnished to the Judicial Commission which contained mis-information. Certain evidence has been brought to my attention that, I think, indicates that quite humanly memories have lagged, and there has been no proper effort to refresh memories. And also on the theory of custodia legis which Mr. Smith talks so much about. We are prepared to go forward on those four points this morning.

MR. SMITH: Your Honor, I would like for the Court to take the motion and go over it. It is our position that it is, on its face and as a matter of law, without any merit. It would open a can of worms here, and allow them to go into the merits of the case on this motion to disqualify. Take the reasons that the movant has given here. He first says that he has had no opportunity or cause to present evidence to the Court. We have pointed out that in our original answer an objection to the Receiver's final accounting, if we can call it that -- and that is what he filed it for, I presume -- that

the accounting was in error, and it had not charged the plaintiff, Manges, with the debts of the partnership M. Guerra & Son - - - or the debts of M. A. Guerra and Mrs. Jeffries to the partnership which he assumed, and that if he had done that, the whole thing would be changed, and I have quoted some of those pleadings in my answer to the motion. For the Receiver now to come in and say he had no opportunity to answer - - - I don't know how you can state a matter in any clearer language to convey notice to someone, than the manner in which we stated it in our objections to the accounting. So if the Court will take judicial notice of the objections we filed, I think his reason No. 1 goes out the window.

In his reason No. 2 he talks about innuendos and so forth. To come here with that sort of a motion is - - - I think the Court is quite capable of determining what is innuendo, and what is fiction, and I don't think the Court will decide this case on that, but on the facts. I think your Honor can decide what is fact, what is innuendo, and what is mere allegation.

Now, he says that Clinton Manges did not owe the money to the Receiver as we said he did. But what does that have to do with the Judge's disqualification? That is an issue on the merits of the case, and this motion to disqualify has nothing to do with that. We con-

tend that the plaintiff owes some \$312,000.00 to the Receivership, and the Receiver says he owes \$94,000.00.

But regardless of which it is, that is a matter on the merits, and there is no reason that that question should be opened here. What does it have to do with the Judge's disqualification?

Now next he talks about beneficial ownership of the stock in the First State Bank & Trust Company. It is a matter of res adjudicata, I think, in the original case, and that is in the original case that went to the Supreme Court of Texas on the appointment of the Receiver, that at the time the Receiver was appointed, M. Guerra & Son owned so many shares of stock. Of course there may be quite a bit of conflict in the testimony about the transfers where it finally wound up in the ownership of the plaintiff, Manges.

Now the next provision is that this will provide the Court with all pertinent facts for the Court's decision in this matter. From the witnesses he has subpoenaed here, I don't see a single witness on the list who will - - - he hasn't plead that he will bring in a witness who can testify that Judge Carrillo did not accept ten shares of stock in the bank on December 10, 1970. He doesn't even say in his motion that he will prove that. Unless he is going to put on testimony to that effect, he

00477

has nothing that will touch that question. He is not going to put on testimony that the Judge did not enter into the oral lease contract with the plaintiff, which effects the Judge's disqualification. Unless he is going to put on evidence that those transactions did not take place -- and it has already been testified to by the Judge and by the plaintiff -- then he has nothing to reach it. Unless he is going to put on testimony that the Judge did not accept this Cadillac automobile from the plaintiff in that trade involving this house, and unless he is going to put on testimony that there is yet an additional mistake about the property, because there is already evidence in the record that the title to that property was checked, and in both transactions, even when it was corrected, we found the title was not in the Judge on that date. So they are not playing with very much integrity here. Either the Judge owned that property on October 12, 1970, or else it is a farce. Unless they are going to put on evidence and testimony that these things are not true, and the Judge and the plaintiff have lied about it, then there is nothing they can put on that effects the Judge's disqualification.

Now, he has subpoenaed here Mr. J. C. Guerra and Mr. V. H. Guerra, and Mr. Manges is here in the Courtroom. Now, we have discovery notices out to take deposi-

tions, and these people have refused to give their testimony. And to permit them to come here and testify today on one side of the case, and not testify for the - - - or under cross examination by these defendants, would be partiality that the Receiver is inviting the Court into. And we would object, certainly, to any testimony by J. C. Guerra unless he comes in honestly and offers in evidence the things we subpoenaed under our subpoena duces tecum, including his income tax return, and including V. H. Guerra's income tax return. What do they have to tell the Court about the Judge's disqualification? Nothing.

THE COURT: Well, I don't know what the testimony is going to be. I want to give them an opportunity -- both sides, as a matter of fact -- to present any more testimony with reference to this issue. Now, I will say this -- I am here solely for the purpose of determining the disqualification question as concerns the Judge, and any ruling I make will not be in confirmation or rejection of any ruling that Judge Carrillo has made, because I am not here for that purpose. And in the second place, I have not heard enough evidence to where I could make a just decision on it if I wanted to. If Judge Carrillo is held to be disqualified, then those matters will be taken up. It will probably be done by some other Judge. Depends on who Judge Alamia sends here. So I can't make

00479

any ruling which would either condemn or ratify anything Judge Carrillo has done at this time.

MR. SMITH: Yes, sir, and the parties can't agree to ratify it.

THE COURT: Because if he is disqualified, all that will have to be gone into later. And if he is not disqualified, there is no question on it.

MR. CHURCH: Please the Court, at the conclusion of the last hearing, Mr. Smith submitted to the Court that matter in front of your Honor there, which he calls data to support his motion. And also he files rebuttal briefs. And by those things he raises what he calls fact questions. There is no sworn testimony here, but he is raising fact issues, which he says are true and are not contested, in support of his motion to disqualify. I agree with the Court. When he first came here I thought the only thing we would hear would be whether or not Judge Carrillo was disqualified. But as the Court will recall, these matters are far afield on that question. By those things he makes accusations against Mr. Manges, and against the Receiver, and many other matters he brings out. And the letter written by Mr. Smith, which the Court knows about, sets out further what he says are uncontested facts. But it's not in the record here. And I think both the Receiver and also Mr. Manges would join in the motion to re-

00480

open. We didn't open this up. Mr. Smith did. He says these are true facts, and the record has the statements. But there is no sworn testimony in those motions or in that data. The record contains the evidence, and I don't think it is fair, because it goes far afield.

THE COURT: The thing of it is, I am not going to pay any attention to anything except what pertains to the disqualification of Judge Carrillo.

MR. BATES: Right there, your Honor, you see the Court is telling us he is going to, on his own motion, disregard the junk that is in that data. But you see, is it all going up on appeal to the - - -

THE COURT: Well, as I understand, this is part of the record - - -

MR. SMITH: I was submitting it under our bill of exceptions, and yes, it will be going up, and there is nothing the Court can do to stop that.

THE COURT: I have already ruled - - -

MR. BATES: There is nothing this Court can do to keep uncorroborated testimony, junk like is in here - - - well, let me call a little of this to the Court's attention. This is at the top of page 3 of the motion to support - - - no, the data to support motion to take judicial notice by the Court. That says, "The underlined statement 'and subject to this receivership proceeding'

"is either false (since neither MX-1 nor MX-2 contains such restriction) or an inexcusably late admission by the Receiver that the property was in custodia legis at the time of this effort to oust the Court by conveyance thereof."

Neither of those statements are true, but he puts it in there as throwing light on whether it was in custodia legis. And he has personal knowledge that it was not in custodia legis, because he was in every proceeding that was had in Federal Court. And he knows it was not in custodia legis in this proceeding. If he has forgotten those proceedings down there, I have records to show the Court that that is inexcusably false. And it has gone on and on. He said the Court can't stop it from going upstairs, and he is right, But I do want the opportunity to show the Court the other side of the coin.

Now, he says these other defendants are not displaying much integrity, and not coming in honestly. I have read nearly all of his letters to the Judicial Qualifications Section, and starting from this time, the next time Mr. Smith challenges my integrity, I am going to ask for a recess. It is not right. I ask the Court to tell him not to make those remarks. If he challenges my integrity, he must do it only from the stand, and under oath. I hope the Court will instruct him not to do it,

00482

because I don't want to stand and listen to it.

THE COURT: Just keep your cool, Senator.

MR. BATES: I am going to try to, but it is hard to do when this is going up on appeal.

MR. SMITH: Not a thing I have said challenges anybody's integrity. I didn't make the facts here. He made the facts, and if it challenges his integrity, there is nothing I can do.

Now, with respect to these documents he talks about, I ask your Honor to read them. He says those conveyances were subject to the receivership. But there is not a word in there that says that. He is really just arguing a question of law here, that when we filed our application in the Federal Court, that took it out of custodia legis. That arrangement in Federal Court, the Federal Court never summarily took jurisdiction and actually took it over to adjudicate this. It is true that there was a period of time in there when the Receiver was under injunction, but there is a big difference between taking property out of the custody of the Court, and enjoining him from mis-using it. But that is exactly the truth, and not a word in those documents says that those contracts were subject to the receivership.

MR. BATES: This is absolutely correct. And if the Court will look at what he is talking about, it is

a pleading by the Receiver, and it is a legal proceeding here. And I have some proof to put on on that this morning, too. It's a simple matter of this partnership deed that was made outside the presence of the Receiver, that has absolutely nothing to do with that. The Receiver can't go all over these Counties and see all these people who are involved, and tell them, "You can't draw this deed," or "You can't do this or that," until it is presented to the Court by me. It says here, "and subject to these receivership proceedings" is a conclusion and nothing more. Those deeds were made outside the purview of the receivership, and not with the Receiver's consent or knowledge, and not accepted until every single party of this partnership signed. He is saying we say it's in the deeds. But it doesn't say that at all. But he didn't put anybody on to prove that, he just says it in this stuff. Certainly we have matters that have happened outside the Receiver's presence while I think it was in custodia legis. But your Honor, let me call your attention to what happened in the bankruptcy proceeding, when he was there, and nearly all the parties who are here this morning were present in person. On page 37 of the transcript of that proceeding, and this is on the 15th of December, 1969, in front of Mr. Arthur Moore, the Referee in Bankruptcy, when Joe Guerra was on the stand, he testified that when

00484

he sold this bank stock, he did so without any partnership meeting or agreement, and sold it under what he believed to be his authority under the partnership agreement, and also that when he and Virgil sold this property to Clinton Manges, they did so on the same basis, and without consulting anybody. But he comes here now and he accuses me of all this, because this stuff was in my custody, in custodia legis. But Mr. Smith was there when this happened. Has he told the Court about that? I don't believe he has.

