

**INQUIRY CONCERNING A JUDGE
NO. 5**

NOVEMBER 4, 1975

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BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

NOVEMBER 4, 1975

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

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v.2
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1 THE MASTER: Are we ready to proceed?

2 MR. MITCHELL: We are ready.

3 MR. FLUSCHE: We are ready, Your Honor.

4 THE MASTER: All right.

5 MR. FLUSCHE: Your Honor, this morn-
6 ing we will continue with our presentation
7 of evidence with respect to Paragraph 2 of
8 the amended proceeding.

9 Today we will call as our first wit-
10 ness Juan Rievera.

11

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JUAN RIEVERA,

15

called as a witness, having been first duly sworn

16

upon his his oath to tell the truth, the whole truth

17

and nothing but the truth, testified as follows:

18

19

E X A M I N A T I O N

20

BY MR. FLUSCHE:

21

22

Q What is your full name?

23

A Juan Rievera, Junior.

24

Q Where do you live?

25

A San Antonio, Texas.

1 Q How are you employed?

2 A By the San Antonio Independent School District.

3 Q In what capacity?

4 A As assistant football and head track coach at
5 Edison High School.

6 Q Prior to the time you were employed at Edison
7 High School, where were you employed?

8 A I was at Fox Tech High School for three years.

9 Q How about prior to that?

10 A Crystal City Independent School District for two and a
11 half months.

12 Q How about prior to that?

13 A Seven and a half months in Edinburg with the
14 Edinburg Independent School District.

15 Q Prior to that, where were you employed?

16 A Benavides Independent School District.

17 Q Was that in Duval County, Texas?

18 A Yes, sir.

19 Q How long were you employed by the Benavides Inde-
20 pendent School District?

21 A Seven years.

22 Q In what capacity were you employed there?

23 A The first year there, I was an assistant coach and
24 the other six years I was head football coach.

25 Q During the course of your employment at Benavides,

1 did you have an opportunity to become acquainted
2 with Judge O. P. Carrillo?

3 A Yes, sir, I did.

4 Q Do you see him in the courtroom?

5 A Yes, sir.

6 Q Where did you live when you were in Benavides,
7 Texas?

8 A I lived in a house I rented from Mr. Carrillo.

9 Q O. P. Carrillo?

10 A Yes, sir.

11 Q Where is that house located?

12 First of all, do you know where B. C. Chapa
13 lives, the father of the Judge?

14 A Yes, sir.

15 Q Where did you live with relationship to the home
16 of B. C. Chapa?

17 A Right behind his home, Mr. Chapa's home.

18 Q In relation to the old high school, where did you
19 live?

20 A About a block and a half north, I would say.

21 Q Now, did you live in this house you rented from
22 O. P. Carrillo for the entire seven years you were
23 employed in Benavides?

24 A Yes, sir.

25 Q How much rent did you pay for that house?

1 A Fifty dollars a month.

2 Q Did that amount remain constant throughout the
3 whole period?

4 A Yes, sir.

5 Q Can you describe the layout of the house, what
6 sort of house was it?

7 A It is a wooden frame house, two story; got seven
8 rooms, four downstairs, three upstairs, two bath-
9 rooms; that is about it.

10 Q What was the -- first of all, were there any
11 carpets on the floor?

12 A No, sir.

13 Q What kind of floors did it have?

14 A Wooden floors.

15 Q How about air conditioning?

16 A No air conditioning.

17 Q What kind of heating system did you have?

18 A I used my own heaters.

19 Q Small gas heaters?

20 A Yes, small gas heaters.

21 Q During the course of your occupancy of that home,
22 were there any repairs made to the home?

23 A Yes, sir.

24 MR. MITCHELL: Pardon me, Your Honor.

25 I don't know the relevancy and I hesitate

1 to interrupt, but reading paragraph two of
2 the first amended notice of proceedings,
3 I don't detect anything dealing with a
4 house in Benavides, Texas, so consequently
5 I am going to object. I don't want to be
6 caught waiving.

7 THE MASTER: I assume this is leading
8 to something with what you call the Manges
9 case account?

10 MR. FLUSCHE: Yes, sir.

11 THE MASTER: Does the air conditioning
12 and floor covering relate to this?

13 MR. FLUSCHE: All of this has to do
14 with the value of the home. Later in the
15 case, the value of the home will become
16 relevant, as it is related to a point between
17 Mr. Manges and Judge Carrillo.

18 MR. MITCHELL: That is what I thought.
19 This is something he is anticipating I will
20 do and he is anticipating it and hoping I
21 bring it up.

22 It is like the old law school case,
23 Judge, where you anticipate a defense and
24 try to bottom my defense beforehand.

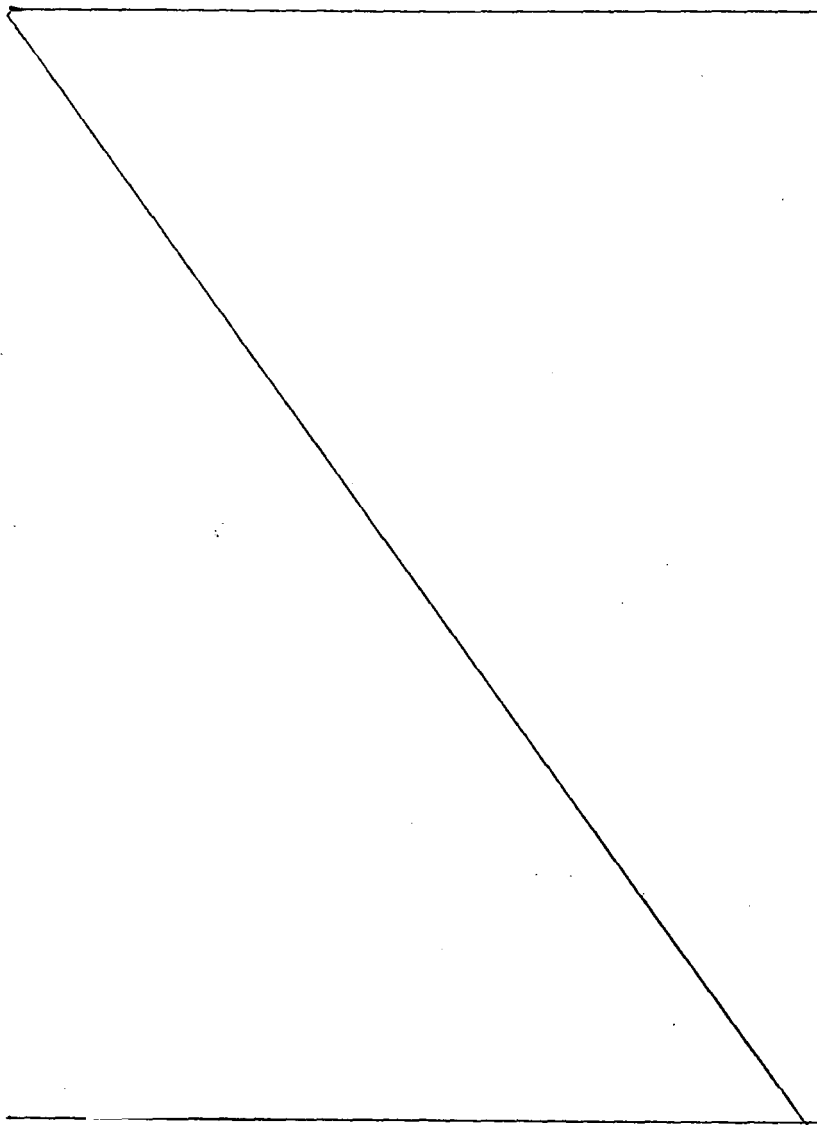
25 THE MASTER: You are referring to Judge

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Carrillo's initial reply?

MR. FLUSCHE: Yes, sir.

THE MASTER: Well, I will overrule the objection.



1 MR. FLUSCHE: I will say this, Your
2 Honor, if I don't connect it up, I will
3 withdraw all of his testimony.

4 THE MASTER: All right.

5 Q (By Mr. Flusche) Let me ask you this, do you
6 have any idea what the value of the house is?

7 A No, sir, I am a poor estimator on things like
8 that.

9 Q All right. With regard the fifty dollars a month
10 rent that you paid, did you consider that to be
11 fair or did you consider it to be too low or too
12 high?

13 MR. MITCHELL: That is immaterial and
14 irrelevant.

15 A I considered it pretty fair.

16 THE MASTER: The objection is overruled.
17 The value is an issue, rental has relevance
18 to value.

19 MR. MITCHELL: Yes, no question, Your
20 Honor. That is why I didn't object to the
21 fifty dollars a month, but whether he thought
22 that was fair or not, would be irrelevant and
23 immaterial. Fifty dollars a month, he paid
24 it for seven years, obviously he thought
25 there was some mutuality, that was the basis

1 for my objection, Judge Meyers.

2 Q (By Mr. Flusche) What was the size of your
3 family during the time that you occupied that
4 house?

5 A My wife and four sons.

6 Q What was the general condition of the house when
7 you moved out?

8 A It was kind of, you know, my kids were small and
9 kind of deteriorating a little bit, you know,
10 especially the sink area.

11 Q How about the walls in the house?

12 A They were sheetrock, white walls. They were kind
13 of deteriorating, you know, the paint was coming
14 off.

15 Q Was there a garage that was attached to that
16 house?

17 A No, sir.

18 Q On the property?

19 A No, sir.

20 MR. FLUSCHE: Would you mark that as
21 Examiner's Exhibit No. 5.

22

23 (Whereupon, the above-mentioned
24 document was marked for identification
25 as Examiner's Exhibit No. 5.)

1 MR. FLUSCHE: May I approach the
2 witness, Your Honor?

3 THE MASTER: Yes.

4 Q (By Mr. Flusche) Mr. Rievera, I show you what
5 has been marked as Examiner's Exhibit No. 5 and
6 ask you to examine that.

7
8 (Handed to the witness.)

9
10 Do you recall that night before last we showed you
11 a sketch of the second floor of the house?

12 A Yes, sir.

13 Q And do you remember that you said that that sketch
14 was inaccurate?

15 A Yes, sir.

16 Q Does Exhibit 5 here accurately portray the
17 relationship of the rooms and the number of
18 bedrooms on the second floor of that house?

19 A Not accurately, but it is there, you know, the
20 three rooms and the bathroom, that is all that
21 was upstairs.

22 Q Generally is it --

23 A Yes, sir.

24 MR. MITCHELL: May I have him on voir
25 dire, Your Honor?

1 THE MASTER: Yes.

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

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BY MR. MITCHELL:

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11

Q Who drew the sketch of the E-5, Mr. Rievera?

12

A I did.

13

Q You state it does not accurately portray --

14

A Not accurately, according to specifications.

15

Q Why would you draw something to be used in court that wasn't accurate? Is there some reason that you want to tell us about why you drew something that you would testify under oath that is not an accurate portrayal?

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A I was just showing the man where I live, that is all.

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MR. MITCHELL: Judge, again we are going to object to it on the grounds of no proper authentication by the witness' own testimony, it is not authentic because it is not

1 accurate and secondly it is irrelevant and
2 immaterial.

3 THE MASTER: I think you are not
4 understanding each other. You need to
5 question him some more.

6 Q (By Mr. Flusche) Mr. Rievera, when you say that
7 the sketch on E-5 is not accurate, you mean it is
8 not drawn with the precision that an architect
9 would draw it?

10 A That is what I am saying.

11 Q It generally reflects --

12 A It generally tells where I used to live.

13 THE MASTER: It is admissible and it is
14 admitted.

15 Q (By Mr. Flusche) Now those seven years that you
16 lived there, what years were those?

17 A 1963 to 1970.

18 Q And what month in 1970 did you move out?

19 A August, I believe.

20 Q And what month did you move in in 1963?

21 A Approximately August, 1963.

22 MR. FLUSCHE: Would you mark these as
23 Examiner's Exhibits 6, 7 and 8.

24
25 (Whereupon, the above-mentioned

1 documents were marked for identification
2 as Examiner's Exhibits 6, 7 and 8.)
3

4 MR. FLUSCHE: May I approach the
5 witness again, Your Honor?

6 THE MASTER: Yes, sir.

7 Q (By Mr. Flusche) Would you look at these
8 pictures, sir?
9

10 (Handed to the witness.)
11

12 Q Mr. Rievera, I have shown you what has been
13 marked as Exhibits 6, 7 and 8 and I will ask you
14 whether or not those are pictorial representations
15 of the house that you lived in in Benavides,
16 Texas?

17 A Yes, sir, they are.

18 Q All right.

19 A The palm trees grew a little bit.
20

21 MR. MITCHELL: May I -- may I ask
22 counsel just to inform me of what -- when
23 the pictures were taken, in terms of date.
24 The witness testifies it is a pictorial
25 representation, but I would like to know
the date, if I could.

1 MR. FLUSCHE: They were taken about two
2 weeks ago.

3 MR. MITCHELL: Which would be in the
4 month of --

5 MR. FLUSCHE: In the month of October.

6 MR. MITCHELL: 1975?

7 MR. FLUSCHE: 1975.

8 MR. MITCHELL: We would object on the
9 grounds of no proper predicate and
10 irrelevant and immaterial.

11 THE MASTER: Well, I don't know what
12 you mean no proper predicate.

13 MR. MITCHELL: Improperly authenticated,
14 Judge.

15 THE MASTER: I overrule that objection,
16 but all of this is subject to his -- as he
17 said he is going to withdraw it all if he
18 doesn't connect it.

19 MR. MITCHELL: I would like to keep
20 reminding him of that pledge to this Court
21 as we go along, Judge Meyers.

22 THE MASTER: They are admitted and hand
23 them here unless you are going to ask some
24 further questions of the witness.
25

1 (Handed to the Master.)

2

3 MR. FLUSCHE: I believe that is all.

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9 C R O S S E X A M I N A T I O N

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11 BY MR. MITCHELL:

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13 Q Mr. Rievera, during the time you were at Benavides,

14 you taught school and I believe you were also a

15 football coach?

16 A Yes, sir.

17 Q You paid your rent every month by check to Judge

18 Carrillo?

19 A Yes, sir.

20 Q And did you pay the rent up until the time you

21 left in 1970 to Judge Carrillo?

22 A Yes, sir.

23 Q And it was, I suppose, by check payable to him

24 drawn on your bank account?

25 A Yes, sir.

1 Q In looking at the pictures in the exhibit, it
2 appears to be quite a large home. Would you say
3 that it is probably the largest home there in
4 Benavides for rent, or one of the largest?

5 A I would say that it is one of the largest, uh-huh.

6 Q And of course, to accommodate you and your
7 youngsters, I think you had four children?

8 A Yes, sir.

9 Q You and your wife?

10 A Yes, sir.

11 Q And it was, I suppose located in the neighborhood
12 that you felt would be conducive to raising your
13 kiddos, is that right?

14 A Yes, sir.

15 Q It was a good neighborhood?

16 A Yes, sir.

17 Q And at the time you lived in it, I don't suppose
18 you let the house, the grass grow and get into an
19 unkept condition as is shown in those pictures?

20 A No, sir, we cleaned it quite often.

21 Q All right.

22 MR. MITCHELL: Your Honor, I believe I
23 have no further questions of this witness.

24 MR. FLUSCHE: One last question.

25

R E D I R E C T E X A M I N A T I O N

1
2
3 BY MR. FLUSCHE:
4

5 Q Do you know whether or not this house has been
6 occupied since you moved out of it?

7 A No, sir, I don't know.

8 MR. FLUSCHE: Okay, I believe that's all
9 we have.

10 THE MASTER: Is there any reason not to
11 excuse Mr. Rievera?

12 MR. MITCHELL: Excuse me, Your Honor.
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R E C R O S S E X A M I N A T I O N

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3 BY MR. MITCHELL:
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5 Q Was there any question that Judge Carrillo owned
6 the house, Mr. Rievera? You talked to him about
7 any problems that you had in connection with --

8 A Yes, sir, I didn't ask, you know, who it belonged
9 to. He said he had a house for rent if I wanted
10 it, so I told him --

11 Q And for seven years you rented it and for seven
12 years you paid the rent to him?

13 A Yes, sir.

14 Q And if you had any problems or anything that the
15 landlord had to attend to, who would you come to --
16 would you contact him?

17 A I contacted Mr. Carrillo.

18 Q Never in any doubt in your mind during that period
19 of time that he owned it?

20 A No, sir.

21 MR. MITCHELL: We have no further
22 questions and in answer to the Court's
23 inquiry, we have no reason why he can't be
24 excused.

25 MR. FLUSCHE: We agree.

1 THE MASTER: Mr. Rievera, you are excused
2 and you can go back to San Antonio.

3 MR. ODAM: Your Honor, we would call as
4 our next witness Mr. John C. Gaston, who is
5 a real estate appraiser. However, we checked
6 yesterday and Mr. Gaston is in the hospital
7 in San Antonio due to kidney ailments. I
8 believe he should be able to testify -- today
9 is Tuesday and perhaps on Thursday, we would
10 like permission perhaps to take him out of
11 order. I don't know if we will still be on
12 Paragraph 2 or not, we would like to take him
13 out of order and so apprise counsel at this
14 time.

15 THE MASTER: That is granted.

16 MR. ODAM: At this time we would like to
17 call Mr. Garland Smith.
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1 GARLAND F. SMITH,
2 called as a witness, having been first duly sworn upon
3 his oath to tell the truth, the whole truth and
4 nothing but the truth, then testified as follows,
5 to-wit:

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

8
9 BY MR. ODAM:

10
11 Q Would you please state for the Court your full
12 name.

13 A Garland F. Smith.

14 Q And where do you reside, Mr. Smith?

15 A Weslaco, Texas.

16 Q And what is your profession?

17 A Lawyer.

18 Q And how long have you been licensed to practice
19 law?

20 A Since February, 1937.

21 Q And how long -- where do you reside -- in
22 Weslaco -- that is in the Valley?

23 A Yes, sir, that is right.

24 Q And how long have you been practicing law in the
25 Valley?

1 A Since the 31st of October, 1945.

2 Q Are you familiar with the lawsuit styled Clinton
3 Manges versus M. A. Guerra, et al?

4 A Yes, sir.

5 Q And very briefly, what was your role, if any,
6 with respect to that litigation?

7 A I came into the case after it had been under way
8 for some time and it is a very complicated case.
9 A receiver had been appointed.

10 Q I will get into the details of it perhaps at a
11 later point.

12 A Yes, sir.

13 Q I take it that you are --

14 A Yes, I think your question now means who did I
15 represent. I represented M. A. Guerra and R. R.
16 Guerra ultimately, but originally I represented
17 H. E. Guerra, Jr. There are three phases of the
18 case which will have to be explained later.

19 Q All right, sir. And the Guerras that you
20 referred to are these -- what relation are they
21 to each other?

22 A They are brothers.

23 Q And the Guerra brothers would be Plaintiffs or
24 Defendants in this lawsuit?

25 A They were Defendants and they were all partners

Page missing from original hearing transcript.

1 MR. ODAM: Mark these, please.

2 (The above mentioned documents were
3 marked Examiner's Exhibit 9, 10 and 11 for
4 identification.)
5

6 Q (By Mr. Odam:) I show you what the court reporter
7 has marked Examiner's Exhibit 9 and ask you if you
8 can identify it.

9 A Yes, sir, that is a letter that I wrote to Mr.
10 Pipkin.

11 Q This letter is dated what?

12 A May 1st, 1973, and addressed to Mr. Pipkin in
13 his capacity as Executive Director of the Judicial
14 Qualifications Commission and that is my signa-
15 ture on the letter.

16 Q And it indicates here copies were sent to O. P.
17 Carrillo and the Honorable Mangus Smith, and to
18 the best of your knowledge, were copies sent to
19 them?

20 A Yes, sir.

21 MR. ODAM: We will offer Exhibit 9 in
22 evidence.

23 MR. MITCHELL: Objection, hearsay, and
24 the recitals speak for themselves.

25 THE MASTER: That is offered to prove

1 the truth of the statements here in the
2 letter?

3 MR. ODAM: It is not as to the truth-
4 fulness at this time. This is the basis
5 for the complaint referred to yesterday's
6 testimony and it is for showing not the
7 truthfulness in the matter, but we will get
8 into that later. This is to show the rele-
9 vancy of the Manges versus Guerra lawsuit.

10 MR. MITCHELL: We stand on the objec-
11 tion. It is hearsay and self-serving to
12 the extent this witness would send a letter
13 a month after a hearing on a motion to dis-
14 qualify and this a copy to the attorneys
15 and the principal litigant and it is hear-
16 say.

17 THE MASTER: It is not admitted to
18 prove any statement, but to show that a
19 complaint was registered, is that right?

20 MR. ODAM: That is correct.

21 THE MASTER: It is admitted for that
22 purpose.

23 (Examiner's Exhibit 9 was admitted
24 into evidence.)
25

1 Q (By Mr. Odam:) Mr. Smith, Exhibit 9 is the letter
2 dated May 1st, 1973. Could you briefly describe
3 for the Court what was generally the purpose you
4 had in writing to Mr. Maurice Pipkin?

5 MR. MITCHELL: He is speaking out of
6 both sides of his mouth, if the Court
7 please. He said he was not offering the
8 letter for the truth and it is hearsay and
9 it is irrelevant and immaterial.

10 Certainly it is a fact and speaks for
11 itself on the way he presented it.

12 THE MASTER: That is overruled.

13 MR. MITCHELL: Note our exception.

14 THE WITNESS: The purpose of the letter,
15 and as I explained in the letter, we were
16 trying a civil lawsuit and it did appear
17 there were some matters in there that were
18 infractions of criminal law, but I have
19 never, in my previous cases, tried to file
20 proceedings against anyone on a civil case,
21 but in this case we were in the point of
22 the proceedings where we had the Cadillac
23 and the grazing privileges the Judge had
24 received from one of the litigants, so --

25 MR. MITCHELL: That is irrelevant and

1 immaterial and we move to strike as being
2 non-responsive.

3 THE MASTER: Your statement that it is
4 not irrelevant and immaterial, I don't
5 think you meant that.

6 Mr. Smith, you are an attorney, do you
7 have first hand knowledge of what you just
8 said?

9 THE WITNESS: Yes, sir.

10 MR. MITCHELL: I spent all night read-
11 ing three hundred pages on that point, and
12 to this day, there has been no relation.
13 I will test his personal knowledge on cross-
14 examination and secondly it would be hear-
15 say.

16 THE MASTER: As the record stands now,
17 it is first hand knowledge from a profes-
18 sional who knows the difference between hear-
19 say and non-hearsay.

20 THE WITNESS: I base it on the state-
21 ment of the Judge on oath himself. That is
22 about as close to personal knowledge as you
23 can get and the Plaintiff also, Mr. Manges.

24 That was background as to the point
25 I was getting at. I had raised these points

1 and the attorney for Mr. Manges in that
2 case made the issue with Judge Smith, who
3 was trying it, that I was breaching my
4 professional duty by raising all of these
5 issues about criminal proceedings and bribery
6 and not having taken it before a Grand Jury
7 in the 229th District.

8 MR. MITCHELL: He is talking about a
9 Grand Jury and I object to that and move to
10 strike it.

11 If Counsel would put to him a question --

12 THE MASTER: The question was the pur-
13 pose of the letter, is that correct?

14 MR. ODAM: Correct, Your Honor.

15 THE MASTER: Was that in response to
16 that question?

17 THE WITNESS: Yes, it was, and it is
18 necessary to answer the question.

19 THE MASTER: All right, sir.

20 THE WITNESS: Because of my professional
21 ethics having been questioned by the adverse
22 attorney before the judge who was passing
23 on it, I felt I had to clear up the matter
24 and I had not reported it to a Grand Jury
25 or tried to get any prosecution of it, but

1 I was fearful that might have some adverse
2 effect on my case, so I decided I would
3 clear the atmosphere.

4 The more I thought about it, I realized
5 that the other attorney was trying to put
6 me in a corner. The more I thought about
7 it, the more upset I got about it, and when
8 I got home, I was at that time preparing a
9 speech for a service club on our Law Day,
10 so I decided that the other attorney was
11 wrong and I should have taken it before a
12 Grand Jury -- well, not a Grand Jury, but
13 should take it before the Judicial Qualifi-
14 cations Commission.

15 I wrote that letter to fulfill my pro-
16 fessional duty in the matter and clear the
17 atmosphere, as far as my conduct was con-
18 cerned.

19 Q Would you consider this letter as -- this letter,
20 Examiner's Exhibit 9, would this be the letter
21 by which you formally and officially presented
22 this matter to Mr. Pipkin?

23 A Yes, sir.

24 Q I show you what has been marked as Exhibit 10
25 which is a letter dated April 3rd, 1973, and ask

1 you if you can identify this letter.

2 A Yes, that is another letter. That is a correct
3 xerox copy and that is my signature. It is also
4 addressed to Mr. Pipkin.

5 MR. ODAM: We would offer in evidence
6 at this time Examiner's Exhibit 10.

7 MR. MITCHELL: I would like to see them
8 both.

9 We object to it and it is likewise
10 hearsay and it is not properly authenticated.
11 He testified that May 11th was the first
12 communication he had with Mr. Pipkin.

13 THE MASTER: What is the purpose of
14 the offer?

15 MR. ODAM: The purpose of the offer is
16 the witness testified by his last statement
17 this was the first official communication
18 by which he laid the matter before the com-
19 mittee.

20 THE MASTER: Exhibit 10 is an earlier
21 communication to the State Judicial Qualifi-
22 cations Commission, is that correct?

23 MR. ODAM: My question to him was that
24 if Exhibit 9 was the official communication,
25 then why was there a letter earlier from

1 him?

2 THE MASTER: So you are not offering
3 Exhibit 10 for the truth of the matter, but
4 as it speaks for itself?

5 MR. ODAM: Yes, sir, that is correct,
6 we are not for that, but for intent.

7 THE MASTER: It is admitted for the
8 intent.

9 Mr. Odam, I think Mr. Mitchell is
10 through with the Exhibits.

11 MR. ODAM: I have also given him
12 Exhibit 11.

13 I am not offering Exhibit 11 in evi-
14 dence yet.

15 MR. MITCHELL: Well, I am going to object
16 to Exhibits 10 and 11 on the grounds that
17 both are hearsay and irrelevant and immaterial.