MR. SMITH: There is a very simple answer, your Honor. At the last hearing, I believe Mr. Church raised an issue that I should have remembered the transactions concerning the bank stock because it had come out in the testimony in that Federal case. That is true. I heard the testimony. We were putting on evidence here through the President of the bank that the transactions had been made. Of course I remembered that the question had been testified about there, but that doesn't prove it to your Honor, and we were putting on evidence here the best we had. And when I said I didn't remember the details of that transaction, I hadn't gone back through the records. We at one time had a copy of the transcript, but I believe that was turned over to Mr. Skaggs. But anyway, I didn't find that testimony on the bank stock, and at the time I

didn't remember the details of the same. Of course I remember about the Federal case, and of course I remember that in the end the Federal Court did not take jurisdiction, and not having taken jurisdiction they did nothing to affect any transaction as far as this receivership, since at the end the application was dismissed in Federal Court, and the Court, other than the fact that it enjoined everybody from proceeding for a little while, they did nothing to affect the custodia legis of this property.

Now, it is true there was substantial dealing with the partnership property during the time it was in custodia legis. A ranching operation like this cannot stand still from 1968 to 1973, while the partners argue. Cattle have to be sold, and things have to be done. The thing is, I think, that it goes back to a Supreme Court decision some fifty years ago, that those who deal with property in custodia legis do so at their own risk. To the extent that the dealings were improper, then whoever has had dealings with property in custodia legis has to account for them. They have not cited a single case showing anything contrary to the - - -

THE COURT: Mr. Bates, what did the Federal Court do? Did it take jurisdiction of this?

MR. BATES: Mr. Smith was present on October

21st, 1968, when he and Mr. Skaggs petitioned the Court for a stay order, and Judge Garza, in chambers, did so, and I was wired that I would take no further action, and I did not do so, until this date when Mr. Smith and everyone agreed to dismiss the case.

THE COURT: Well, I just wanted to know what happened to the case.

MR. BATES: That's what happened. They all got together, as they have been trying to do, and dismissed it. And the Receiver went along with them, I think probably when all the parties agreed to it. And there is Mr. Smith's signature on the thing right there. And at that time he was representing Mr. M. A. Guerra. So he has a lot more knowledge about all this than he put in these documents.

MR. SMITH: Your Honor, I have tried to restrict what I put in here to matters that are pertinent. I don't know anything he has said here that is pertinent to whether or not Judge Carrillo is disqualified.

THE COURT: Well, you were the one who brought up the question of custodia legis.

MR. BATES: He has brought up every conceivable act of the Receiver, and of his lawyers, and of his accountants. He has gone so far afield it's not even funny. The irrelevant matter is largely contained in this so-

00487

called data, which he flagrantly tells the Court is going up regardless. I think if he - - -

MR. SMITH: Well, it's submitted under a bill of exceptions. You can have your day in Court on that.

THE COURT: Well, gentlemen, I am going to open it up, and let either of you put on what you want to present.

MR. BATES: Your Honor, I would like to have the name of the witness, Jack Skaggs, called.

THE COURT: Jack was in my Court yesterday, and he said he had a case up in Sinton that he had to go try today. He is willing to come - - -

MR. BATES: Judge, I will take oath that Mr. Skaggs said he wouldn't come.

THE COURT: Well, he will come if necessary.

MR. BATES: Well, it's necessary.

THE COURT: Well, let's proceed with another witness. If necessary, we can have another hearing.

MR. BATES: Unless Mr. Skaggs is here, it would not be properto wind this up. I just want to show the Court one document, to show the Court why it is necessary to have Mr. Skaggs here. I don't want it to go into the record, and I would appreciate the Court not looking at the documents attached.

THE COURT: What is this?

MR. BATES: Certain arrangements he made and was supposed to have made on behalf of this man, his then client, Ruben Guerra.

THE COURT: With reference to - - -

MR. BATES: With reference to the allegations contained here about welching by Mr. Manges and by the Receiver. It's in there, that I have welched on some deal I was supposed to have made with Ruben.

THE COURT: Mr. Bates, doesn't that all boil down to the correctness of the decision of the Court, finally approving it? And like I say, I am not going to consider any of that -- I am not ruling on it.

MR. BATES: Your Honor, then shouldn't we be allowed to come in, in answer to that "bill of exceptions" and show why it should not be considered on its merits?

THE COURT: Here is the thing -- let me say this. If the Judge is disqualified, all that matter will have to be gone into.

MR. BATES: Can the Court grant more relief than is prayed for, your Honor, by the complainants, Mr. Smith and his clients?

THE COURT: I don't think so.

MR. BATES: I would call your attention to the motion for disqualification and recusation, and all subsequent motions in support of it. "Wherefore, these defend-

00489

"ants suggest that the Judge of this Honorable Court disqualify or recuse himself from further proceedings in this cause."

THE COURT: Here is the thing, Senator. If it developes that the Court was disqualified - - -

MR. BATES: From what, your Honor? From further proceeding?

THE COURT: From sitting in the case.

MR. BATES: But that's not what they ask for.

THE COURT: But just a minute -- if he is disqualified, any order he signed, if he was disqualified from the start, any order would be absolutely void.

MR. BATES: That's what he said in all this - - -

THE COURT: Yes, sir, I know. And that matter can be raised any time, after final judgment or any time. It can be collaterally attacked.

MR. BATES: Then in effect the Court is telling me he is going to grant whatever is necessary to close the proceedings?

THE COURT: With reference to disqualification.

MR. BATES: In any matter Mr. Smith has raised, by motion or in direct attack, touching on the credibility of these people, it should be allowed to go into this record, and this includes such things as he says that the Receiver - - - so much of this is awfully dangerous languag

to go to the appellate court, even on a bill.

THE COURT: Jim, frankly the fact that everybody agreed to an order, if the Judge was disqualified, wouldn't breathe life into it. It may justify an order of a subsequent Judge which he might enter confirming it.

MR. BATES: Judge, it may be the Judge has already admitted matter in here that is not pertinent to the question of qualification, but if it has, it puts the parties in the position of attacking the integrity - - -

THE COURT: I have permitted whatever I thought was necessary at the time.

MR. BATES: Then we will proceed on the same basis. And we will try to document it as well as possible. Is Mrs. Jeffries here?

MR. SMITH: Your Honor, Mrs. Jeffries husband is here. She claimed she was ill and couldn't come here this morning, and he thought possibly he could testify to whatever she could. He wanted me to explain that.

MR. BATES: I would be glad to have Mr. Jeffries come forward.

00491

JAMES A. JEFFRIES,

Called as a witness by the Receiver, being first duly sworn,
testified as follows, to-wit:

EXAMINATION BY MR. BATES:

Q Is your name James A. Jeffries?

A Yes, sir.

Q And you are the husband of Virginia G. Jeffries?

A Yes, sir.

Q Are you familiar with her signature?

A Fairly well, yes.

Q I would like to hand you this document, which we will
have identified as The Receiver's Exhibit No. 1 - - -

A Yes, that is my wife's signature.

MR. SMITH: I would like to see that.

Q Is that your signature also, at the bottom of the second
page?

A Yes, sir.

Q Do you recall executing that document at the time it
says at the bottom of it it was executed?

A Yes, sir.

MR. BATES: All right, counsel, you may examine
it.

Q Did you and your wife appear before Jorge Gonzalez, a
Notary Public in and for Starr County, when you affixed

your signatures to that?

A Yes.

Q All right, do you, and your wife as far as you know, still regard this as a valid document?

A Yes, we do.

MR. BATES: I offer that in evidence as the Receiver's Exhibit No. 1.

MR. SMITH: Your Honor, we object to that being received in evidence on the question of the Judge's qualifications, because it has no relevance to it. It is apparently a contract of settlement between Mrs. Jeffries and Mr. Manges, under the terms of which Mr. Manges took her place in the partnership, and she reserved certain mineral interests. That's a matter on the merits of the case. We would not object to the document on the merits, but it has no relevance here.

MR. BATES: It is pertinent in this respect -- he has stated, in letters and in his data supporting the motion, and personally, that all partners to the partnership did not sign all settlements and documents, and this is an absolute power of attorney. Plus he has also stated that these people are opposing the position of Judge Carrillo and the Receiver. This goes to that, whether they have a right, under this, to do so. But he has, for the record, stated that all six partners are on his side

of this.

MR. SMITH: I would like to answer that.

First, we represent only M. A. and R. R. Guerra, and as far as I know we have not attempted to speak for anyone else here. I think I have made the statement in my brief that no other party except Clinton Manges has employed counsel to oppose our motion. If there is anything where I have gone further than that, I will stand on the pleadings.

MR. BATES: He has also made the statement that these people should have been here and involved in the settlement of this - - -

MR. SMITH: And I would like to answer that. We are talking about the approval of orders entered by the Judge. They were approved at the time certain orders were entered and the parties signed applications of the Receiver or the order of approval, I don't know which. I believe the record will show that while Clinton Manges signed it individually, there is no signature of Mrs. Jeffries by attorney in fact for Mrs. Jeffries.

THE COURT: Gentlemen, that goes back, as I said, to the merits - - -

MR. BATES: No, your Honor - - -

THE COURT: Just a minute, Senator, don't interrupt. It goes back to the correctness of the judgments

and orders, and I am not going to decide that. I am not here for that, and I am not interested in it. Frankly, whether the parties agreed to it or not, in that particular thing, it doesn't matter. If the Judge was disqualified, it can't be cured by an agreement. But like I say, that is a matter I think should be heard, if he is disqualified, by the Judge who will reconsider it. And I am sure the Judge will go along on those where it is agreed to. But I don't know that -- that's a matter to be heard then, not now.

MR. BATES: Your Honor please, any document that has had to do with this case, whether settlement contracts or not, if they go to the partiality, the disqualification -- if any of them do or do not reflect impartiality - - -

THE COURT: Senator, whether he is impartial or not doesn't make any difference. If he is disqualified, he is disqualified.