18 THE MASTER: Exhibit 11 has not been
19 offered. 10 has been offered to show a
20 prior communication to the communication
21 of May 11, 1973, and I take it to explain
22 it.

23 MR. ODAM: Yes, Your Honor.

24 THE MASTER: It is admitted for that
25 purpose.

1 (Examiner's Exhibit 10 was admitted
2 into evidence.)
3

4 Q (By Mr. Odam:) I give you a copy of Exhibit 10.
5 What is the date on the letter you have before
6 you there?

7 A The one I have before me is April 3rd, 1973.

8 Q The last letter which was admitted into evidence
9 was Exhibit 9, which was the May 1st letter?

10 A Yes, sir.

11 Q And for the purpose of this question, it is my
12 understanding the May 1st letter, 1973, was your
13 official complaint, or what would you describe it
14 as?

15 A I didn't file it as a complaint simply because --
16 well, I guess you don't want my reason, but I
17 didn't file it as a complaint, but to convey the
18 information as to why I had made these allega-
19 tions concerning the Judge and my motion to dis-
20 qualify and to perform my duty and to take action
21 in the matter and relieve the atmosphere that I
22 had not performed my professional duty in some-
23 thing I had personal knowledge of.

24 Q The May 1st letter, would you please state for
25 the record whether it was a verified letter or

1 not.

2 A It was just a letter, not sworn.

3 Q With that background on Exhibit 9, the May 1st
4 letter, would you explain what was the purpose of
5 the transmitting of the earlier letter, Exhibit 10?

6 MR. MITCHELL: We object again. That
7 is all hearsay and what is the purpose of
8 his further hearsay and conclusion and it
9 has nothing to do with factual presentations
10 in this case.

11 THE MASTER: I overrule the objection.

12 THE WITNESS: Apparently Mr. Pipkin
13 had received rumors or news of this case.
14 It had received some publicity.

15 MR. MITCHELL: Anybody knows that is
16 hearsay and I am going to object to that
17 testimony.

18 THE WITNESS: Well, I would say the
19 first paragraph of the letter takes care
20 of it. It states what the situation was,
21 that Mr. Pipkin had requested some informa-
22 tion from me concerning the case.

23 Q (By Mr. Odam:) The purpose of our record in this
24 proceeding, the documentary evidence is going to
25 be voluminous.

1 Could you read into the record your state-
2 ment?

3 A Yes, the first paragraph.

4 "Mike McKinney related your request for a
5 copy of the record in the above matter if Judge
6 Carrillo should testify. Judge Carrillo did
7 testify and we have ordered a copy of the complete
8 record on the motion for disqualification, which
9 includes the January 20th and March 30th proceed-
10 ings."

11 Q Could you briefly, again, for purpose of descrip-
12 tion for the record generally, describe the contents
13 not as to the truthfulness, but what that letter
14 generally relates to.

15 A The contents concern the matter of the Cadillac
16 automobile which had been purchased for the Judge.

17 MR. MITCHELL: We will move to strike
18 that. It is hearsay and it speaks for
19 itself.

20 THE MASTER: Mr. Odam, I assume this
21 is going somewhere, but the letter is the
22 one in evidence, so there is no necessity
23 for the witness to describe it. The Master
24 can read it and the Judicial Qualifications
25 Commission and it is not in evidence to

1 prove the truth of the matter, so why are
2 you having him describe it?

3 MR. ODAM: The purpose of describing
4 it is for the purpose of the letter. It
5 does speak for itself, which the nine member
6 commission can read and the Master can read,
7 and it was in light of the documents we
8 have, the great amount of them, and it was
9 with the intent in mind generally to describe
10 what the contents of the letter are for the
11 record.

12 MR. MITCHELL: I remind Counsel he said
13 he didn't offer it for the truth of the
14 matter.

15 THE MASTER: It is not admitted for
16 that, it is simply to show charges made.

17 MR. MITCHELL: I submit a rose is a
18 rose. He is forcing the ultimate conclusion
19 of the contents and that is precisely what
20 we object to.

21 THE MASTER: I am going to sustain the
22 objection to summarizing the contents of
23 the letter.
24
25

1 MR. ODAM: Okay.

2 Q (By Mr. Odam) Mr. Smith, the Examiner's Exhibit
3 No. 9 and No. 10 have been offered into evidence.
4 I will show you what the court reporter has
5 marked as Examiner's Exhibit No. 11 and ask if
6 you can identify that document?

7 A Yes, this is a letter dated July 26, 1973 which
8 I addressed to Mr. Pipkin and it is signed by me.

9 Q The letter is on your letterhead?

10 A Yes, sir.

11 Q Your office letterhead?

12 A Yes, sir.

13 Q And you say this is your signature?

14 A Yes, sir.

15 MR. ODAM: Your Honor, we would offer
16 into evidence at this time, which has been
17 marked as Examiner's Exhibit No. 11.

18 THE MASTER: It is a letter dated what?

19 MR. ODAM: July the 23rd.

20 THE WITNESS: July the 26th.

21 MR. ODAM: July the 26th, I am sorry.

22 MR. MITCHELL: We're going to object to
23 it as hearsay and it is self-serving and it
24 invades the province of the finders of fact
25 in this case, precisely the matters which

1 we are trying, Your Honor. I want to
2 continue to read it.

3 THE MASTER: This is a similar letter
4 to the first two, I mean it is hearsay if it
5 is offered to prove the truth.

6 MR. ODAM: Your Honor, the purpose in
7 offering -- we have now had two communications
8 by Mr. Smith, generally regarding and setting
9 up, if not on an official complaint, laying
10 matters before.

11 Again, simply for the purpose of our
12 record, to be sure that the documents are
13 before the Master and the Commission, is to
14 show that here is yet another communication
15 to the Commission about the particular
16 lawsuit.

17 It is not for the purpose of the
18 truthfulness of the matters asserted in the
19 letters, it is simply to have on the record
20 that we have yet another communication and
21 my next question to Mr. Smith is having
22 identified it, what was the purpose in
23 having yet a third -- I am not going to go
24 into the contents of the letter, just simply
25 it appears to me that these have been filed

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with the Commission and that they need to be a part of the record for purposes later on.

THE MASTER: Well, I will admit it on the same basis that I admitted 9 and 10, that is simply to show that the letter was written and what it says, but not as any evidence of the truth of the matters complained of.

MR. ODAM: Again, Your Honor, we do not offer it for the truthfulness of whatever the statements are in those letters.

THE MASTER: Can you go ahead, Mr. Odam? Do you want to ask them about the exhibit?

MR. ODAM: He has a copy of the exhibit, Your Honor, I presume he was deciding whether or not to make any objection to it.

THE MASTER: He has made his objection.

MR. MITCHELL: I have made my objection. For the record, Judge, it is sixteen pages single spaced and I would like to read it. He can continue, I just want to read it.

THE MASTER: That was my suggestion, I thought that you could probably listen and read at the same time.

MR. MITCHELL: That is fine.

1 THE MASTER: Incidentally, will Mr. Haynes
2 be in today?

3 MR. MITCHELL: Yes, Your Honor. May I
4 point out he called me after yesterday's
5 session. He was leaving by automobile. We
6 are somewhat concerned, he didn't make it last
7 night. He will pop in sometime today and
8 with leave of the Court, we would like to
9 have him join us when he does get here.

10 THE MASTER: Certainly.

11 Q (By Mr. Odam) Mr. Smith, Examiner's Exhibit No.
12 11 is a letter, I believe, which you have before
13 you now on the witness stand, is that correct?

14 A Yes, sir.

15 Q And what is the exact date of that letter?

16 A August -- July the 26th, 1973.

17 Q Now, would it be your third written communication
18 with the State Judicial Qualifications Commission?

19 A I presume it is. Frankly, I wouldn't want to
20 say absolutely because it has been quite a while
21 back and I haven't really reviewed that
22 correspondence, and I don't know whether I could
23 or not. I have got several files, but so far as
24 I know, it would be the third.

25 Q All right.

1 A It was the third of any significance.

2 Q All right. The third, and that statement is based
3 on Exhibit 9 and 10, being the first and second
4 ones?

5 A Yes, sir. That is correct.

6 Q All right. Now, this is your third and as
7 Mr. Mitchell just pointed out, this letter is
8 apparently -- well, how many pages is the letter
9 that you have before you?

10 A It is sixteen pages, as Mr. Mitchell observed.

11 Q Again, we are not at this particular time going
12 into the truthfulness of whatever the contents of
13 that letter are.

14 A Yes.

15 Q But what was your purpose in having yet a third
16 communication with this Commission?

17 A Mr. Pipkin had been to my office and had
18 interviewed me concerning the case and he asked
19 if I would do him the favor of preparing sort of
20 a chronology of the events involved in the lawsuit
21 and that is what this letter is.

22 Q This would be what you described as a chronology
23 of the events?

24 A Yes, sir.

25 Q In the lawsuit?

1 A Yes, sir.

2 Q You mentioned earlier on in your testimony that
3 the lawsuit of Manges versus Guerra is -- how
4 would you describe it, complex or what?

5 A Well, it is complex. There are three phases of it
6 and the first phase was the appointment of a
7 receiver.

8 Q Now, we are not talking about any of the complaints
9 at this point?

10 A Yes.

11 Q But just simply the substance of what Manges
12 versus Guerra is about.

13 A All right.

14 Q I will ask you this: Have you had the occasion
15 in view of your -- knowing that you were going to
16 testify here, to prepare for your own benefit and
17 giving this testimony any written document or
18 materials?

19 A Yes, I prepared a memorandum that does explain the
20 three phases of the case. It is complex, it is
21 like an octopus any way you approach it. It is
22 complex. And for my own use and benefit of the
23 Court --

24 Q Okay.

25 A -- or for the -- I prepared a memorandum.

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MR. ODAM: Mark this as Examiner's Exhibit No. 12.

(Whereupon, the above-mentioned document was marked for identification as Examiner's Exhibit No. 12.)

Q (By Mr. Odam) Mr. Smith, I show you what the court reporter has marked as Examiner's Exhibit No. 12 and ask if you can identify this document?

A Yes, this is a memorandum I prepared to try to review the essentials of this complex case and somewhat the problems involved.

Part of it is, I would say, would be mitigating as to Judge Carrillo's situation because it puts it in the environment in which this whole thing happened, which I think has to be done and which goes a little bit beyond the exact acts of the judge in this case.

I think to understand the case, you have to understand the situation that exists in Duval and Starr Counties and in the 229th District Court at that time.

Q The last page -- it has your name on it?

A That's right, I didn't sign it, but I will, just

1 since I am responsible for this.

2
3 (Witness signing Exhibit No. 12.)

4
5 Q All right.

6 MR. ODAM: Your Honor, at this time we
7 would offer into evidence what has been
8 marked as Examiner's Exhibit No. 12, which
9 Mr. Smith just signed.

10 MR. MITCHELL: May I have the witness
11 on voir dire?

12 THE MASTER: Yes, sir.

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

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3 BY MR. MITCHELL:
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5 Q What is this Exhibit 12?

6 A Well, it is -- it covers the history of the case.

7 Q Well, I notice you have got a Doonsbury cartoon.

8 A Yes.

9 Q What has that got to do with the case, Mr. Smith?

10 A That is -- that illustrates the very point, it is
11 a professor in a law school introducing a new
12 course which is entitled "Right and Wrong 10-A."
13 That is what we are dealing with here.

14 Q Well, let me ask you this: Where does the data
15 come from? I am charged with the same responsibility
16 you would be charged with if you were cross-
17 examining me.

18 You have got an exhibit that has got newspaper
19 articles, cartoons, unauthenticated, as far as I
20 am concerned, documents and I am going to object
21 on the grounds of hearsay.

22 Have you got a reason why I shouldn't object
23 to that? You are a lawyer. You tell me.

24 A Yes.

25 Q Why?

1 A I am answering your question. We are dealing with
2 a situation here where it is common knowledge and
3 you know it as well as I do, Mr. Mitchell, it is
4 common knowledge that Duval and Starr Counties
5 have been policed counties and the courts have
6 been controlled by the political machines for
7 fifty years -- maybe a shorter time, you know, and
8 I know it and every lawyer in South Texas knows
9 it.

10 Q Would it surprise you if I didn't know it? I
11 don't want to argue with you, I am trying to get
12 some predicate facts.

13 First of all, Mr. Smith, you didn't come
14 into this case until years and years and years
15 after it commenced.

16 A Not years and years.

17 Q It was commenced in '58, is that right?

18 A No, it commenced in 1968. I was in it in June of
19 1969. November -- October and November of '68.

20 Q I don't want to argue with the witness.

21 MR. MITCHELL: Judge, I am going to
22 object on the grounds it is hearsay, it is
23 manufactured evidence directly from the
24 witness stand as evidenced by the fact that
25 they attempted to authenticate it by signing

1 it. It contains Lord knows, newspaper
2 accounts, all sorts of data which we object
3 to on the grounds specifically of no proper
4 authentication, no proper predicate and
5 hearsay.