MR. BATES: But it has to be for some reason.

THE COURT: Disqualification for interest.

MR. BATES: Yes, sir, and if these documents show interest, or do not show interest, or do not show the other grounds for disqualification, they should be taken into consideration. If there is a single document in the Receiver's file to reflect interest, prejudice or

00495

whatever, the Court should look at it. If you are not going to conclude with - - - pardon, if you are going to conclude this without looking at it, whether the interest was there by itself, and never look at whether or not that interest is corroborated - - - that statement of interest by itself doesn't make it interest.

THE COURT: Well, I think we disagree on the law.

MR. BATES: I am disagreeing about facts. If there is a lack of facts to show interest, we should be permitted to put them in. If the settlement sheets do not show interest, we should be permitted to put them, although you may not look at them.

THE COURT: Well, you can put them. I don't think I will pay any attention to them.

MR. BATES: Your Honor please, I would like to. I may have to do like Mr. Smith has.

MR. SMITH: Let the record show our exception.

(Such exhibit was, by the reporter, marked for identification as Receiver's Exhibit No. 1, was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

MR. SMITH: Your Honor, at various times I will request the Court, I think for obvious reasons, to substi-

tute true copies of these documents, so that the originals will not be lost.

THE COURT: Yes, sir.

Q I have one more question, Mr. Jeffries. According to Mr. Smith, you speak for yourself and for your wife in this matter?

A Yes, sir.

Q Do you think - - - would you have any objection to Judge Carrillo continuing to hear the receivership case?

MR. SMITH: I object to that. There is no way he could approve it if the Judge is disqualified.

THE COURT: That's true. But go ahead, let him answer the question.

Q All right, sir?

A The evidence I have read, and the documents that we have been furnished copies of, I don't think Judge Carrillo would be impartial.

Q All right, sir, I accept that as your answer.

MR. BATES: That's all I have.

MR. SMITH: I have no questions.

(Witness excused.)

M. A. GUERRA,

Called as a witness by the Receiver, being first duly sworn,
testified as follows, to-wit:

EXAMINATION BY MR. BATES:

Q Your name is M. A. Guerra, is that not true?

A Yes, sir.

Q And you are one of the original partners of M. Guerra &
Son, a partnership?

A Yes, sir.

MR. BATES: Mr. Reporter, would you mark this,
please?

(And instrument handed to the re-
porter was marked for identification
as Receiver's Exhibit No. 2.)

Q Now, you have inspected that document, have you not?

A Yes, sir.

Q And it was executed on January 15, 1971?

A According to that document.

Q Is that your signature on it?

A That's right.

Q And did you swear to it before a Notary Public on the 15th
of January, 1971, a Notary in and for Starr County, Texas?

A That's what it shows.

Q Well, did you do that, sir?

00498

A Yes, sir.

MR. BATES: Mark this, please.

(An instrument handed to the reporter was marked for identification as Receiver's Exhibit No. 3.)

Q Now, will you read what has been marked as Receiver's Exhibit No. 3, please?

A (The witness complies.)

Q Do you recall that document, sir?

A Yes, sir.

Q Did you sign it, sir?

A Yes, sir.

Q And you signed it on the 8th day of December, 1970, did you not?

A That's what the document reads. Must be.

Q You would not have signed it with the date blank, would you?

A No, I don't think so.

Q This is also signed by Mr. Clinton Manges?

A Yes, sir.

Q And in your presence?

A Yes, I think so.

Q And what office was this signed in, sir?

A It doesn't say, but I think it must have been in Vannie Cook's office.

00499

Q Mr. Vannie Cook's office in McAllen?

A I think so.

MR. BATES: Please the Court, I would like to introduce in evidence Receiver's Exhibits Nos. 2 and 3.

MR. SMITH: Your Honor, we of course have the same objection that those are probably pertinent on the merits of the case, but not on the question of disqualification of the Judge. We realize they are pertinent on the merits.

THE COURT: Well, I'll let them in.

(The same were received in the evidence, and true copies thereof are contained in the appendix of exhibits hereto.)

Q Now, Mr. Guerra, the Receiver's Exhibit No. 3 is a contract between you and Clinton Manges, is it not, sir?

A Yes, sir.

Q And this contract says that, in paragraph 6, that Clinton Manges agrees to pay you the sum of \$230,000.00 in cash, and to cancel your liability on a promissory note dated June 30, 1970, in the amount of \$15,000.00 payable to Marshall Johnson, does it not?

A Well, there is only one thing there. I didn't owe the \$15,000.00 by myself.

Q But this is what this says, does it not?

00500

A Yes, sir.

Q And it also says that Mr. Manges will assume all obligations due Jack Skaggs, your lawyer, isn't that right?

A That's right.

Q And he also agreed to assume the tax liability on any income tax that will be due by you on the sale of your interest in M. Guerra & Son?

A Yes, sir.

Q Did you really know how much the tax liability was?

A Well, the original I was billed with was \$118,000.00, but now they come up with fifty some thousand dollars more.

Q But those things there that Manges was to pay, did Mr. Manges pay those?

A He paid me, and he paid the tax, and I guess he paid the rest of them, I don't know.

Q Did he pay Jack Skaggs?

A I imagine so.

Q You haven't gotten any bills from him?

A No.

Q And he also agreed to pay you \$17,000.00, plus interest, which is now due, which Joe Guerra owed you?

A Yes, Joe paid me that amount.

Q And that \$17,000.00 involved bank stock?

A Right.

Q How long had Joe owed you the \$17,000.00 for the stock?

00501

A I don't remember exactly. For some time.

Q Back about 1967, wasn't it?

A I think so.

Q Actually, you previously testified in the State case and in the Federal case that it was in 1967, isn't that correct?

A If that's what I testified, that's what it was.

Q Well, it was before any application had ever been brought to bring M. Guerra & Son into receivership?

A Right.

Q And at the time the partnership was brought into receivership, you personally had no stock in the bank?

A No, just the debt that was owed me.

Q Which you got paid for?

A Yes, sir.

Q And that was before the appointment of a receiver that the sale was made, wasn't it?

A Yes, sir. The sale was to Joe, you know.

Q Yes, sir, as an individual?

A Yes, sir.

MR. SMITH: For the record, I would like to interpose our objection to this. I don't think we have raised any question about the bank stock M. A. Guerra sold to J. C. Guerra. It's only the stock that was in the name of M. Guerra & Son at the time the Receiver was appointed, and if this took place before the Receiver was appointed, it's not in issue.

00502

MR. BATES: Please the Court, may I read from his pleading?

THE COURT: That's all right, I will permit it.

MR. BATES: He just says, in this data to support his motion to take judicial notice, that the entire record in this case - - -

THE COURT: Senator, I have said it is admitted, and go ahead. Quit arguing. I have ruled for you.

MR. BATES: Yes, sir, I'm sorry.

Q At the beginning, how many shares of stock did the partnership own in the bank?

A At the beginning of what?

Q When you set up the partnership?

A I believe, to the best of my recollection, it was 444.

Q And some people say 404. There is some dispute about it, but it was over four hundred shares?

A That's right.

Q Now, you entered into this contract on the 8th of December, 1970, and you also entered into the Receiver's Exhibit No. 2 on the 15th of January, 1971, did you not?

A Yes, sir.

Q And when was Judge Carrillo - - - when did he take the bench, do you recall?

A No, I don't recall. But I believe this is his first time, isn't it?

00503

- Q Yes, and it would be January 1st, 1971, would it not, sir?
- A I suppose so, yes.
- Q And before he took the bench, M. Guerra & Son - - - or at least you, you had divested yourself of all interest in bank stock, had you not?
- A Yes, sir.
- Q And you had no interest as one of the partners in any bank stock?
- A No, sir.
- Q Before he took the bench. And you actually executed a general power of attorney, irrevocable power of attorney in the receivership case, appointing Clinton Manges to act as your attorney in fact?
- A Yes, sir, but if he ever did I don't know it.

MR. SMITH: Judge, we object again. This is not even relevant to the merits - - -

THE COURT: Overrule.

MR. SMITH: Our basis - - - your Honor, if you will read the pleadings, what Mr. M. A. Guerra is seeking here is his interest in the minerals and town lots that were reserved in that contract.

MR. BATES: Judge, I have no more questions.

MR. SMITH: No questions, your Honor.

(Witness excused.)

ARNULFO GUERRA,

Called as a witness by the Receiver, being first duly sworn,
testified as follows, to-wit:

EXAMINATION BY MR. BATES:

Q Please state your name?

A Arnulfo Guerra

Q Where do you live, Mr. Guerra?

A Roma, Texas.

Q What is your business or occupation?

A I am an attorney.

Q As regards these proceedings, who do you represent?

A At this time I don't represent anybody.

Q Do you represent - - - have you in the past represented parties to the case?

A Yes, sir, I did. I represented J. C. Guerra, Virgil H. Guerra, and Virginia G. Jeffries.

Q You say you represented Mr. J. C. Guerra?

A Yes, sir.

Q And Virginia G. Jeffries?

A Yes, sir, and Virgil H. Guerra.

Q I would like to hand these two documents to you - - - well, first let me have them marked.

(Two instruments handed to the reporter were marked for identification

00505

(as the Receiver's Exhibits Nos.
4 and 5.)

Q Now, Mr. Guerra, I would like you to inspect these two documents, please?

A (The witness complies.)

Q Now, at the time these documents, Nos. 4 and 5 - - - No. 4 is entitled Settlement Statement, August 20, 1971. Were you representing Mr. Virgil Guerra and Mr. Joe Guerra at that time?

A I believe by that time Mr. J.C. Guerra had already advised me he would handle his own negotiations with the Receiver and Mr. Manges. And also by that time all of the transactions involving settlements were taken over by the clients themselves. That's why my signature doesn't appear anywhere on those instruments.

Q At that time how long had you been representing Mr. J. C. Guerra and Mr. Virgil Guerra and Mrs. Jeffries?

A Since the beginning of the law suit in 1968, I believe.

Q And this was - - - how long prior to August 20th, 1971 had you not been representing them?

A I may have still been representing Virgil then, but they had assumed, like I say, personally, the settlement of all matters concerning either the Receiver or Mr. Manges.

Q Now, from January 1st, 1971 down to August 20th, 1971, was Judge O. P. Carrillo on the bench in this district?

A I believe so.

Q His was also the Court to which these settlement sheets would have been taken for approval?

A That is correct.

Q Sometime before August, 1971, are you relatively certain you represented these two people?

A Yes, sir.

Q Tell the Court whether or not you think any evidence of partiality - - - do you think of any such evidence which may have been brought on by Judge Carrillo's interest in this law suit?

MR. SMITH: We object to that. We think the answer would be immaterial.

THE COURT: I will permit it.

A I knew of none, sir.

Q How long have you been an attorney here?

A Since 1955.

Q And you have been involved in politics since that time?

A Yes, sir.

Q Do you feel relatively certain you would recognize pressure, or evidence of interest, if any existed here?

A I am sure I would have.

Q And you felt none?

A That's right.

MR. BATES: Thank you, that's all.

00507

EXAMINATION BY MR. SMITH:

- Q You say your signature does not appear on any of these exhibits?
- A Not those exhibits. And I believe on most of them it wouldn't appear.
- Q And the reason was that you were no longer representing the partners, they were handling it themselves?
- A I was advised that they would handle the settlement aspect by themselves.
- Q So not having participated in these proceedings, you would have no basis to judge whether there was partiality or impartiality, would you?
- A That's right, insofar as where my name doesn't appear, I would have no knowledge. o
- Q And you did not at that time appear before Judge Carrillo in connection with these matters?
- A Not that I can recall, as far as this final settlement.

MR. SMITH: That's all.

- - o - -

RE-EXAMINATION BY MR. BATES:

- Q Well, there is no evidence any place that anybody except the Receiver appeared before him, is there?
- A That is correct. Most of the arrangements were made with the Receiver and Manges.

00508

Q You never participated in any hearings in Judge Carrillo's Court about this?

A No, sir.

Q It was all done by agreement?

A That is correct.

MR. BATES: That's all.

(Witness excused.)

- - o - -

MR. BATES: Now, your Honor, we will call as our next witness Mr. Virgil Guerra.

MR. SMITH: We are going to object to him testifying unless he will produce at this time the material we subpoenaed, including income tax returns for the years involved. Part of the allegations were that there was a pay-off of some cash between Manges and Virgil and Joe Guerra for their cooperation in messing the partnership up with these proceedings. And we insist on those documents being furnished before this witness testifies, otherwise the proceeding would be entirely partial.

THE COURT: Well, I will overrule.

--- o ---

00509

VIRGIL H. GUERRA,

Called as a witness by the Receiver, being first duly sworn,
testified as follows:

EXAMINATION BY MR. BATES:

MR. GUERRA: Judge, before this, my counsel in San Antonio advised me, on this particular hearing, just to confine my answers to strictly as to the qualification of the Judge.

MR. SMITH: I would certainly agree with that, your Honor.

MR. GUERRA: And not to go into anything further besides that.

THE COURT: In other words, you don't care to testify to anything - - -

MR. GUERRA: That doesn't concern the question of qualification or disqualification of the Judge.

THE COURT: Well, let's see what the questions are.

Q Please state your full name?

A Virgil H. Guerra.

Q Where do you live, Mr. Guerra?

A Roma, Texas.

Q Are you one of the original partners of M. Guerra & Son?

A Yes, sir.

Q Mr. Guerra, have you owned - - - did you own at any time since the partnership was formed, stock in the bank here in Rio Grande City?

A I think I did, being a member of the firm.

Q How much is your understanding that the firm owned in the bank?

MR. SMITH: We object to this as being absolutely irrelevant to the qualification of the Judge.

MR. BATES: May I be heard, your Honor?

THE COURT: Go ahead.

MR. BATES: Mr. Smith says in his pleadings - - -

MR. SMITH: This is on the merits, your Honor.

MR. BATES: It's not on the merits. He pleads that ten shares of stock were transferred to Judge Carrillo on December 10, 1970, before he got on the bench. I am trying to show that as of the time Judge Carrillo got on the bench, all of the stock except for one parcel was completely without the area of the Receiver. He says we did nothing to get those shares. If there is tainted stock, it must have come about through the Receiver, according to his language. The only thing this Receiver has ever touched was the forty shares, which was agreed to by all parties.

MR. SMITH: I would agree with that. It is his failure to touch the other 360 shares that we complain about.

MR. BATES: I'm touching on that.

MR. SMITH: But it's on the merits.

THE COURT: Well, go ahead.

Q Did you individually own stock in the bank before January 1st, 1971?

A Individually?

Q Yes, sir?

A I don't think so.

Q You only owned it as a partner in the firm of M. Guerra & Son?

A I believe so.

Q Do you know when your stock was taken out of M. Guerra & Son partnership?

A I couldn't say exactly, no.

Q Did you participate in its being sold?

A No, I think Joe handled that.

Q But he handled it with your approval?

A Oh, yes. If he handled mine, it was with my approval.

Q And you have no objection to the method or time or place of its disposal?

A Joe was to do with it whatever he thought best.

Q And you approved?

A Yes, sir.

Q Now, you have been in this law suit from the first day, have you not?

00512

A Yes, sir.

Q And you are still in it, still have an interest in it?

A Yes, sir.

Q And you are aware that Judge Carrillo took this bench on January 1st, 1971, as presiding Judge here?

A Yes, sir.

Q I believe he took Judge Luna's place?

A Yes, sir.

Q Judge Luna from San Diego?

A I recall the name. I never knew him.

Q We never had any hearing before him?

A I don't recall any.

Q Since Judge Carrillo has been on the bench, have you maintained your ordinary interest in these proceedings?

A I think so.

Q Have you felt any pressures evidenced by any of the alleged interests Judge Carrillo is alleged to have had in the outcome of this law suit?

A I haven't detected any. Of course, I am not too much in touch with the thing.

Q But you still have an interest in it?

A Yes, sir.

Q If anyone had brought any pressure to apply on you, or tried to make you act against your will or against your interest, you would certainly have known it?

00513

A I believe so.

Q Has that happened?

A No.

Q Has anybody intimated that it would happen?

A Not to my knowledge.

MR. BATES: Your witness.

MR. SMITH: Your Honor, while we object to this testimony and move that it be stricken as irrelevant, if it is admitted then we do want to cross examine.

THE COURT: I think it's irrelevant. The whole thing is irrelevant. But I am letting it go in, so go ahead.

- - o - -

EXAMINATION BY MR. SMITH:

Q Mr. Guerra, you signed one of the deeds that brought on this receivership, attempting to convey to Clinton Manges your roughly one-sixth interest in M. Guerra & Son ranch lands. I believe that was done in 1968, is that right?

A I may have. I don't remember the details.

Q And March 31st, 1969, you then joined J. C. Guerra in executing a deed conveying the entire 72,000 acres of ranch lands to Clinton Manges, did you not?

A I probably did. I don't know exactly. But if you say so, I guess so. It may be, I don't remember exactly the date.

00514

Q But you did do it, just don't remember the date?

A Probably so.

Q Now, you are a rancher, are you not?

A I like to think so.

Q Are you engaged in any other businesses or professions?

A No.

Q Mr. Guerra, it was our understanding from everyone we talked to, back at the beginning, that you never had any intention of going out of the ranching business in Starr County, and that when this was all wound up you were to come up with your land. Was that your - - -

A Not entirely, no. You kind of dream about other things. There may at this time have been something else I had in mind.

Q But you did come up with about 12,000 acres?

A Yes, sir.

Q And that is about what you would have been entitled to according to your interest in the partnership?

A About that.

Q And the truth of the matter is, your deal with Manges to convey the whole thing, and joining him as plaintiff to ask for this receivership, was designed to force all other partners of M. Guerra & Son to sell their interest, you knowing all the time that you would come up with your land, you would have a partial Judge on the bench?

00515

A No. Everybody else got land too.

Q Just three of them. And you sold yours twice, once just yours and then everybody else's. And then to come up with your full interest? I wonder if you would explain that for us?

A They did too, everybody did.

Q How much did M. A. Guerra get?

A Well, he sold everything.

Q For about half price?

A Well, price is not my - - - that's his own.

Q Well, you know land in this County is worth about a hundred dollars an acre, isn't it?

A Probably now it is.

Q And that was probably so in 1969 when you made that deal, wasn't it?

A I wouldn't know it would be worth that.

Q It was worth more than fifty-four dollars an acre, wasn't it?

A That was a matter of an offer and an acceptance.

Q But you did come up with your full interest in the land.

A Well, I wouldn't say full interest. I bought 12,000 acres.

Q It's within a thousand acres, isn't it?

A Well, I bought it, yes.

Q Bought it back from the Receiver?

A Yes. Didn't the others do the same thing?

00516

Q No, sir, not Mrs. Jeffries or M. A. - - -

A Well, those that have land.

Q Yes. But you sold yours, and you forced others to sell theirs - - -

A I did what everybody else did. Everybody sold, I bought.

MR. SMITH: That's all.

- - o - -

RE-EXAMINATION BY MR. BATES:

Q You didn't get \$118,000.00 of income tax paid for you, did you?

A No, sir.

Q You had to pay that yourself?

A Yes, sir.

Q And M. A. Guerra got that \$118,000.00 plus \$230,000.00, didn't he?

A That's what the contract said.

Q So that was - - -

MR. SMITH: Your Honor, I am going to - - -

MR. BATES: I'm just answering your questions.

MR. SMITH: Your Honor, this is highly deceptive.

If he keeps his land, he doesn't pay any income tax, that's the whole point. And this is all on the merits.

MR. BATES: Your Honor - - -

THE COURT: I think I'll just wipe out all of

00517

this testimony. I don't think any of it has any bearing on the thing I am here for.

MR. BATES: Your Honor, I think it has a bearing on the partiality, if it affected any transaction.

THE COURT: partiality doesn't make any difference.

MR. BATES: Interest is indicated by partiality or lack of it.

THE COURT: That wouldn't make any difference.

MR. BATES: Well, I have to respectfully disagree. If the man has an interest - - -

THE COURT: I was disqualified in the water suit, and there was no evidence of any partiality.

MR. BATES: That, I suppose, was a matter of fact proved - - -

THE COURT: That's what I'm looking at in this case.