6 THE MASTER: Well now, what is it,
7 Mr. Odam?

8 MR. ODAM: Your Honor, the witness has
9 previously stated he is prepared to testify
10 to explain for the benefit of the Master and
11 the Commission the lawsuit of Manges versus
12 Guerra.

13 THE MASTER: Until I hear objection, I
14 think he can do that.

15 MR. ODAM: All right, the witness --
16 well, it is very complex, it is a very complex
17 lawsuit. The explanation of this would have
18 to be done in my judgment on some written
19 basis.

20 It appears to me that in order for
21 Mr. Smith's testimony to be in a logical
22 basis set forth, that he would have to refer
23 to certain notes, simply for the benefit of
24 the Master and for the benefit of the
25 Commission, I wanted this document introduced

1 into evidence so that there could be a
2 logical explanation of Manges versus Guerra.

3 As he said before, all that is involved,
4 we are not yet to the point of trying to
5 prove up necessarily the truthfulness of the
6 complaints, but simply to explain what -- a
7 very involved litigation, Manges versus
8 Guerra. That is simply the purpose of it
9 to have for the benefit of this record, for
10 the Master and the Commission, a logical
11 format that he can present and that is the
12 purpose of it, Your Honor.

13 THE MASTER: Well, I think it is
14 premature to offer it at this time, then.
15 If he wishes to use it in giving his testimony,
16 and show how each document ties in, then it
17 may become admissible and I haven't looked
18 at it, but if Mr. Mitchell is correct, that
19 it has newspaper excerpts in it, I don't see
20 how that becomes admissible.

21 MR. ODAM: Your Honor, we would then
22 withdraw the offer of the evidence and with
23 Mr. Mitchell's objection at this time, we
24 would offer it for a later purpose, this
25 Exhibit 12.

1 THE MASTER: You can do that and an
2 expert -- and he is an expert in the field
3 of law, can certainly, like any other expert,
4 prepared documents and prove them up, but I
5 don't believe this has reached that status
6 yet.

7 MR. ODAM: Well, again, the witness --
8 I am beginning to take him through a number
9 of questions and I believe it would be
10 necessary for him to refer to a written
11 paper, and I was anticipating Mr. Mitchell's
12 question as to the basis of what he has in
13 his hand, and that is why I want to go ahead --
14 attempt to get it into evidence at this time
15 rather than go through that stage of what he
16 had in his hand to explain the lawsuit.

17 MR. MITCHELL: I would like to also, if
18 I might be permitted, Your Honor, to take the
19 witness on voir dire to determine precisely
20 his connection with the lawsuit and when he
21 got in it so I can determine from the
22 questions put to him by counsel, whether he
23 is testifying from personal knowledge or from
24 hearsay, or otherwise. If I might be
25 permitted --

1 THE MASTER: I don't know what you mean
2 "hearsay." This witness was counsel of
3 record in the case, not from the time it was
4 filed.

5 MR. MITCHELL: That is right.

6 THE MASTER: But from a later time, but
7 I suppose counsel of record can familiarize
8 himself generally with the papers in the
9 case and what the case is about.

10 MR. MITCHELL: Yes, sir.

11 THE MASTER: And testify to things that
12 occurred before he got in the case.

13 MR. MITCHELL: I appreciate that, Judge,
14 and I have no objection, but when he starts
15 talking about "X" giving "Y" things and "M"
16 this in 1968, I want to know what is the
17 basis of his testimony. I appreciate the
18 record rule, Judge, that the Court outlined.

19 THE MASTER: But until -- I don't see
20 anything to take him on voir dire as to
21 right now. What do you want to ask him?

22 MR. MITCHELL: I want to ask him when
23 he actually entered the case, that is the
24 question that I want to know.

25 THE MASTER: All right.

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

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3 BY MR. MITCHELL:
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5 Q When did you actually enter the case, Mr. Smith,
6 and who were you representing --

7 A Exactly as explained in that memorandum.

8 Q It is not clear to me. I read this record of
9 this entire procedure, the transcript of evidence,
10 and it appears to me you were hired to file
11 motions to disqualify.

12 A Yes, sir.

13 Q All right. And that motion to disqualify was
14 filed in 1973 in behalf of the clients that you
15 set out in there, your clients Mr. M. A. Guerra,
16 Mr. Ruben Guerra, your clients. Was that your
17 clients?

18 A That was the third phase of the lawsuit and had
19 nothing -- and it came after the second phase.

20 The second phase was the one in which I
21 participated beginning in 19 -- June, 1969.

22 Q All right.

23 A All of which we thought was settled and in which
24 I started out representing only H. P. Guerra, Jr.,
25 who was a lawyer in Rio Grande City.

1 Q But that is when the case was before the Federal
2 Judge Garza in Brownsville?

3 A No, no.

4 MR. ODAM: Your Honor, pardon me if I
5 might.

6 A Those things are explained in the memorandum. That
7 is why it is complicated.

8 MR. MITCHELL: I have got an order
9 transferring dated --

10 MR. ODAM: Your Honor, if I could state
11 an objection to the nature of the voir dire
12 at this time?

13 THE MASTER: Yes.

14 MR. ODAM: It is my purpose with this
15 witness to go through in a very orderly
16 procedure all of these questions Mr. Mitchell
17 is raising and it appears to me if the
18 Examiners were permitted to set forth these
19 questions in an orderly, logical fashion,
20 Mr. Mitchell can then respond at that time
21 and I anticipate answering every one of these
22 questions in a very logical way for the
23 Court, and if Mr. Mitchell has objection at
24 the time, he can raise it.

25 I simply think that as Mr. Smith has

1 just stated about a third phase --

2 THE MASTER: If you intend to take him
3 to show the basis of his knowledge before
4 you ask him the question, then I will
5 terminate the voir dire at this time.

6 MR. MITCHELL: No, Judge, all I wanted
7 to know is the terms of when --

8 THE MASTER: But he tells me just now
9 he is going to do that and it is his witness
10 and if he is going to show when the witness
11 came into the various proceedings first,
12 then that takes care of the voir dire.

13 MR. MITCHELL: Judge, I will withdraw
14 and sit down; that has not been done. He has
15 asked him questions that go across the
16 spectrum and I am looking at documents here
17 signed by this lawyer back in '71 dismissing
18 the case out of the Federal Court and he is
19 testifying under oath what occurred in the
20 case, what occurred in Judge Carrillo's case
21 in '71. I know that can't be true.

22 THE MASTER: Let's let Mr. Odam go
23 forward and if you are offended by some of
24 the testimony, I might let you further voir
25 dire him.

1 MR. MITCHELL: Thank you, Judge
2 Meyers.

3 MR. ODAM: Your Honor, I would also
4 point out before Mr. Mitchell started on voir
5 dire, that I am withdrawing at this time,
6 the offer of that exhibit in light of these
7 statements, and I will take him through it
8 simply as a memorandum he has in his hand.

9 THE MASTER: All right.

10 MR. ODAM: To make a logical presentation
11 of his evidence.

12 THE WITNESS: If I may make a
13 suggestion, Mr. Odam, I think actually that
14 it will be easier understood by the Court
15 and by Mr. Mitchell if we take the
16 chronological developments of the case
17 because the point at which I entered the case
18 which he is interested in really can't be
19 understood unless you have that background
20 with which I was familiar.

E X A M I N A T I O N

(CONTINUED)

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4 BY MR. ODAM:

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6 Q Well, I appreciate that very much and I was
7 getting ready to turn to the page where that
8 chronology begins and if you, knowing the
9 instrument --

10 A I would suggest Page 7 as being the case where it
11 really gets started.

12 Q All right. Now, Mr. Mitchell has raised certain
13 points, and let me again clear this in my own
14 mind and for the record, Manges versus Guerra,
15 at what point were you employed to serve as counsel
16 in Manges versus Guerra case?

17 MR. MITCHELL: Pardon me, may I ask
18 Your Honor that he pinpoint it, either in
19 federal or the state, that is why we are
20 getting in trouble. It is Guerra and Sons
21 in the federal, in which he was employed.

22 MR. ODAM: Well, let me state the
23 question.

24 MR. MITCHELL: All right. Thank you,
25 Mr. Odam.

1 Q (By Mr. Odam) I am referring to the lawsuit
2 that is styled Clinton Manges versus M. A. Guerra,
3 et al, Cause No. 3953 in state court.

4 A All right. My first contact with that case would
5 have been in the latter part of May or 1st of
6 June of 1969. At that point, Horace Guerra, Jr.,
7 who was one of the partners in M. Guerra and Sons,
8 came to my office and employed my firm to
9 represent him in the defense of his rights which
10 were involved in 3953. That is the case we are
11 talking about here. He was a partner in that
12 partnership of M. Guerra and Sons.

13 Q All right. If I could interrupt you at that
14 point. Now, you talk about him coming to your
15 office to defend his rights in the lawsuit.

16 MR. ODAM: At this time I would like to
17 ask the court reporter to mark as Examiner's
18 Exhibit No 13 the document entitled
19 "Plaintiffs' Original Petition."

20
21 (Whereupon, the above-mentioned
22 document was marked for identification as
23 Exhibit E-13.)

24
25 Q (By Mr. Odam) Mr. Smith, I show you what the

1 Examiner -- or correction, I show you what the
2 court reporter has marked as Examiner's Exhibit
3 No. 13, which is a certified copy what is styled
4 the Plaintiffs' Original Petition and ask you if
5 you have ever seen that document before?

6 A Yes, I reviewed all of the proceedings in this
7 case promptly after I was employed. I just went
8 to the courthouse and reviewed them, but at the
9 time Mr. H. P. Guerra came to the office, he brought
10 with him a copy of the judgment of the Court of
11 Civil Appeals in Waco as I recall it.

12 Q All right. I will get to that in just a moment.
13 Now, this is the Plaintiffs' Original Petition.

14 A Yes.

15 Q In Cause No. 3953.

16 A That is right.

17 Q Was Mr. Horace Guerra, that you referred to
18 earlier, would that be one and the same as --

19 A H. P. Guerra, Jr.

20 Q Who is one of the following persons named as
21 Defendants?

22 A One of the Defendants in there, yes.

23 Q All right.

24 MR. ODAM: Your Honor, at this time I
25 would offer into evidence Examiner's Exhibit

1 No. 13.)

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3 MR. MITCHELL: May I ask a question on
4 voir dire --
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10 V O I R D I R E E X A M I N A T I O N
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12 BY MR. MITCHELL:
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14 Q Did you prepare the pleadings?

15 A No, that is prepared by Mr. Manges' attorney,
16 you see, Mr. Manges was the Plaintiff in this
17 case.

18 Q I understand. You didn't prepare the pleadings?

19 A No.

20 Q And as I understand it, at that particular point
21 Judge Carrillo was not on the bench?

22 A That's right.

23 Q And I will ask you again, what did you have to
24 do with it at that particular point?

25 A At the time Mr. -- at the time Mr. Guerra employed

1 us, that case was on its road to appeal.

2 Q I understand that and Judge Woodrow Laughlin's
3 decision previously appointing the receiver had
4 been sustained by the Supreme Court of Texas, isn't
5 that right?

6 A I had a choice, bear in mind, Jack Skaggs of
7 Carter, Stiernberg, Skaggs and Koppel was the
8 attorney representing the parties M. A. Guerra and
9 R. R. Guerra, who were the Defendants, who had
10 actually gone in and contested the appointment of
11 the receivership.

12 Mr. Skaggs and his firm are one of the oldest
13 firms in the Rio Grande Valley, one of the most
14 sophisticated law firms down there.

15 Q Mr. Smith, I --

16 A They have chosen -- I am fixing to answer your
17 question. They had chosen as their strategy, to
18 do everything conceivable to keep this case out
19 of Starr County and out of the 79th District
20 Court because they knew the court was rigged.

21 Q Judge Woodrow Laughlin's court?

22 A They filed a lawsuit, they filed a lawsuit in
23 Hidalgo County in the 93rd District Court raising --
24 trying to set aside the three deeds under which
25 Mr. Manges had brought his lawsuit on and caused

1 the appointment of a receiver on grounds that they
2 violated the partnership contract and that they
3 were in fraud of the other partners.

4 They also filed a lawsuit in Goliad County
5 for the same reason.

6 That was before Judge Carrillo was on the
7 bench, that is part of what my memorandum covers
8 is that there is an environment there that Judge
9 Carrillo is caught up in and everybody in South
10 Texas knows it, that when you go into those
11 counties, the courts are controlled and that is
12 why Mr. Skaggs filed his suit in Hidalgo County,
13 and why he filed a suit in Goliad County and these
14 things were pending when I was hired.

15 So I had no choice but to go in and defend
16 in 3953 or to make a choice of what I would do.
17 I had to make a choice of intervening for H. P.
18 Guerra.

19 Now, he was the lawyer of those five brothers
20 who were partners and they had kind of looked to
21 him for some guidance and he had not joined M. A.
22 and R. R. Guerra in opposing the receivership
23 because he was trying to make peace and arrange
24 for a partition of this property.

25 But then -- and Judge, now this is the thing

1 that brought the whole thing to a head and caused
2 the whole trouble. There were three partners,
3 or actually six partners, three of whom had
4 attempted to sell their interest to Mr. Manges and
5 Mr. Manges based on deeds they had given him
6 caused the receiver to be appointed.

7 Now while that was pending in the appellate
8 courts, while the receiver had been appointed, and
9 a judge had placed in the custody of the court all
10 of the property of this partnership, nevertheless
11 on March the 31st, 1969 while it was in custody
12 of the court, and that the important thing, two
13 of the Defendants, two of the partners executed
14 a deed to Mr. Manges purporting to act for the
15 partnership and purporting to convey the entire
16 seventy-two thousand acres of ranchland to
17 Mr. Manges, thereby wiping out the rest of the
18 partners so far as their continuing in the ranching
19 business was concerned.

20 That is what brought Horace P. Guerra in to
21 see us, to have us oppose, not only the three deeds
22 that had been given, but also to try to set aside
23 this big deed which conveyed the whole ranch
24 property to Mr. Manges.

25 Now, that was the situation I faced, and so

1 I chose as the strategy whether it was wise or
2 not, to pursue the same strategy that Mr. Skaggs
3 had pursued to try my best to keep the case out
4 of a corrupt court, to put it either in Hidalgo
5 County or to find some way to keep it out of a
6 court where it was a foregone conclusion that we
7 were going to get hurt pretty bad in the District
8 Court, no doubt about it.

9 Now that wasn't just my decision. The
10 decision had already been made by another law firm
11 that had been in the Valley a lot longer than I
12 had and so I chose to intervene in the case in
13 Hidalgo County for a number of reasons.

14 Number one, it wasn't going to be anything
15 happen in 3953 until the Appellate Court ruled
16 finally on whether or not the receivership was
17 valid, but I was employed to do what had to be
18 done in that case for H. P. Guerra, Jr., if as
19 and when we wound up in that court.

20 My employment was to stay out of there as
21 long as we possibly could, simply because there
22 was no court, it was controlled by one of the
23 litigants, that is why we did it.

1 THE MASTER: All of this came after --
2 it seems to me to have not wanted this much
3 time, and to identify that as Plaintiff's
4 Original Petition and to certify documents.
5 Sure, he was not in the case when it was
6 filed, and what objection do you have to
7 that?

8 MR. MITCHELL: Well, Your Honor, I
9 just asked the simple question for the pur-
10 pose of leveling an objection.

11 My question was, first of all, did he
12 file it and he said he did not.

13 THE MASTER: I don't see why you asked
14 the question. It was apparent he didn't
15 file it, he was defending.

16 MR. MITCHELL: Well, it was not appar-
17 ent to me, Judge.

18 I am going to object to it as being
19 beyond the scope of the formal hearing and
20 irrelevant and immaterial in this procedure.

21 THE MASTER: You are objecting to what?

22 MR. MITCHELL: Introduction of Exam-
23 iner's Exhibit 13.

24 THE MASTER: You have said it was cer-
25 tified, didn't you?

1 MR. ODAM: Yes, sir.

2 THE MASTER: Your objection is over-
3 ruled.

4 THE WITNESS: I think I hae probably
5 answered the question you asked.

6 (Further examination.)
7

8 Q (By Mr. Odam:) Before we had introduced into
9 evidence the Plaintiff's Original Petition, you
10 stated you had been approached by Horace Guerra?

11 A Yes, sir.

12 Q Who is a Defendant in the lawsuit?

13 A Yes.

14 Q And we identified a copy of the petition which
15 indicates he is a Defendant in the lawsuit?

16 A Yes.

17 Q In the Plaintiff's Original Petition, on voir dire,
18 you stated it was then filed in what judge's court?

19 A It was the Plaintiff's Original Petition that was
20 filed in the 79th District Court. At that time
21 this Court was presided over by Judge Laughlin.

22 Q Woodrow Laughlin?

23 A Yes.

24 Q In other words, was there created, to the best of
25 your knowledge, a 229th Judicial District?

1 A Yes, it had been created and it was by the Legis-
2 lature. The exact date, I believe I have in a
3 memorandum somewhere, as to when that court became
4 effective, but the effect of the creation was to
5 create a new district court composed of Duval,
6 Starr and Jim Hogg Counties. It took Jim Hogg
7 and Duval from the 79th and Starr from one of
8 the others.

9 I believe Starr came from the 79th and Duval
10 and Jim Hogg from the 49th.

11 Q Do you know the date on which the Plaintiff's
12 Original Petition was filed?

13 A Yes, it was filed at my -- let me move to my
14 memorandum.

15 It was filed October -- well, here again,
16 and this is significant, it was signed by Judge
17 Laughlin, the order setting the date for hearing
18 on October 9, 1968, but it was not actually filed
19 for a couple of days and was filed in the clerk's
20 office on October 11, 1975.

21 MR. MITCHELL: 1975?

22 THE WITNESS: No, October 11, 1968.

23 Q What page are you referring to?

24 A Page 12, next to the last one on that October 9,
25 1968, date. That should be October 11, 1968,

1 instead of 1975.

2 THE MASTER: The file mark on the
3 Petition is October 11, 1968?

4 THE WITNESS: Yes.

5 THE MASTER: Although an order was
6 signed two earlier?

7 THE WITNESS: Yes, sir.

8 Q (By Mr. Odam:) Again, referring to your memoran-
9 dum, what date did you say was incorrectly typed
10 on the memorandum?

11 A October 11, 1975.

12 Q That should be October 11, 1968?

13 A Yes, that is right.

14 Q And what date was set for a hearing on that
15 Plaintiff's Original Petition?

16 A I believe it was November 17th, but on November 18th,
17 the judgement was entered denying numerous pleas
18 in abatement on behalf of R. R. Guerra and M. A.
19 Guerra, who had opposed the receivership.

20 Q In the Plaintiff's Original Petition, Mr. Clinton
21 Manges was shown as Plaintiff versus a number of
22 the Guerras and I believe you said earlier it
23 was a limited partnership?

24 A Yes.

25 Q What was the name of that limited partnership?

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A M. Guerra and Son,

Q Who were the members of that limited partnership?

A R. R. Guerra, M. A. Guerra, J. C. Guerra, H. P. Guerra and Mrs. Virginia Guerra Jeffreys.

Q Now, the Plaintiff's Original Petition sets forth in it a total of ten defendants. All of the members of the limited partnership to which you referred, those would all be defendants in the lawsuit?

A Yes, the ones I named, but I believe they sued the wives of the defendants as well.

Q Among the defendants in the lawsuit were not only the members of the limited partnership, but there wives and someone else?

A Yes, Southwestern Life Insurance Company which held a mortgage on the land involved at the time this was filed.

Q In the M. A. Guerra and Son partnership, would you please explain who were limited and general partners?

A All were limited except Virginia G. Jeffreys. That is what caused the trouble. too many partners.

Q Now, the Plaintiff's Original Petition; you mentioned in a term of a receivership. Could you explain what was sought in the petition filed by

1 Mr. Campman?

2 A Campman, Campman, Church and Burns was the firm
3 filing it on behalf of Mr. Manges.

4 Q What was Mr. Manges seeking?

5 A At the time of filing of this suit, he had
6 acquired the deeds from J. C. Guerra, which is
7 Joe Guerra, and I am going to use first names to
8 avoid confusion.

9 Mrs. Jeffreys and Joe had signed a contract
10 of sale and deeds purporting to convey to Mr.
11 Manges their alleged undivided one-sixth interest
12 in the ranch lands owned by the partnership. The
13 partnership estimated the ranch lands at seventy-
14 two thousand acres. There have been surveys made
15 since that time, but I don't think the exact
16 acreage ever got into the pleading. I will refer
17 to it as seventy-two thousand acres.

18 Q You referred earlier to big deeds and little deeds?

19 A Yes.

20 Q Would you characterize these as big deeds or
21 little deeds?

22 A These three deeds were the little deeds, because
23 they conveyed only a one-sixth interest each.
24 They didn't actually own one-sixth, because all
25 of these children were the children of Horace P.

1 Guerra, Senior, who created this partnership and
2 in his will he left his sixth interest, which
3 included his interest in the partnership, to the
4 children. They had a slightly different interest.
5 The interest ranged from eighteen point six seven
6 to thirteen per cent for Mrs. Jeffreys.

7 Q So the three little deeds were from Joe, Virgil
8 and Virginia?

9 A Yes, that is right. With these three deeds, Mr.
10 Manges went to court and said the profits were
11 not being divided and the partnership could not
12 make decisions and that we needed a receiver
13 appointed and the judge appointed the receiver-
14 ship for two reasons.

15 One was to protect the interest of all the
16 partners and the other was because the partners
17 themselves could not agree. Those were the reasons
18 for the appointment of the receiver.

19 Q Okay. I believe you said that in response to
20 Judge Meyers' question earlier, that the Plaintiff's
21 Original Petition was file marked on October 11,
22 1968?

23 A Yes, sir.

24 Q And the order was signed on October 9th, 1968?

25 A Yes, sir.

- 1 Q What date was the receiver actually appointed?
- 2 A The receiver was appointed on November 18, 1968.
- 3 Q All right. On that date, what Judge appointed the
- 4 receiver?
- 5 A Judge Woodrow Laughlin.
- 6 Q Who did he appoint as receiver?
- 7 A James S. Bates.
- 8 Q Is he the son of Jim Bates?
- 9 A Yes.
- 10 Q Where does he reside?
- 11 A Edinburg.
- 12 Q What is his profession?
- 13 A He is a lawyer.
- 14 Q On November 18th was when Bates was appointed?
- 15 A Yes.
- 16 Q At some time after this date of November 18, 1968,
- 17 when were you approached by Mr. Horace Guerra?
- 18 A That was in -- I would say the latter part of
- 19 May or June. I filed my petition intervening in
- 20 the Hidalgo County court on June 10, 1969, so it
- 21 would have been somewhere in that two week period
- 22 prior to June 10th. I know there was a certain
- 23 amount of urgency about it.
- 24 Q Pardon me, the receivership order signed on Novem-
- 25 ber 18, 1968, appointed Senator Bates and said

1 something about an appeal to the Supreme Court?

2 A Yes, Mr. Skaggs appealed the case. I had numerous
3 conversations with him all during this time.

4 Q Who was Mr. Skaggs representing when he appealed
5 the case?

6 A He was representing M. A. and R. R. Guerra. That
7 is another point that is confusing, because in
8 the end I wound up representing those same two
9 parties in a motion to disqualify Judge Carrillo.

10 Q Mr. Skaggs appealed the order of the receiver?

11 A Yes.

12 Q How soon after that date did he do that?

13 A He filed a supersedeas bond, but I am not sure of
14 the dates, but it was timely. The case is reported
15 and I have the citation. The citation is 442
16 Southwestern Second, 441.

17 I have a xerox copy of that attached to the
18 memorandum.

19 Q All right. He appealed that to the Court of Civil
20 Appeals?

21 A Yes.

22 Q Where was that on the appeal for the appointment
23 of the receiver?

24 A My recollection is Mr. Guerra brought a copy of
25 that opinion with him when he employed me, which

1 would indicate it was prior to June 1st, 1969.

2 As a matter of fact, that opinion which is attached,

3 I believe, is about Exhibit 3 to my Exhibit and

4 will show the exact date, but I believe it was

5 May, 1969.

6 Q I believe that is Exhibit 2 to your memorandum?

7 A Yes.

8 Q Now, the court opinion you are referring to, what
9 court was that in?

10 A In some way it got transferred over to the Waco
11 Court of Appeals from the San Antonio court.

12 Q So the opinion you have is of the Court of Appeals?

13 A Yes.

14 Q What action was taken after the Court of Civil
15 Appeals?

16 A Mr. Skaggs appealed it to the Supreme Court.

17 Q And was that writ granted?

18 A It was ultimately denied, sometime in the area
19 of November or December, 1970.

20 Q When the appeal was made and the Waco court ruled,
21 what was the effect of its ruling on the receiver-
22 ship, did it confirm?

23 A They affirmed the appointment of the receiver.

24 Q So at the time you got in the case, Senator Bates
25 had been confirmed by the opinion of the Court of

1 Civil Appeals?

2 A Yes.

3 Q What was the basis of H. P. Guerra coming to you
4 then?

5 A Well, logically he should have gone ahead and
6 employed Mr. Skaggs. He gave his reason as being
7 that Joe and Virgil had conveyed out from under
8 him his right.

9 Q You said Joe and Virgil, but I thought they con-
10 veyed the three little deeds only.

11 A But on March 31st, 1969, up to that time, Horace
12 had not intervened in the litigation. When they
13 sold his ranch -- you see, he was interested in
14 partitioning the ranchlands and the partnership
15 did owe over a million dollars in debts. He
16 wanted to come up with his part of the ranchland.

17 Q So the deed you are referring to is at the bottom
18 of Page 12 of your memorandum?

19 A Yes, that would be it. When Joe and Virgil were
20 purporting to act for him, Guerra and Son gave
21 a deed to Manges, which he recorded, purporting
22 to convey the entire seventy-two thousand acres.
23 That was when Horace decided he could not act as
24 peacemaker, because they were trying to sell him
25 out, and he came to see me about the matter.