MR. BATES: Well, if the Court please, if you are ready to make a ruling, I can't stop you.

THE COURT: What I am here for is to hear anything that would have a bearing on the case, the disqualification.

MR. BATES: I didn't open this line of questioning, your Honor. It was directed solely at the evidence of partiality. Mr. Smith asks a question that I think this man should have a right to answer. It's just

not fair without his answer.

THE COURT: Frankly, I'm not going to pay any attention to it.

MR. BATES: Well, but I would like to have it in the record.

Q You did get your land?

A I bought it.

Q And you borrowed \$360,000.00 to buy it back from the Receiver?

A I did.

Q Nobody did you any favors there?

A No, sir.

MR. BATES: That's all.

- - o - -

RE-EXAMINATION BY MR. SMITH:

Q You realize that in February, when they deeded the forty thousand acres to Manges, they didn't make him put up what he owed the Receiver?

A No, I don't know that. I'm not that familiar with it.

Q The records show that. Did you know it took place?

A No, I don't.

Q Your signature is on that order approving that.

A Everything they brought to me that everybody else signed, I signed.

00519

Q Whose signature did you base yours on?

A Everybody's. Usually I was the last one to sign. I was less acquainted with it than anybody.

- - o - -

RE-EXAMINATION BY MR. BATES:

Q Mr. Smith used language to the effect that you didn't get your land from the Receiver free of liens and encumbrances.

Do you owe the Receiver any money on the - - -

A On the land I bought?

Q Yes, sir?

A Not that I know.

Q As far as the Receiver, it is free and clear?

A I paid the Receiver every penny they requested.

MR. BATES: Thank you, Mr. Guerra.

(Witness excused.)

- - o - -

MR. BATES: Would your Honor consider a short recess at this point?

THE COURT: Yes, sir, we'll take a ten or fifteen minute recess.

(Whereupon the Court was in recess for a few minutes, following which the Court convened and the hearing was resumed as follows:)

00520

RUBEN R. GUERRA,

Called as a witness by the Receiver, being first duly sworn,
testified as follows, to-wit:

EXAMINATION BY MR. BATES:

Q Please state your full name, please?

A Ruben R. Guerra, Roma, Texas.

Q Mr. Guerra, you are one of the parties to this law suit?

A Yes, sir.

Q I call your attention to a copy of a pleading entitled
Motion for Disqualification or Recusation. Are you fam-
iliar with that pleading, sir?

A Well, among so many papers, I think I have - - -

Q I would like to have you look at it, sir.

A I have read so darn many papers.

Q Just take it and look at it, please.

A (The witness complies.) Yes, I am familiar with it.

Q Have you read it before, sir?

A Yes.

Q Are you aware of the facts alleged in it?

A Well, like I say, I am depending on my attorney to do those
things. I just read it, and this is as far as I can go.

Q Are you aware of the facts alleged in it?

A Well, yes.

Q There is a great deal in it about bank stock, isn't there?

00521

A There was quite a bit of bank stock, yes.

Q Now, I want to call your attention to paragraph 2(b) of that pleading. Would you read that, please?

A (The witness complies. What is your question?)

Q I ask you if that is not the language that is contained in your motion to disqualify Judge Carrillo?

A My language?

MR. SMITH: We object to this line of questioning. Those things are in the motion, and I don't see the point in going over it with him.

THE COURT: What is the purpose of it?

MR. BATES: The purpose is, one, to ask if he did make that allegation, and two, to find out if it is a true allegation. And I wanted him to be aware of what it said.

THE COURT: Let me see it, please.

A I don't think I can give you an accurate answer on that.

THE COURT: All right, go ahead.

Q All right, that language is there, is it not?

A It's in there, but I'm not in position to qualify or disqualify, because - - -

Q I'm not asking you to disqualify.

A What are you asking?

A I am asking you if that is your position. Do you believe that one of the purposes of Clinton Manges in filing the

00522

original receivership suit was to cause a confirmation of his purchase of the majority of the bank stock?

A Well, so many things have come up, I can't confirm or disallow.

Q Well, as a matter of fact - - -

A In fact, I don't know whether that belongs in this Court or not.

Q As a matter of fact you were a party to this law suit originally, on its first hearing in this Court, back in November of 1968, and were represented by Mr. Jack Skaggs, were you not?

A Oh, yes.

Q And were present in Court during all the proceedings, were you not?

A Yes, but I don't have the mind to get all these facts. This thing has delayed so long, been dragging on, and I would like to know the reason why it has been delayed so long.

Q I would like to see if you remember this language that your attorney in 1968 used, in relationship to this language here in paragraph 2(b) of your motion to disqualify. Mr. Skaggs made this objection -- "Your Honor, I object to any inquiry by counsel as to bank stock." Now, this is when he was representing you.

A Yes.

00523

Q And he said, "Mr. Manges doesn't claim in his pleadings any interest in any bank stock. It is utterly immaterial - - -" and so on. Do you remember that?

A Well, it's very possible. So much has passed by, so much in writing - - -

MR. SMITH: Again we object to this line of questioning of this witness. The order, of which the Court can take judicial notice, placing this partnership estate in receivership, placed 444 shares of the bank stock in receivership, and during the pendency of the case Mr. Manges did acquire all or a substantial part of that stock. That is what that pleading is based on. It was taken into the custody of the Court, and Manges may not have claimed it at the outset, but he certainly did at the end.

MR. BATES: That is exactly my point. His pleading says one of the original purposes was to cause confirmation of the purchase of the controlling interest in the bank, and that language is his. This was all done while this business was in Court somewhere else.

MR. SMITH: That is exactly what we complain about. It was never taken up by the Court. The plaintiff and Virgil and Joe were going ahead - - -

THE COURT: Well, go ahead and question him.

MR. SMITH: Note our exception.

00524

MR. BATES: Will the reporter mark these two documents, please?

(Two instruments handed to the reporter were marked for identification as Receiver's Exhibits Nos. 6 and 7.)

Q And I will hand them now to you and ask you to read them over.

A (The witness complies.) Okay.

Q All right, sir, have you read both of the documents?

A Yes, sir.

Q Do you recognize them?

A Oh, yes.

Q Did you execute Exhibit 7 yourself?

A That is my signature, yes.

Q Then you did execute it?

A Oh, yes.

Q And is this the signature of someone holding your power of attorney, as attorney in fact?

A Yes, sir.

Q And you recognize it?

A Yes, sir.

Q Were these documents executed by your consent and with your authority?

A Oh, yes.

00525

Q Now, in this letter of March 16th, 1971, you entered into an agreement with Mr. Manges to do certain things in exchange for Mr. Manges doing certain things?

A Yes, sir.

Q And they speak for themselves, what both of you were to do?

A Yes, sir.

Q And on August 20th, some eight months later, you entered into Exhibit 6?

A Yes, sir.

Q Which is called a Settlement Between R. R. Guerra and M. Guerra & Son?

A Yes.

Q So for some time prior to March 16th, 1971, and after that on down to August 20th, 1971, you yourself were personally dealing with Clinton Manges, outside the receivership?

A I understood that this - - -

Q No, sir, just please answer the question.

A Well, of course that is true, yes. But I have something to say about it.

Q And it is true, then, from sometime in the year 1971, when Judge Carrillo first got on the bench, down to the time when you agreed on this settlement with the Receiver, you were dealing directly with Clinton Manges, or you and your attorney were, outside the receivership?

A Yes, but we had to.

00526

Q No, now - - -

THE COURT: Let him answer, counsel.

Q All right, why did you have to?

A Because my attorney, Jack Skaggs, from the beginning of this litigation advised us, recommended, to try to settle the matter outside the Court, because we stood no chance in the Courts in this District at all. And we had to abide by his recommendation, that's why we were dealing - - - in fact, Manges was mostly dealing with Jack, not me.

Q Jack didn't sign this letter, did he?

A He was my attorney. He approved it and asked me to sign it, so we could get it ironed out. He said that Clinton was running things. And Clinton would go to Jack more than I did.

Q Doing what -- to do what?

A Speaking about these matters.

Q To do what -- to what end?

A To make a settlement.

Q Well, isn't that what you did on March 16th, 1971?

A We had to do it.

Q Who made you?

A Jack .

Q Your own attorney made you?

A Yes.

Q How did he make you?

A Because he warned me of the danger of losing everything. That the Court in this District, he had no chance if he fought it out.

Q When did he do that?

A From the very beginning.

Q In 1968?

A All along.

Q And by virtue of those threats, then - - -

A Not threats, recommendations.

Q Oh, they weren't threats?

A I didn't say they were threats. He was recommending.

Why he knew about the condition and the situation in the Courts, I have no way of finding out. But he did recommend to get out of this Court, settle outside. That way, maybe we could - - - well, that we had practically no chance.

Q So to do everything you could to settle with the - - -

A Even if it wasn't to my satisfaction.

Q And you weren't satisfied with this letter of March 16, 1971?

A I have never been satisfied with this letter, or any other document.

Q Were you satisfied on August 20, 1971?

A No. I would like to have some accountants go over the

00528

figures.

Q That's not what I asked. You weren't satisfied when your attorney signed this letter and you acquired \$278,000.00 worth of property?

A We had to be satisfied for the time being.

Q And then in spite of the fact that your lawyer recommended you sign the letter, and seven or eight months later the settlement sheets, and you did so sign them, you are still not satisfied with these two items and the results thereof?

A That remains to be seen. I don't know what we can do later. But that satisfied the situation up to the point where we acquired the land.

Q And that's all you really want?

A And from there on out we would see what we could do.

Q Your land was what you wanted?

A I wanted everything that was mine. Wouldn't you?

Q And wanted to pay everything you owed?

A I did. And more.

Q Did you pay Sheinfeld, Maley & Kay nine thousand plus dollars?

A I never dealt with them. Jack did.

Q Did you agree to pay them?

A Not me. The firm, the partnership.

Q Well, will you read Section 2(c) there? And when "you" is used, it means you.

00529

A Well, I was one of the partners, and one partner binds all.

Q Just a moment, I want to clear that up - - -

MR. SMITH: Your Honor, I don't have any objection to this on the merits, but I certainly object here. It has nothing whatever to do with the qualifications question.

THE COURT: Well, I agreed to let it in.