1 Q All right.

2 A That is the first business I ever had with Horace
3 Guerra, Junior, in the 79th or the 229th Court
4 that was contested.

5 Q What did Horace Guerra want you to do in light of
6 that conveyance?

7 A Well, of course, he wanted to set the conveyance
8 aside, because, number one, the partnership con-
9 tract had a provision that if any party to the
10 partnership wanted to sell, he had to offer it
11 back to the partners. That had not been complied
12 with and he didn't realize that two of the partners
13 could sell the entire assets of the partnership.
14 This was not the entire assets, but it put them
15 out of the ranching business, which was the pur-
16 pose of the partnership in the beginning.

17 It was a situation here where two sell the
18 one asset that put the partnership out of busi-
19 ness.

20 While general partners have rather vast
21 power, it was his opinion and mine, too, that as
22 a matter of law, one or two partners cannot dispose
23 of assets which puts the partnership out of busi-
24 ness, which was the purpose of the partnership.

25 Q Did you represent any of the other Guerras at that

1 time?

2 A No.

3 Q Did Horace Guerra retain you?

4 A Yes.

5 Q Did any other Guerras retain you thereafter?

6 A Yes.

7 Q Who was that?

8 A We were approaching the second phase of the case,
9 and it is necessary at this point to explain the
10 bankruptcy proceedings Mr. Mitchell was talking
11 about a minute ago in order to understand that
12 question.

13 Q What is the first phase of the case?

14 A I regard this appointment of the receiver and
15 the appeal of that to the Supreme Court and the
16 validating of the receiver as the first phase.

17 THE MASTER: Excuse me. You were never
18 in that litigation?

19 THE WITNESS: No.

20 THE MASTER: You spoke of litigation
21 in Hidalgo County. Was that a suit filed
22 by Mr. Skaggs to set aside the big deed?

23 THE WITNESS: No, to set aside the
24 little deed.

25 THE MASTER: All right. Although the

1 litigations are late, it was that litiga-
2 tion that you talked to Horace Guerra about
3 and intervened in?

4 THE WITNESS: Yes, I talked to him
5 about the whole picture and we discussed
6 whether we should intervene on the appeal,
7 but I had read Mr. Skaggs' briefs and I
8 thought he covered the law thoroughly and
9 I could not see that our intervention could
10 add anything to it and we decided that the
11 best thing to do was file nothing in the
12 case, which we didn't do.

13 THE MASTER: This is a good and proper
14 time, since it is about one minute before
15 break time, for a recess.

16 (A short recess was taken.)
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1 THE MASTER: You may proceed, Mr. Odam.

2 Q (By Mr. Odam:) Mr. Smith, on the last series of
3 questions prior to the break, I think you just
4 completed what you refer to as the first phase
5 setting up the receivership?

6 A That's right.

7 Q -- et cetera, and appeal to the court. Now, I
8 would like to get into what you referred to as
9 the second phase.

10 A Yes, sir.

11 Q And overall how would you globally describe the
12 second phase, the second being the --

13 A Globally, the overview, I guess the bureaucrats
14 would call it.

15 Q Now wait a minute --

16 A The second phase would be -- would include that
17 period while the receivership matter was on
18 appeal, and while the attorneys were wrestling
19 around to find ways to keep it out of the Starr
20 County courts, or to get it settled.

21 During that second phase settlements of the
22 case were made and when Judge Carrillo came on
23 the bench those settlements were pretty well made
24 and had to be carried -- or were supposed to be
25 carried out.

1 Q Pardon me, you mentioned Judge Carrillo, the peti-
2 tion had been filed in the 79th District Court.
3 Do you know around what period of time that the
4 229th District was created?

5 A Yes, now that I have reference to my memorandum,
6 I have it here on September the 1st, 1969, was
7 the date when the 229th District Court became
8 effective and the rest of the history on that was
9 that Judge -- I believe it is R. F. Luna that was
10 appointed by the Governor to serve.

11 The bill creating the Court was introduced
12 in the Legislature by Representative Oscar Carrillo
13 who was the brother of the Judge but because
14 Oscar Carrillo had introduced the bill, the Gover-
15 nor could not appoint O. P. Carrillo to the bench
16 at that time.

17 Q Who was Governor at that time?

18 A Preston Smith.

19 Q And for what period of time did Judge Lune serve?

20 A O. P. Carrillo, could, of course, run for election
21 as Judge which he did in the election as Democratic
22 nominee in 1970 unopposed, and in the general
23 election he was unopposed also and he was elected
24 in the election of November, 1970.

25 Q He went on the bench as Judge of the 229th in

1 January of 1971?

2 A Yes.

3 Q So during phase two of the litigation, we now
4 have Mr. Horace Guerra that has approached you.
5 What action did you then take, what legal action
6 did you take on behalf of Mr. Horace Guerra?

7 A We had filed, intervened and filed, our interven-
8 tion in the case that Jack Skaggs had filed for
9 M. A. and Ruben in the 93rd District Court of
10 Hidalgo County, Texas.

11 I have attached Jack Skaggs petition to
12 show the background as an Exhibit, that is all it
13 does, that he was trying to stay out of Starr
14 County.

15 Q About what date would you say you filed that inter-
16 vention on behalf of Horace Guerra

17 A June 5th, 1969.

18 Q And the purpose of that intervention was --

19 A The purpose was really to try to -- now I not only
20 challenged the little deeds, but I also challenged
21 the big deed.

22 Q This would be --

23 A Which Jack had not done simply because at that
24 time the big deed had not been given.

25 Q Okay.

1 A I also challenged the transfer of the bank stock
2 that J. C. Guerra had transferred to Manges giving
3 him control of the First State Bank and Trust Com-
4 pany of which the Guerras, while they did not have
5 absolutely fifty-one per cent control, they had --
6 well, the case on appeal reflected four hundred
7 and forty-four shares. There may have been some
8 arrangement, and I am not sure what the answer to
9 that is, but some of that stock belonged to J. C.
10 Guerra personally and some of it belonged to M.
11 Guerra and Sons, but all of it was transferred by
12 J. C. Guerra either personally or acting for the
13 partnership to Clinton Manges.

14 Now, again, while this -- after the court
15 had taken judicial custody of the property --

16 Q Now, the bank stock, is the bank stock, that is,
17 bank stock in which bank?

18 A That is the First State Bank and Trust Company
19 of Rio Grande City. It is the only bank in --
20 it was the only bank in Starr County at that time
21 and still is, I guess.

22 Q Now, was it your legal position that the bank
23 stock was in custodia legis?

24 A Yes, as was the land.

25 Q And your intervention was filed June 10th, 1969,

1 then what was the next action that you took on
2 behalf of Mr. M. P. Guerra?

3 A The next action -- of course, Mr. Skaggs and I
4 had held numerous conferences on how we might keep
5 the case out of the courts in Duval or Starr
6 County, which was the 229th, and we had -- well,
7 the things that made it urgent -- this had gone --
8 we had been discussing ways from the time I got
9 into the case up until on October the 1st, 1969,
10 the Supreme Court had refused the application for
11 writ that put quite a bit of heat on us. We were
12 either going to wind up in Starr County, wherein
13 we foresaw a certainty that our clients would have
14 to look to the appellate courts for correction, if
15 correction were possible, or so we were -- we
16 had briefed the law out on the case in Hidalgo
17 County and we had concluded that there was a
18 strong probability that the plea of privilege
19 would be upheld, which had been filed by Manges
20 on the Hidalgo County suit.

21 Q Okay, now to clarify that point, Mr. Manges filed
22 a plea of privilege to have the case --

23 A Transferred to Starr County because of this
24 prior suit.

25 Q All right.

1 A 3953, the one we are really talking about.

2 Q Okay.

3 A So, on October the 21st, 1969 --

4 Q Well, pardon me again for -- 3953 was filed in
5 Starr County?

6 A Yes, that's right.

7 Q And there was also the suit in Hidalgo County?

8 A That's right.

9 Q Which had what cause number?

10 A It was -- just a second, I'll give you that, it
11 is B-24674 in Hidalgo County and I have a copy
12 of Mr. Skaggs' petition attached to this memoran-
13 dum.

14 Q So you concluded that Mr. Manges' plea of privilege
15 which had been filed in Hidalgo was probably viable?

16 A Would probably be a good plea, and for that rea-
17 son we -- if we were going to keep it out of Starr
18 County, we are going to have to find another way
19 to do it and at that time we filed on October the
20 21st, we filed this arrangement or petition for
21 an arrangement in bankruptcy in the United States
22 District for the Southern District of Texas in
23 Brownsville. That was October --

24 Q Who were the Plaintiffs -- what would you call
25 them, Plaintiffs?

1 A Yes, the Plaintiffs were Ruben and M. A. Guerra,
2 who were represented by Mr. Skaggs, and Horace P.
3 Guerra whom I represented, and we filed a joint
4 pleading for the arrangement in bankruptcy and we
5 presented a plan for the arrangement, as you have
6 to do, showing how the debts of the partnership
7 could be paid.

8 Q And what --

9 A And so forth.

10 Q And who did you want to have put in bankruptcy?

11 A Well, M. Guerra and Son, the partnership.

12 Q So the three limited partners in essence were the
13 moving parties?

14 A Well, the three general partners.

15 Q Three general partners?

16 A Three of the general partners.

17 Q All right.

18 A We had a legal problem involved there which was
19 to be significant further down the road and that
20 is that in an arrangement in bankruptcy, the real
21 estate arrangement for a partnership, you have
22 to have all of the partners as petitioners to the
23 court.

24 Now, that created a problem for us because
25 we only had three of the partners but we had taken

1 the position that the other three partners having
2 sold their interest were no longer in a position to
3 speak for the partnership.

4 That was a legal question in the case that
5 weakened the opposition somewhat.

6 Q What court was the arrangement in bankruptcy filed?

7 A The United States District Court for the Southern
8 District of Texas in the Brownsville Division.

9 Q What was the cause number of that arrangement?

10 A That was 29-B-9.

11 MR. MITCHELL: That is 69-B-9.

12 A 29-B-69?

13 MR. MITCHELL: No, it is 69-B-9.

14 A Yes, 69-B-9, there is another typo. Yes, 69-B-9.

15 Q And at that point you are representing Mr. Ruben --
16 correction, you are representing Mr. Horace Guerra,
17 and Mr. Skaggs was representing --

18 A Yes, that is right.

19 Q And Mr. Skaggs was representing Ruben and M. A.
20 Guerra?

21 A Yes, that is correct.

22 Q And what transpired in that litigation in bank-
23 ruptcy court in Brownsville?

24 A The referee in bankruptcy --

25 Q Who was the referee in bankruptcy?

1 A Arthur M-O-L-L-E-R had ruled against us on the
2 jurisdiction question. We had appealed from his
3 ruling to Judge Garza and, incidentally, on the
4 filing of this application Judge Garza did enter
5 an order staying the hand of the receiver in the
6 state court from interfering with the property
7 until the jurisdictional questions were decided.

8 That order stayed in effect until the bank-
9 ruptcy proceeding was dismissed. My recollection
10 is that in January the 6th, 1971, is the correct
11 date on the final dismissal.

12 Q All right, what date did he issue the stay order?

13 A On October 21st, 1969. You have to relate that
14 date to October the 1st when the Supreme Court had
15 refused the writ which was going to throw us
16 back into Starr County but Mr. Skaggs had applied
17 for -- or made a motion for rehearing which was
18 still pending at the time the writ was granted --
19 or at the time the injunction or restraining order
20 was granted.

1 Q And what again was the period of time from
2 October 21st, 1969, as to what date did that
3 stay order remain in effect?

4 A Until December 6, 1971.

5 MR. MITCHELL: No, no, January 6th.

6 THE WITNESS: Excuse me, January 6th,
7 1971.

8 There is some confusion on the dates
9 of dismissal, because there were three
10 dismissals. Ruben dismissed and finally
11 Horace did.

12 Q And up to the point where you appealed it to
13 Judge Garza, where you instituted the stay order,
14 what transpired on in February, if anything?

15 A The next significant thing that happened was
16 Mr. Skaggs made a settlement on behalf of Ruben
17 Guerra on February 27, 1970. At the time of
18 making that settlement for Ruben, he advised
19 M. A. Guerra --

20 Q Pardon me. Who did he make settlement with?

21 A Clinton Manges.

22 Q What were the terms of that settlement?

23 A That Ruben would be allowed to withdraw his
24 18,667 interest in the seventy-two thousand
25 acres of ranchlands and they estimated that as

1 thirteen thousand four hundred forty-five point
2 twenty acres in the end.

3 Q Pardon me, thirteen hundred?

4 A Thirteen thousand four hundred forty-five point
5 twenty.

6 Q Okay.

7 A He was to receive from Manges a mineral deed
8 conveying to him the one-half of the minerals
9 under this thirteen thousand so many acres that
10 Manges was supposed to have gotten under the big
11 deed and he was to retain his eighteen point six
12 six percent interest in the one-half of the
13 minerals that had been reserved to the M. A.
14 Guerra and Sons partnership.