A It's written there, yes.

Q Are you telling the Court now that you weren't doing this individually?

A Well, you got me all mixed up - - -

Q Read right here, Mr. Guerra.

A Well, I signed the letter individually.

Q So you weren't acting just as a member of the firm?

A Well, I guess not.

Q And you didn't get your land as a member of the firm, but as Mr. R. R. Guerra?

A I don't know how I got it, but - - -

Q You haven't seen the deed?

A Yes. In fact, the fact I have it, that's all I need - - -

Q Do you owe any money to the receivership on your land?

A I don't think so.

Q Well, you know so.

A I don't know until I get an accounting.

00500

Q As a matter of fact, you agreed here to pay a reasonable attorneys' fee, and some eight months later, agreed that a reasonable fee to the attorneys was \$9,699.00. Have you ever discharged that obligation?

A I think we are coming to that.

Q But you haven't as of this date?

A No.

Q And you represented to me as the Receiver, over your signature and the signature of your partners, that that had been paid, did you not?

A I understood this was the final accounting.

Q Did you represent to Mr. Hendrix, my lawyer, and to me as Receiver, that you had already paid that bill or - - -

THE COURT: Counsel, I have heard all of this I want. I'm sick and tired of it.

MR. BATES: Your Honor, there is one maxim of law that we do not seem to be acquainted with here, and that is that we come into Court with clean hands.

THE COURT: Counsel, we are not trying you or anybody else here. We are hearing the question of whether or not Judge Carrillo is disqualified.

MR. BATES: No, sir, we are not trying somebody for something particular, but we are trying a petition brought by him to recuse the Judge - - -

THE COURT: He doesn't have to have clean hands on that.

00531

MR. BATES: He doesn't?

THE COURT: No, sir.

MR. BATES: Then I offer these two documents to impeach his credibility.

THE COURT: Impeach his credibility?

MR. BATES: To impeach his credibility. He swore to the Receiver and in the Court over his signature that he had paid that attorneys' bill.

THE COURT: It's not a matter of credibility for him at all. It's a question of whether the Judge is disqualified.

MR. BATES: He testified to facts in their petition, and said he read them and they were probably right.

THE COURT: Okay. That's a pleading by his attorney.

MR. BATES: Your Honor, I let him read it twice.

THE COURT: Yes, that's right. I think we are wasting a lot of time here on matters that don't even touch the thing top, side nor bottom. I wanted to give you a chance to put in anything that pertains to the question of the Judge's qualification. Now, I am not here to vindicate anything you did, or criticize anything you did, or anything like that. I am just here to determine whether the Judge is disqualified.

MR. BATES: Your Honor, I have an obligation

00532

to myself and to the receivership, especially in view of this letter to the Judicial Fitness - - -

THE COURT: I am not interested in the Judicial qualifications section of the State Bar. I just have no interest in that or in deciding anything that has any bearing on that.

MR. BATES: But counsel has carefully seen to it that the Court received copies of all this - - -

THE COURT: But of course you know that the Court is not paying any attention to these things the lawyers say. I am going by the evidence here.

MR. BATES: Well, I would like to offer these two documents in evidence.

THE COURT: All right, they will be admitted.

Q Now, Mr. Guerra - - -

MR. BATES: Your Honor did say these are admitted in evidence?

THE COURT: Yes.

(The same were received in the evidence, and true copies thereof are contained in the appendix of exhibits hereto.)

Q Mr. Guerra, at one time when you were a partner in M. Guerra & Son to the full extent, the partnership owned some bank stock, is that right?

A Oh, yes.

00533

Q Who had control of that bank stock?

A We never knew. I think Joe used to keep it, without our consent or knowledge, somewhere at his home or in his safe. When we found out we thought it wasn't right, but what can you do?

Q Do you know when that stock was disposed of?

A It was all done with our prior knowledge, whatever transactions he had with anybody.

Q Do you know when it was disposed of?

A I don't remember.

Q All right, now did anyone besides your own attorney tell you you didn't have a chance in this Court up here, anyone connected with this law suit?

A Well, I think my attorney's advice was sufficient for me. I didn't go around consulting a bunch of - - -

Q And your attorney was from Harlingen, eighty-five miles from here?

A Yes, sir, and we met frequently, and from the beginning he did say we didn't have a chance.

Q And you believed him?

A I had to. He was the only one I could talk to about it.

Q He was the only one you could trust, too, wasn't he?

A I imagine.

Q Did you trust him when you signed that letter?

A I have no distrust in the man.

Q My question was, when you signed that letter of March 16th, 1971 did you still trust him?

A He was still my attorney.

MR. SMITH: Your Honor, whether he trusted his former attorney, I don't think relates in any way to the Judge's disqualification.

THE COURT: Well, it's already in.

MR. BATES: I think that's all the questions I have.

MR. SMITH: Your Honor, on the question of the credibility of this witness, I would like to explain the circumstances of the letter. I think it is irrelevant to the - - -

THE COURT: Yes, I think it is.

MR. SMITH: But if we reserve our right on the merits, the whole matter of these attorneys' fees is explained through the relationship between Mr. Guerra and his former attorney. They relied on Mr. Skaggs' assurances when they signed that. The receiver had no responsibility in the - - -

A Mr. Smith, I haven't had a final settlement with Mr. Skaggs' firm yet.

MR. SMITH: That's the whole thing, he hasn't had a final settlement with them yet, and that is a thing that will be taken care of.

00535

MR. BATES: I needed to ask you this, Mr. Guerra -- is that settlement you handed me there, with Skaggs' firm or with me as Receiver, in which you got the \$278,000.00 worth of land?

MR. SMITH: Your Honor, the receivership was released, and there is no way that they can - - -

MR. BATES: But did you represent it to me at the time as having been done - - -

THE COURT: Senator, I am not here to vindicate or to criticize anything you have done. I am trying to stay completely out of that.

MR. BATES: Your Honor please, he hasn't.

THE COURT: Maybe not, but this is not the proper forum to hear it.

MR. SMITH: Your Honor, if the Receiver had, promptly after - - -

THE COURT: Frankly, I am not going to pay any attention to a lot of this argument, Mr. Smith. We are doing nothing but wasting time.

- - o - -

EXAMINATION BY MR. CHURCH:

Q Mr. Guerra, I have just a couple of questions. I believe you stated Mr. Jack Skaggs made you settle with Mr. Manges?

A Well, now, he didn't make me. He recommended the settle-

ment even though it was at a sacrifice to me, because it was better to come out with something than to lose it all through the Court.

Q Did you ask anybody to get Mr. Manges to settle with you?

A The only man that spoke to Manges and me about it was Mr. Skaggs.

Q Did you ever go to Mr. Vannie Cook and ask him to get Mr. Manges to settle with you?

A I went to see Mr. Butler and Mr. Cook to discuss the matter with them. I didn't ask him.

Q Isn't it true you asked Mr. Butler and Mr. Cook to get Mr. Manges to settle with you?

A It wasn't asking. We were discussing the matter, and Mr. Cook told me he thought it would be better for everybody to come to a settlement. But I didn't go up there and ask or beg for a settlement. Because he had indicated perhaps some interest in some of the property Manges was to acquire.

Q And it is your testimony under oath that you did not ask Mr. Cook to intervene in your behalf to get Mr. Manges to settle?

A I only thanked him, that if he would bring a fair settlement about, I thanked - - - I would thank him for it.

Q So you did want to settle it?

A Of course I did.

MR. CHURCH: All right, I have no further ques-

tions.

- - o - -

EXAMINATION BY MR. SMITH:

Q Mr. Guerra, had Mr. Skaggs at the time of this letter, accepted employment from Mr. Manges, when you made this recommended settlement based on these documents? I believe this is March 16th, 1971 -- was Mr. Skaggs at that time representing Mr. Manges in the Groos National Bank controversy?

A I don't know. I just don't know. He might have. I was not able to get Jack for some time prior to his giving up the case. I just couldn't contact the man, never could. I had to talk to his Secretary and ask her to relay the message, ask him to call me, that certain things were coming about. It was hard to contact him. And I think you had the same experience.

MR. SMITH: That's all.

- - o - -

RE-EXAMINATION BY MR. CHURCH:

Q On this settlement, there is an earlier settlement in which you reached a settlement with Mr. Manges in Mr. Johnson's office in McAllen, did you not?

A I have an idea - - - I would have to see the papers.

00538

Q You didn't sign the papers.

A I don't remember just what it was, whether I signed it or not. I can't be sure. If you have the papers I can tell you more definitely.

MR. SMITH: Your Honor, that settlement is attached to one of our pleadings. We have no objection to going into it on the merits of the case, but it has no relevance here. It was in February, 1970 — I have the date here.

MR. CHURCH: Well, just mark this, please.

(An instrument handed to the reporter was marked for identification as Plaintiff's Exhibit No. 18.)

Q Mr. Guerra, I hand you what is marked as Plaintiff's Exhibit 18, and ask you to state whether or not that isn't the original settlement you made with Mr. Manges?

A Yes, that is my signature.

Q And that was made in 1970, or a year prior to the one we are talking about?

A Yes, according to this date.

Q And Mr. Skaggs was representing you in 1970?

A Yes, sir.

Q He was present in Mr. Johnson's office?

A I think he had all to do with the matters.

Q And you were present?

00539

A That's right.

Q And Manges and Skaggs and you reached this agreement?

A Yes.

MR. CHURCH: I would like to have this received in evidence, your Honor, Plaintiff's Exhibit 18. Have you seen it, counsel?

MR. SMITH: We have a copy of it attached to our pleadings, and I presume this is a correct copy.

THE COURT: All right, it will be admitted.

MR. CHURCH: We would like permission to substitute a copy of that, your Honor. It is an original.

THE COURT: That will be all right.

(Such exhibit was received in the evidence, and a true and correct copy thereof is contained in the appendix of exhibits hereto.)

MR. CHURCH: And we have no further questions.

(Witness excused.)

- - o - -

MR. BATES" Your Honor, I want to get this order of dismissal of the bankruptcy proceedings marked.

(The same, was, by the reporter, marked for identification as the

00540

(Receiver's Exhibit No. 8.)

MR. BATES: And I would like to offer it in evidence, your Honor, on the question of custodia legis, and which reflects on the Judge's actions before or after this proceeding in Brownsville.

MR. SMITH: We have no objection other than it is irrelevant, like most of this other stuff he has been putting in the record.

THE COURT: Okay, I will permit it to be introduced.

(The same was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

MR. BATES: Your Honor please, except for Mr. Skaggs, I don't have any other witnesses.

MR. SMITH: What does counsel propose to prove by Mr. Skaggs?

MR. BATES: I propose to find out if Mr. Skaggs threatened him with partiality of this Court here, that is the major item.

MR. SMITH: I think the Court can take judicial notice of this. Mr. Skaggs filed this in two different Courts and in the Federal Court, trying to keep it out of here.

00541

MR. BATES: Your Honor please, we of course think it does. And we properly subpoenaed him.

THE COURT: Well, like I say, Mr. Skaggs is tied up with two other Courts.

MR. BATES: I will be glad to wait until he gets untied.

THE COURT: Well, I want to wind this thing up. I don't think the testimony would be material. And furthermore, unless his client agrees to it, Mr. Skaggs can't testify to any - - -

MR. BATES: No, sir, he can testify to matters I showed the Court this morning, and the matter of having drawn these documents, and the matter of good faith or lack of it as far as he represented to Mr. Manges and the Receiver in writing.

THE COURT: Well, the instrument speaks for itself.

MR. BATES: But your Honor, some of them I can't get in without him.

MR. SMITH: We might be able to stipulate - - -

MR. BATES: I am not interested in a stipulation from Mr. Smith. Each time I do that I find myself on the outside looking in.

THE COURT: Well, if he will stipulate - - -

MR. BATES: I want to ask him myself, about the

00542

background of some of these documents. I want to know if the Receiver was entitled to depend on them in presenting to a Court - - -

MR. SMITH: That goes to our exception that the Court has already overruled. There is no use in putting on evidence to show that our bill of exceptions should have been overruled, when it has already been done.

THE COURT: Well, during the noon hour let's see if you can get hold of Mr. Skaggs.

MR. BATES: Your Honor, I had a very unsatisfactory talk with him about coming here. I would rather the Court did not delegate that chore to me.

THE COURT: All right. Let's be back at one-thirty.

(Whereupon the Court, at 12:00 o'clock noon, was recessed until 1:30 PM, at which time the Court convened and the hearing was resumed as follows:)

THE COURT: Counsel, I put in a call for Mr. Skaggs at his office, and they said he was in Sinton. I called Sinton and talked with Judge Miller there, and Mr. Skaggs was not there yet. Judge Miller said they had a hearing set at two o'clock. I understand Mr. Skaggs did call back after lunch, while I was not here, and he talked

00543

to Mr. Van Dresar. Van can tell you what he said.

THE REPORTER: Mr. Skaggs did call from Sinton and talked to me, and asked me to tell the Court and counsel that he was to be engaged in a hearing in Sinton this afternoon and could not get here, but that in any event he considered the subpoena that had been served on him to be defective and that he was not properly served, and he did not consider himself to be under subpoena in this case. He also said that in no case would he testify to anything in this case which would be privileged under the attorney-client relationship.

MR. BATES: I have no quarrel with anything he said except about the validity of the subpoena. I believe he was served in the Courthouse in Edinburg by one of our deputy Sheriffs.

THE COURT: What did you expect to prove by him?

MR. BATES: I expect to prove by that letter I showed the Court this morning, and other witnesses, expect to prove the validity or lack of validity of the evidence his client gave this morning about the implied threats about the judicial situation in Starr County, Texas, and whether that involved an interest of the Judge. I expect to prove by his testimony the Statement of Facts in this 1968 matter, and by the Statement of Facts his statement that he made about the bank stock, on the validity of the

pleading of interest of the Judge in that respect. That is just briefly it. Those things bear on whether or not this Judge was interested in the outcome of this suit. I think it is extremely important. He was the attorney the Receiver dealt with, representing one of the present claimants. I am not trying to stall this -- we got out the subpoena in the proper way. If the Court will give us a few days to go into - - -

THE COURT: I don't know. The thing of it is, I am starting in next week on three weeks of jury trials.

MR. BATES: I would be glad to do it next Saturday, your Honor. My questioning of Mr. Skaggs should not take an hour, including cross examination. I will do it any time the Court wishes. If Mr. Skaggs will come to Hidalgo County tomorrow morning, I will be glad to meet over there.

THE COURT: Well, the Courthouse will be closed.

MR. BATES: Judge, I don't know how else I can evidence good faith.

MR. SMITH: Judge, I think I know what the defect in the subpoena was -- it was not accompanied with the usual dollar. I think that is probably what Mr. Skaggs is talking about. I was served in this case too, and I didn't get my dollar. But I think that is probably the grounds of his claim of invalidity. But our position is

that the only things Mr. Skaggs would testify to, what Senator Bates has indicated, are irrelevant and this thing should not be delayed for that. It might be pertinent on the merits, and there will be plenty of chance for that. Then too, there is not all this great injustice involved. If some other Judge presides in this case, a fair and impartial Judge won't do anything to hurt anybody. I can't see any necessity in delaying this just to hear evidence that will not likely be relevant.

MR. BATES: Please the Court, this case has been on the docket of this or some other Court since 1968. We have been called on by the Court so seldom in this thing because of the interminable delays at the instances of the partners here, that I think another week to get into the heart of this matter won't hurt anybody. There is nothing hanging in the balance -- no notes being called, no foreclosures, just involves stagnant property that has been hanging in the balance for years.

THE COURT: I would contest that. Roughly what is involved is a half interest in minerals formerly owned by M. Guerra & Son and half of them were conveyed to Mr. Manges. And I believe the minerals involve around, roughly, 22,500 mineral acres. To have that many minerals inactive during a leasing period as we are in now, is damaging to the estate and has been since 1968.

00546

MR. BATES: If the parties have ever desired to lease any minerals in this estate, they have never presented any request to the Receiver or the Court. Not one of them, not any group of them, not one partner. The Receiver needed cash flow so badly that he had to go borrow it at the opening of this. If the Court please, I ask for a week from Saturday. I know the Court will be tied up, and I am sure the Judge will be tired after a full week's trial, but one week from tomorrow won't jeopardize anybody's interests.

THE COURT: Well, I was thinking about working tomorrow.

MR. BATES: If Mr. Skaggs can be there tomorrow, I'll be there.

MR. SMITH: We will make ourselves available. Anytime it can be heard we will be there, but I think it is an unnecessary waste of time of the Court and counsel and the parties to have any further proceedings. I don't see that anything Mr. Skaggs has is pertinent.

THE COURT: Well, let's go ahead with what we have.

MR. BATES: I am through, your Honor, except for Mr. Skaggs. Mr. Church may have something.

MR. CHURCH: I have just one or two questions of Mr. Jeffries, please.

00547

JAMES A. JEFFRIES,

Called as a witness by the plaintiff, being previously sworn,
testified as follows:

EXAMINATION BY MR. CHURCH;

Q For the record, you are Mr. James A. Jeffries, the same
one who testified here earlier?

A Yes, sir.

Q I believe you testified Mr. Manges entered into a contract
with your wife, Virginia G. Jeffries, and you consummated
that contract?

A Yes, sir.

Q And isn't it correct that Mr. Manges overpaid Mrs. Jeffries
by some \$33,000.00?

A No, that is not correct.

Q What is correct.

A I don't have the exact figures in my head. But it has been
agreed on what Mr. Manges has coming back on what he paid
for income tax.

Q But he has overpaid her?

A Yes, sir.

MR. CHURCH: That's all, your Honor.

MR. SMITH: No questions. I just think that
should be stricken as irrelevant.

(Witness excused.)

00548

THE COURT: Mr. Smith, do you have anything?

MR. SMITH: I would just like to put in the record the subpoena that was served on me. Let me ask the reporter to mark it.

(Such exhibit was, by the reporter, marked for identification as Defendants' Exhibit No. 19, was received in the evidence, and a true copy thereof is contained in the appendix of exhibits hereto.)

MR. SMITH: What I have to say is in the pleadings and briefs, and if there is any testimony they want from me I want them to ask me today or to release the subpoena.

MR. BATES: I will release the subpoena.

MR. SMITH: Your Honor, I have just talked to Ruben Guerra, and he has committed himself to a trip a week from Saturday. He will be here tomorrow, and if Mr. Skaggs can be here tomorrow, that will be agreeable.

THE COURT: If he refuses to come, you will have to get out another subpoena.

MR. BATES: That is reaching the conclusion that the subpoena is void. He owes the duty to the Court to come before the Court and make such allegations about the subpoena rather than just disregard it.

THE COURT: If you are trying to prove any communication between he and his client - - -

MR. BATES: He has every right to claim that.

THE COURT: Now, the pleadings he has filed - - -

MR. BATES: I am not intending to prove that. It's about statements he made in Court and in writing.

THE COURT: If you have the record of that, why not use it?

MR. BATES: That is not certified, your Honor.

MR. SMITH: If it's in the record of the Federal Court matter, I will stipulate to it.

MR. BATES: It's not. It was in this Court, in the first case, when I wasn't the Receiver.

THE COURT: If that was before the Judge went on the bench, I don't think that would be material.

MR. BATES: Your Honor, it's about the entire transaction about the bank stock, of which Judge Carrillo was to have wound up with ten shares. It goes to the document I presented to the Court this morning.

THE COURT: Well, I can't see the materiality of that, Senator. I just can't see it.

MR. BATES: If your Honor please, I have to fall back on the theory I spoke to the Court about. If Judge Carrillo is to be disqualified because of interest, we are entitled to show lack of partiality or evidence of partial-

00550

ity. Mr. Skaggs statements in Court do not tally with that.

THE COURT: Well, I think you probably have other evidence in there to substantially - - -

MR. BATES: No, sir. I have the testimony of Ruben Guerra, which is absolutely contra.

THE COURT: True. But frankly I don't think that is the criteria to go by.

MR. BATES: But it is one of about four or five things.

THE COURT: I can't see that at all. I haven't read that in any of the decisions.

MR. BATES: Your Honor please, there is a lot of things in this case I haven't read. I have never seen any case where the Receiver of a Court where the Court was disqualified after some four or five million dollars worth of property has been moved. That's the reason the Court should let us do everything we can to show it. Mr. Skaggs is important to that.