15 There were some other miscellaneous provisions
16 such as root plowing and things that Manges was
17 supposed to do, but in connection with that
18 thirteen thousand acres and minerals, Manges was
19 to get the executory right to execute mineral
20 rights under the ranchlands that Ruben received.

21 Q At that time, I believe you said Mr. Skaggs
22 represented both M. A. and Ruben?

23 A Correct.

24 Q Did he continue to represent them?

25 A No, at that time, he told M. A., who was

1 substantially overdrawn in the ranch account, and
2 he could not afford to sacrifice the partnership
3 to carry M. A., so the explanation was made to
4 M. A. and M. A. gave that same explanation to me
5 when M. A. asked us to handle his case as well.

6 Q Now, did Mr. Skaggs, at any point, represent
7 Mr. Clinton Manges?

8 A Yes, as a matter of fact, Horace employed us
9 rather than going to Mr. Skaggs. He knew
10 Skaggs had represented Mr. Manges in the action
11 where Manges defrauded the Small Business
12 Administration and was found guilty of the same.

13 Q Did Mr. Skaggs have occasion to represent
14 Mr. Manges in any effort to gain control of the
15 bank in San Antonio?

16 A Yes, at the time of this settlement, and I don't
17 know the dates, but at the time of this settlement
18 with Ruben, he had undertaken the representation
19 of Mr. Manges to gain control of the Groce
20 National Bank in San Antonio.

21 Q So M. A. Guerra had been advised by Skaggs he
22 could not represent him and then, did M. A. Guerra
23 come to you?

24 A Yes, he came to me and wanted to know if we would
25 represent him along with Horace in the rest of

1 the litigation.

2 Q What litigation are you referring to?

3 A The whole thing, wherever it wound up.

4 At that time, we had it in an appeal from
5 Judge Moller's decision, and he was the referee
6 in bankruptcy.

7 Judge Garza had ordered Judge Moller to review
8 the thing and come back with another -- well, he
9 didn't tell him how to decide it, but asked him
10 to review it. That was the situation, although
11 briefs and a few things had been filed.

12 Q At this time you were representing Horace and
13 M.A.?

14 A Yes, of course, after Ruben made his settlement
15 with Mr. Manges -- you see, Manges was interested
16 in getting back to Starr County and we were
17 interested in getting out. Part of the agreement
18 was with Ruben, he was to submit to the jurisdiction
19 of the 229th Judicial District Court. At that
20 time, part of the agreement was Mr. Skaggs would
21 not give us a copy of Ruben's settlement and he
22 didn't. We had motions for discovery and we never
23 did get a copy of Ruben's contract until after we
24 came back into the case, but that is down the
25 road.

1 Q Okay. At any point, did your client, Mr. Horace
2 Guerra, settle with Mr. Manges?

3 A Yes, we were, of course, hanging on to federal
4 jurisdiction by our fingernails in a situation
5 where you are supposed to have unanimous decision
6 of the partnership, and we had the question of
7 whether three could do it, but not knowing what
8 Ruben's settlement was, we filed an amended plan,
9 just taking the position Ruben had settled and
10 that constituted a withdrawal from the partnership.

11 At any rate, having been without our knowledge
12 that the two partners we represented were the
13 only ones that had a right to speak, but we were
14 getting on thinner and thinner jurisdictional ice
15 at that time. The strategy we adopted was the
16 best thing to do was to try to work out a
17 settlement. We felt like we could get a better
18 settlement than we could if we wound up at the
19 mercy of the Court.

20 Q You are talking about settling in 3953?

21 A That is right.

22 Q Was a settlement entered into in December, 1970?

23 A Yes. Bear in mind, Horace Guerra was himself a
24 lawyer. Mr. Manges was conducting direct
25 negotiations with him. His son Horace Guerra,

1 III, was employed by the First State Bank and
2 Trust Company in Rio Grande City, of which Manges
3 had gained control under the transfer of stocks
4 which we say were in custody of the Court at the
5 time of the transfer.

6 Q What was the term of the settlement?

7 A Horace's settlement was dated December 1st, 1970,
8 and the terms of his was that he would withdraw
9 in kind seven thousand five hundred acres of land
10 and would permit the remainder of his sixteen point
11 six six percent interest to be transferred to
12 Manges under the big deed. He went along with the
13 terms of the big deed that gave Manges executory
14 rights on oil and gas minerals and gave Manges
15 rights to half of the minerals on all of the M. A.
16 Guerra and Sons lands, and reserved only his
17 sixteen point six six percent interest and half
18 the minerals.

19 There was a subdivision or two of town lots
20 in Roma that the partnership also reserved.

21 Q What was the action, if any, that Horace was a
22 petitioner in the bankruptcy? Did he remain in
23 that case?

24 A He made his settlement in direct negotiation with
25 Manges, which was all right. I told him that he,

1 being a lawyer, that if he could find a settlement
2 that would satisfy him, to let me know.

3 On December 1st, he called me by phone and
4 asked me to dismiss him out of the federal
5 bankruptcy proceeding, which I did. I mailed the
6 order on that for Judge Garza's signature on or
7 around December 1st, but I think it is signed on
8 December 6, 1970.

9 Q All right. You had filed the bankruptcy on behalf
10 of Horace?

11 A Yes, and I was left with M. A. Guerra.

12 Q Who was representing Ruben Guerra?

13 A Ruben had already dismissed his participation
14 in the bankruptcy proceeding and when Horace
15 dismissed, that left only M. A. Guerra.

16 I realized it was inevitable that we were
17 going to wind up in Starr County in this case.
18 In the interim, M. A. Guerra had been conducting
19 negotiations, and I believe a real estate agent
20 by the name of Stevens had been sent down to do
21 negotiating for him, but M. A. Guerra had been
22 very careful not to enter into a settlement without
23 discussing it with me, because he was not a
24 lawyer.

25 He did finally get terms that he thought he

1 would be willing to accept and we did make a
2 settlement for him on December 8, 1970.

3 Q You made a settlement for who?

4 A M. A. Guerra. That was the last of the partners.

5 Q At what point did you represent, if at all, Ruben
6 Guerra?

7 A I didn't represent him until we made the motion
8 to disqualify.

9 Well, we filed a protest against the
10 receivers and to oppose that, we filed a motion
11 to disqualify the judge.

12 Q How far down the line before you began to again
13 represent Ruben Guerra?

14 A Well, we have to understand the M. A. Guerra
15 settlement a little bit. At this point,
16 settlement had been made and the significant thing
17 here is the manner in which the litigant, Manges,
18 had wound up in charge of the whole affair.

19 When Jack Skaggs made his settlement with
20 Ruben Guerra, he didn't negotiate with me or
21 anyone else and he knew and I knew and everybody
22 in the case knew Manges was running the litigation.
23 He didn't consult as to whether this settlement
24 was satisfactory and that is highly important.
25 The settlement was made directly with Manges and

1 he got the ranch he wanted, which he probably
2 could have gotten from the other partners, but
3 the significance of this was that one of the
4 litigants was running the lawsuit and all he had
5 to do was talk to one of the litigants.

6 MR. MITCHELL: You are talking about
7 the federal judge?

8 THE WITNESS: No, on Phase 2 -- well,
9 of course -- I am talking about the state
10 judge. At that time, of course, Judge
11 Carrillo didn't take office until January
12 1st, 1971, so the judges prior to that were
13 just as objectionable.

14 THE MASTER: You are talking about the
15 judge of the court in which the receivership
16 was appointed?

17 THE WITNESS: Yes.

18 MR. MITCHELL: You are not talking about
19 Judge Carrillo?

20 THE WITNESS: No.

21 Q (By Mr. Odam) What judge are we talking about
22 that you are talking about he did not confer
23 with?

24 A At that time, presumably to settle the thing,
25 they should have discussed it with Judge R. F.

1 Luna. The settlement being made in December,
2 1970, and the anticipation was they would be
3 dealing with the court and Judge Carrillo, who
4 was coming to the bench.

5 Q When was Judge Carrillo elected?

6 A In November, 1970.

7 Q And then Judge Carrillo came on the bench when?

8 A Soon after the 1st of January, I imagine January
9 2nd is when he was sworn in.

10 Q Of what year?

11 A '71.

12 Q Now, M. A. Guerra settled with Clinton Manges.
13 How did that leave him in relationship to the
14 federal bankruptcy?

15 A He settled under these terms. M. A. Guerra was
16 overdrawn in the partnership in the vicinity of a
17 half million dollars. That was what Jack Skaggs
18 indicated to me, that he was overdrawn that
19 amount, because he had sickness and a lot of
20 problems in his family that had caused him to
21 spend more money than the other partners and the
22 settlement we made was that he would sell his
23 interest in the partnership to Manges for a cash
24 sum of two hundred thirty thousand dollars, with
25 Manges to pay all of the income tax that might be

1 assessed against M. A. Guerra as a result of this
2 sale in the partnership.

3 Q You say we negotiated that settlement, did you
4 participate in it?

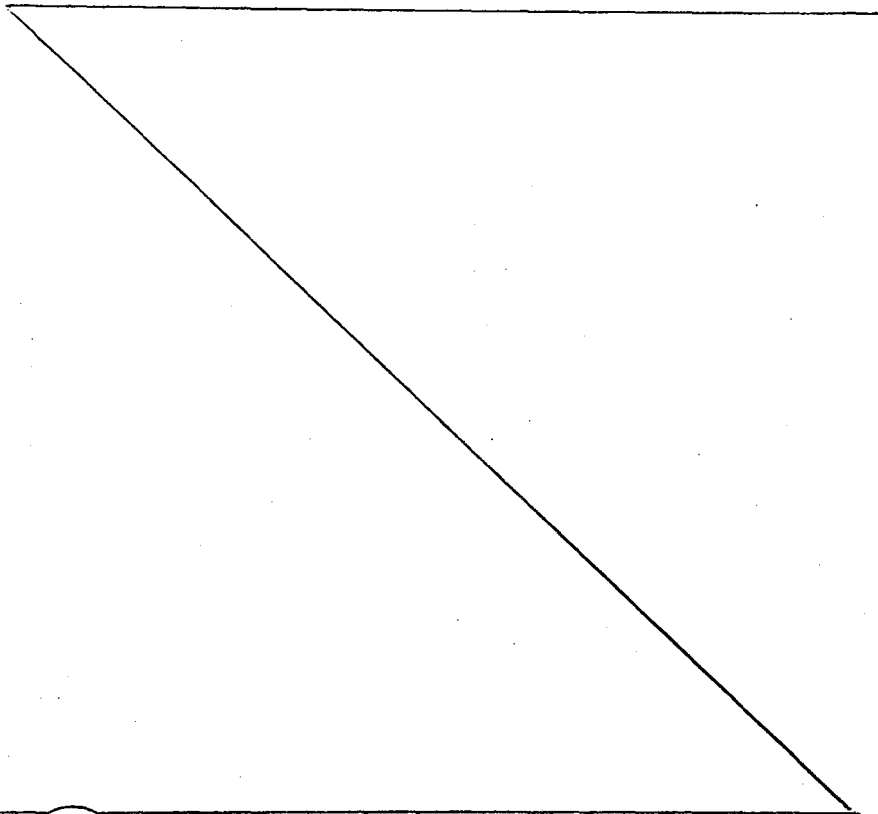
5 A Yes, mainly in the drawing up of the final
6 contract. I met with Bill Church at the office
7 of Manny Cook in McAllen and we negotiated the
8 terms and signed it there in McAllen. Manges
9 took the position of M. A. Guerra in the
10 partnership.

11 Among the things he did was, Manges assumed
12 all of the obligations that M. A. Guerra owed to
13 the partnership and received all of the benefits
14 that M. A. Guerra would have coming from the
15 partnership, except that M. A. Guerra reserved his
16 seventeen point sixty-six percent interest in the
17 undivided half interest in the mineral rights on
18 the seventy-two thousand acres, which had been
19 reserved to the old partners in the big deed, so
20 that pretty well lays the groundwork for what
21 happened in this interim.

22 This gets us to the third phase of the case,
23 because after those settlements were made, and
24 really the bargaining power that M. A. Guerra had
25 in making a favorable settlement, and after one

1 hundred and forty thousand dollars was paid on
2 income tax in M. A. Guerra's behalf and his
3 indebtedness to the partnership was paid, he
4 averaged out at one hundred and seventy dollars an
5 acre and the big deed was selling the land for
6 fifty-three dollars thirty cents an acre.

7 He wound up being the last stumbling block
8 in the way of Manges taking charge of the thing
9 through the use of the District Court.



1 Q Now, did he dismiss his proceedings in Federal
2 District Court?

3 A He dismissed his proceedings in Federal District
4 Court after this happened. It wasn't done imme-
5 diately because the -- Mr. Church wanted to make
6 some title examinations and little precautions in
7 connection with closing, and we discovered some-
8 thing that I didn't even know as Mr. Manges -- as
9 Mr. Guerra's attorney, that his wife had died and
10 there had been no probate of her estate and that
11 created a title problem that Mr. Church and I had
12 to work out. The way we settled it, I got quit-
13 claim deeds from his children who were all adults,
14 and it was January the 15th when we settled.