MR. SMITH: Your Honor, I think that is a specious argument. A fair and impartial Judge could take this case over now, and he can take into consideration anything involved in it, and it is not necessary that this particular Judge finish the case.

THE COURT: Well, I can't say whether the deci-

00551

sions say that or not. It would take a full scale hearing, and I don't - - - in my opinion, if I render a ruling, it is not going to be with reference to whether the decisions of that Judge were correct or not. In other words, I can't hear that, because it would take a full scale hearing, and that is to be done if the Judge is disqualified. Then all that can be gone into.

MR. BATES: I understand, but I think what Mr. Skaggs will offer has a direct bearing on the issue.

THE COURT: I disagree. Gentlemen, if you have no further evidence, I will close the evidence.

MR. BATES: Then I will put them on in a bill of exceptions, to show what I would prove by Mr. Skaggs.

THE COURT: All right.

MR. BATES: I would like to have the letter dated March 24, 1971, signed by Mr. Jack Skaggs, marked as Receiver's Exhibit No. 9, and a set of documents beginning with the release from the National Bank of Commerce of San Antonio to R. R. Guerra, together with the accompanying Notary Public's affidavit, a release of the \$150,000.00 lien dated May - - - I mean note, dated May 14, 1968 in the amount of \$150,000.00, then a letter dated March 18th, 1971, signed by Burleson Smith, attorney at law in San Antonio, directed to M. Guerra & Son, a letter dated March 24th, 1971, directed to M. Guerra & Son, Jim Bates, Receiver,

and signed by Jack Skaggs. All that will be marked as Receiver's Exhibit No. 10.

(Such exhibits were, by the reporter, marked for identification as Receiver's Exhibits Nos. 9 and 10, were received in the evidence for consideration in connection with the Receiver's bill of exceptions only, and true and correct copies thereof are contained in the appendix of exhibits hereto.)

MR. BATES: I expect to further prove by Mr. Skaggs that as a result of the negotiations outline in his letter, Exhibit 9, Mr. Skaggs and his then client, Ruben Guerra, now represented by Mr. Garland Smith, were the orinators of the offer heretofore offered and designated as Receiver's Exhibit 7, and that the same was at the precise instigation of the said Ruben Guerra and his attorney, Mr. Jack Skaggs, which lead to the terms of the said letter agreement marked Receiver's Exhibit 7, and some eight months later, on August 20, 1971, was presented to the Receiver -- without prior notice before that date -- was presented to the Receiver, who in turn presented it to the Court for his approval. And in Receiver's Exhibit 6, the lead name in requesting the Receiver to approve such arrangement was Ruben R. Guerra.

00553

We further expect to prove by Jack Skaggs that at no time did he threaten or intimidate his client regarding the political activities of the bench of the 229th Judicial District Court in and for Starr County, Texas. We further expect to prove by him that paragraph 2(b) of the application to recuse the Court or disqualify the Court, are wholly and totally untrue. We further expect to prove by him that in November, on November 12th, 1968, in a proceeding had in this Court before Honorable Woodrow Laughlin, the prior Judge of the 79th Judicial District Court, that the position of Mr. Ruben Guerra was wholly and diametrically opposed to the allegations in Paragraph 2(b) of the pleadings on file here. And further, related matters in that unverified record. As far as I can tell, the original of that statement of facts is in the Court of Civil Appeals in San Antonio, or in the Supreme Court of Texas. It is not here available.

We further expect to prove by Mr. Skaggs that he and Mr. Garland Smith, representing H. P. Guerra, Jr., M. A. Guerra, H. P. Guerra III and Ruben Guerra, secured a stay order from Reynaldo Garza, Presiding Judge of the United States District Court for the Southern District of Texas on the 22nd of October, 1969, ordering the then as yet unqualified Receiver to cease and desist from any activities regarding the estate or the properties of M. Guerra & Son, a partnership.

00554

THE COURT: Gentlemen, do you wish to present any argument?

MR. SMITH: Your Honor, since that was presented under a bill, we will make no answer to it. I believe the matter, as far as we are concerned, has been adequately taken care of as far as proof. I think the evidence that has come in today has been irrelevant, and I don't believe has touched the matter of the disqualification of Judge Carrillo. I think the sort of thing they are thinking of, that possibly some people agreed to it, or submitted it, does not in any way affect the disqualification. The parties cannot by agreement make him qualified if he is disqualified. Otherwise, I believe our briefs are adequate.

MR. BATES: I have nothing, your Honor.

MR. CHURCH: I have no argument.

THE COURT: Well, gentlemen, it is kind of hard for a Judge to make this decision regarding a fellow Judge, but it is the opinion of the Court that Judge Carrillo is disqualified as of - - - well, say the first of February, 1971. I don't want my ruling in any wise to prejudice the rights of any of the parties or reflect on anyone. But I feel that the promiscuous - - - Judge Carrillo, I think, has been honest. I don't think he feels he is disqualified or has done anything wrong. But the fact remains that he

00555

unquestionably - - - the negotiations with reference to the sale of the - - - or the transfer of the house and lot in Benavides, took place after - - - that is, it originally took place before he went in office, and was finally consummated after he was in office. Also, there was a lease on a number of acres of land, I don't know how many acres -- you might say a free lease for a short period of time, I don't remember how long, which would have amounted to a gift. Then the lease on some five or six thousand acres of land at a price of \$5,000.00 per year for three years, payable at the end of the term, and also for the right of Mr. Manges to terminate at any time he wished, would be a financial interest that would go with this case. It would be expensive for him to move his cattle. And he would have to pay up what was owing on the lease at that time. Also, Mr. Manges is by far the greatest controlling stockholder of the bank, and the appointment as a director would have been a financial interest to him, even though small in comparison with the amounts involved in this law suit. And then the fact that Mr. - - - that the bank, in which the litigant, Mr. Manges owned possibly three-quarters interest in it, by far the controlling interest, was making loans to him up to two or three hundred thousand dollars. As I recall, one of the notes, for two or three hundred thousand dol-

lars, was payable in one year, and the fact that the note could easily be demanded to be paid at maturity, or extended at the will of Mr. Manges. All of these things, and other matters, are like the sword of Damocles, hanging over the head of the Judge by a thin hair. I don't see how a person in that predicament could possibly render an impartial judgment. I couldn't. It's bad, but this is a matter that can be raised at any time. It could be raised after judgment, and it would have to be done all over again. It would be just wiped out. If you have another Judge hear it, he could go over this matter, and vindicate the decisions of Judge Carrillo, if that is correct, or render whatever judgment is correct. That is the reason I don't want in any manner to make any ruling that would in anywise be construed as either ratifying and confirming, or the opposite, holding that there was anything unjust. In my opinion, in other words, what I am saying is I am not accusing - - - no, that's not exactly the word -- I don't mean to hold any of his decisions are not correct. I have no way of knowing that. The fact that they were correct or not correct, in my opinion, does not touch the question of disqualification. It goes to the root of our system itself. Our Courts are under pressure and subject to criticism on many things that are unjust. And our Courts are the very foundation of our system of society.

And if our Courts become corrupt, then there is no justice in the land. And where there is no justice in the land, the only recourse is revolution and bloodshed, and then all people suffer. We, as Judges, must be like Caesar's wife, above and beyond reproach. It is hard enough to render justice and meet the criticism of people on decisions we are called on to make that are controversial, without the burden of anything else that can at all be questionable. I like Judge Carrillo. I have always thought a lot of him. He is young, and he is inexperienced on the bench, but he was kind of caught in a web of circumstances that bound him in this particular case. So it will be the judgment of the Court that he is disqualified.

MR. BATES: Please the Court, on behalf of the Receiver, I ask the Court to make findings and conclusions of law, and give such notice as is necessary in open Court at this time, to appeal the judgment.

THE COURT: I don't know whether you can appeal it or not. I hope you can.

MR. BATES: Well, if we can't, we will try the mandamus route.

THE COURT: I hope you can. Either way I decide on this, the appellate Court can decide the opposite.

MR. BATES: Should I make a more formal request

00558

than I make now for findings and conclusions, or will
that suffice.

THE COURT: I think that will be sufficient.

All right, gentlemen, Court is adjourned.

- - o - -

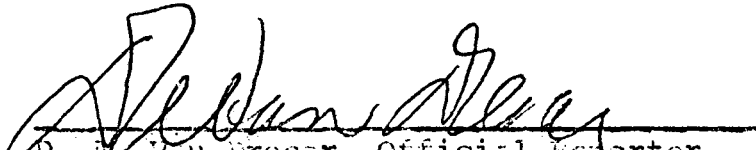
00559

THE STATE OF TEXAS)

COUNTY OF HIDALGO)

I, D. A. Van Dresar, Official Reporter for the 93rd Judicial District Court of Hidalgo County, Texas, do hereby certify that I was present in such capacity and reported in shorthand all of the hearings had in the above styled and numbered cause upon the herein captioned dates; that I thereafter, in person, reduced my said shorthand notes to typewriting, and that the above and foregoing three hundred forty-two typewritten pages contains and constitutes a full, true and correct transcript of all of the evidence adduced at such hearings, together with a correct verbatim report of all objections, remarks, replies, rulings, comments and exceptions had in connection therewith; and that the accompanying Appendix of Exhibits contains true Xerox copies of all documentary evidence received with exception of Defendants' Exhibit No. 18 and Defendants' Exhibit No. 1 to Bill of Exceptions, both omitted at the suggestion of counsel for the defendants.

IN TESTIMONY OF ALL WHEREOF, witness my hand officially
this 15 day of July, 1973.


D. A. Van Dresar, Official Reporter,
93rd Judicial District Court, Hidalgo
County, Texas.

00560

THE STATE OF TEXAS,
COUNTY OF STARR,
COURT NO. 1

Case No. 2441

WITNESSES
TEXAS, this 24th day of

Transcript of the Evidence

at Sept 1975 at STARR CITY,
JUAN ERASMO SAENZ
DISTRICT CLERK, STARR COUNTY TEXAS

By [Signature] Deputy

Filed 26th day of July
A.D. 1973 at 9:05

[Signature]
[Signature]