15 I refused to sign the dismissal in federal
16 court until we got the check for the two hundred
17 and thirty thousand dollars which was finally
18 placed in escrow with Frank Anderson, the president
19 of that bank.

20 Q And about what date did M. A. Guerra dismiss his
21 proceedings in federal court?

22 A We signed the order sometime in, I think actually
23 that we signed it on or about the 15th of Decem-
24 ber, but it was circulated to Mr. Church's firm
25 and to Jack Skaggs' firm before it was finally

1 signed -- I think it was signed on January the
2 6th, 1971.

3 Q If it was signed January the 6th of 1971 the
4 order dismissing M. A. Guerra?

5 A Yes.

6 Q Did that leave -- how viable did that leave, as
7 of January 6th, 1971, the federal bankruptcy pro-
8 ceedings?

9 A We were completely out of the federal court and
10 back in 3953 in Starr County.

11 Q Did the dismissal of the federal bankruptcy pro-
12 ceeding -- what effect did that have on the ear-
13 lier stay order issued by Judge Garza?

14 A Well, of course, that just wiped it out.

15 Q Did it automatically do it or was there a --

16 A It automatically did it.

17 Q There was no written order?

18 A No.

19 Q -- lifting the stay order?

20 A No, there was no written order.

21 Q So the stay order --

22 A When you dismiss a case, that just wiped it out,
23 we all presumed that.

24 Q The stay order on the receivership proceedings?

25 A Yes, sir.

1 Q Was automatically lifted on the dismissal of
2 January 6th, 1971?

3 A That's right.

4 Q So then this takes you back into Starr County in
5 the third phase?

6 A Well, yes, for all practical purposes. That was
7 my last contact with it, because Mr. Manges had
8 assumed M. A. Guerra's debts to the partnership
9 and he had an identity of interest with M. A.
10 Guerra on that and the only thing that M. A. Guerra
11 had at the conclusion when the thing was wound up,
12 he would have his and the partnership would be
13 dissolved, he would have his seventeen point six
14 six per cent of the minerals -- undivided half
15 of the minerals as separate property where he could
16 deal with it as he saw fit except for the fact
17 that Mr. Manges would have the executory rights
18 on it and he would have his interest in the town
19 lots and so forth which he could sell or develop
20 or do with as he saw fit.

21 Q Now, what events of any significance, if there
22 were any, transpired during the remainder of
23 February or correction, transpired during the
24 remainder of 1971?

25 A Well, of course, other than hearsay, of course, I

1 have since acquainted myself with everything that
2 happened in the interim.

3 Horace Guerra, of course, being a lawyer,
4 handled his own participation in things involving
5 3953 and the receivership court. It was a matter
6 then of carrying out more or less settlements that
7 had been made.

8 M. A. Guerra, we just didn't consider he
9 had any further interest in it in light of the
10 fact that Manges had assumed his position in the
11 partnership, so we didn't attend the proceedings.
12 He didn't attend them personally and I didn't
13 attend them. I figured that if anything happened
14 that affected M. A. Guerra that Jack Skaggs would
15 very likely call me about it, which I am sure he
16 would have. We saw no reason for M. A. to spend
17 any money on attorneys fees, I saw no reason why
18 he had anything to protect further.

19 I suppose we should go then to my next con-
20 tact with the case which was actually when Horace
21 Guerra came back to see me.

22 Q When did he come back to see you?

23 A That would have been -- I am going to guess it
24 was in October or early November, 1972, about
25 almost two years later.

1 Q All right.

2 A He advised me that the receiver had circulated a
3 proposed final report wherein he had come up with
4 some accounting there that Horace did not agree
5 with, that indicated there was still an outstand-
6 ing indebtedness of M. Guerra and Son of around
7 three hundred thousand dollars and he was propos-
8 ing to sell this undivided half interest in the
9 minerals which had been reserved to the original
10 partners, to pay this remaining three hundred
11 thousand dollars of debt.

12 Q Who was he proposing to sell --

13 A He mentioned in his motion that Mr. Manges, by a
14 coincidence, happened to be there and was willing
15 to pay three hundred thousand dollars for this
16 half interest in the minerals and the town lots,
17 I believe they were included also, which would
18 provide the funds with which these remaining debts
19 and so forth should be paid.

20 Horace was quite outraged at this because
21 his understanding was because when the final --
22 what they thought, I guess you would say, it was
23 next to the final order had been entered on
24 August the 20th, 1971, wherein approval was made
25 of the deeds that were given -- conveying by the

1 receiver to Ruben, Virgil and -- let's see, Ruben,
2 Virgil and H. P., Junior, got land and Manges got
3 land, all of those things were approved that his
4 understanding that the receivership was ready to
5 be closed and the only thing left was the formality
6 of dissolving the partnership -- entering an order
7 dissolving the partnership and maybe paying some
8 court costs, which wouldn't amount to much, because
9 after all there hadn't been too much proceedings
10 in the case.

11 Q Who would be the -- pardon me, who would be the
12 partners, say, in October of 1972 when he came to
13 you?

14 A Well --

15 Q They were rearranged in light of the events.

16 A Now, of course, the partners who had an identity
17 of interest with Horace were M. A., Ruben, Joe,
18 Virgil and Mrs. Jeffries. They owned the one-
19 half interest in the minerals which the receiver
20 was now trying to sell for three hundred thousand
21 dollars.

22 The best estimate we have been able to
23 make of those minerals is that there is, under
24 the seventy-two thousand acres, if roughly fifty-
25 six thousand mineral acres owned by M. Guerra and

1 Son, of which Manges had acquired half interest
2 under his deed, which everybody recognized.

3 Q So half of the interest in the minerals was owned
4 by Horace, M. A., Ruben, Joe and Mrs. Jeffries?

5 A Yes.

6 Q And the other half was owned by --

7 A By Manges. They conceded it to him except as
8 to this thirteen thousand acres of Ruben and
9 Manges conveyed those minerals to Ruben along with
10 the executory rights, which he received.

11 Q So at this point that he came to you there was a
12 question of the purchase of their half interest?

13 A Yes, that's right.

14 Q So that Mr. Manges would have the total interest?

15 A He would have -- would wind up with the whole
16 thing, and they figured minerals at that time were
17 worth about a hundred dollars per mineral acre and
18 you take twenty-three thousand -- twenty-eight
19 thousand roughly and you have got over two million
20 dollars worth of minerals anyway you look at it
21 that they were trying to sell for three hundred
22 thousand dollars.

23 MR. MITCHELL: Excuse me, sir. So
24 that the record is abundantly clear, when
25 you say, "they" were trying to sell, that

1 was not Judge Carrillo, that was the
2 receiver's application?

3 A The receiver, that is correct.

4 MR. MITCHELL: All right, thank you.

5 Q Mr. Horace Guerra came to you concerned about this
6 attempted conveyance?

7 A Yes.

8 Q By the receiver?

9 A That's right.

10 Q Of the one-half interest?

11 A Yes.

12 Q To Mr. Manges?

13 A That is correct.

14 Q So he came to you with that concern?

15 A Yes, sir.

16 Q And then what transpired next after that concern
17 was known to you?

18 A A few days later M. A. Guerra came in to see me
19 and he was alarmed too because Manges, if there
20 was any remaining debts sofar as M. A. Guerra
21 was concerned. Manges was supposed to pay his
22 part of it, that was in black and white. that
23 was a part of his contract. There was no doubt
24 about it and ultimately Judge Harvill entered a
25 judgment in favor of M. A. Guerra on that point.

1 That part was pretty clear, but nevertheless that
2 didn't make any difference to them, they were going
3 to sell it anyway.

4 Now, we didn't -- we didn't have any doubt
5 about the receiver being in the pocket of Mr.
6 Manges. I have known Jim Bates for twenty years.
7 I have practiced law there with him in the county.
8 He and I have been on friendly relations. I have
9 supported him for senator and voted for him and
10 we have never had any trouble settling cases and
11 I thought when M. A. Guerra came in, I could go
12 see Jim Bates and lay this contract in front of
13 him and say, "Now, Mr. Receiver, the Plaintiff is
14 supposed to pay anything that M. A. Guerra owes,
15 so let's just -- if any of the other partners owe
16 money, that is between you and them. But if
17 Manges owes anything that would be chargeable to
18 M. A. Guerra's interest, you should let him out."
19 I tried to negotiate it that way.

20 The truth of the matter of that Mr. Bates
21 was no longer running the receivership any more
22 than Judge Carrillo was running the court. Manges
23 was calling the shots and we knew that. Jack
24 Skaggs knew it when he made the settlement. We
25 all knew it when we compromised our clients the

1 way we did to settle -- to sell lands we thought
2 was somewhere between a hundred and two hundred
3 dollars an acre for fifty-four dollars and thirty
4 cents an acre.

5 Q When Mr. Horace Guerra and Mr. M. A. Guerra had
6 come to you expressing their concern about this,
7 then what did you do? Did you do anything on
8 their behalf?

9 A Well, I had started these negotiations with Jim
10 Bates and then Ruben Guerra came to see me and he
11 wanted to know if --

12 Q Pardon me, when did Ruben Guerra come to see you?

13 A Well, I think -- well, it would have been shortly
14 after M. A. and Horace, but it would have been, I
15 would say, either before or shortly after Novem-
16 ber the 17th, 1972. That's the date when Jim
17 Bates filed his -- filed his motion to go ahead
18 with this sale.

19 Now, I have letters to Jim explaining M. A.'s
20 position in that he had this contract and we sub-
21 mitted it to him.

22 In any other case, Jim Bates -- we would have
23 settled that, it wouldn't have gone past his
24 office, but you have got to look at his position.
25 Clinton Manges had promised Jim Bates a fifty

1 thousand dollar fee which hadn't been paid. That
2 was one of the main unpaid items.

3 Now, of course, in the interim we had --
4 we had investigated --

5 MR. MITCHELL: Of course, Judge, I am
6 going to object to that, what Clinton Manges
7 had promised Jim Bates as a fee would cer-
8 tainly be hearsay as to my client. I am
9 not inclined to want to interrupt the testi-
10 mony, but if it gets into that area, I feel
11 a duty to object and move to strike it.

12 THE MASTER: Well, do you want to take
13 him on voir dire to show whether it is first
14 hand knowledge or not?

* * * * *

V O I R D I R E E X A M I N A T I O NBY MR. MITCHELL:

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2
3
4
5
6 Q Mr. Smith, I believe that as a part of one of
7 the February or the March or the April hearings
8 in 1973, there had been -- I believe you asked
9 Mr. Randall Nye the very same question whether he
10 knew about it?

11 A Yes.

12 Q And you asked other witnesses at that hearing
13 whether they even knew about the fee of fifty
14 thousand dollars?

15 A No.

16 Q I believe you didn't get any further there in prov-
17 ing it with those folks than we did today. You
18 just assumed that was a deal made with Clinton
19 Manges and Jim Bates?

20 A Well, we didn't assume it. It was common knowledge
21 among the lawyers in the case and I think -- I am
22 sure I had it pretty well straight from Jim that
23 that was what he was supposed to make, although
24 I couldn't quote a date, but in the end -- so we
25 can get at what I really know, and get it off of

1 any possibility of hearsay, we all had that as
2 a -- we just knew that from so many conversations,
3 I couldn't pinpoint one, but in the end, in the
4 final judgment, they approved a fifty thousand
5 dollar fee for Jim Bates for the receivership.
6 So we know that our hearsay knowledge was correct.

7 Q Yes, but that was not Judge Carrillo that appointed
8 Jim Bates?

9 A No.

10 Q Nor was that Judge Carrillo that approved that
11 order?

12 A That is right.

13 Q All right. I just wanted that --

14 MR. MITCHELL: I will turn him back
15 over to you.

16
17 - - - - -

18
19 E X A M I N A T I O N

20 BY MR. ODAM:

21
22 Q We're at the point where Mr. Ruben Guerra came to
23 see you. I thought Mr. Ruben Guerra was repre-
24 sented by Mr. Jack Skaggs?

25 A Yes, that is correct. Ruben told me he was somewhat

1 dissatisfied with Jack. He didn't blame it on
2 Jack necessarily, but he said that Jack told him
3 that he was unwilling to go any further in the
4 matter in opposing this motion that had been filed
5 by Bates, that he felt like that the -- that there
6 was just no hope, that they were just going to have
7 to give up, and relax and enjoy it and lose their
8 minerals, as Ruben presented it, Jack told him
9 he had just run out of gas.

10 I called Jack to be certain that it would
11 be all right with him to represent Ruben in the
12 matter and he told me pretty much what Ruben had
13 reported that he said that he couldn't see any
14 possibility how we could win, that it was a fore-
15 gone conclusion that the Judge was going to go
16 all the way with Manges and just figuring we may
17 as well give up, but he said that if I was willing
18 to tackle it, power to me and good luck, that was
19 more or less the way.

20 While Ruben still had an account on attor-
21 neys fees to settle with him, he said he knew they
22 could work that out and for me to go ahead which --
23 and thereafter I did.

24 Q So what did you then do on behalf of your client,
25 Ruben Guerra?

1 A Well, the first thing we did, of course, was to
2 make an analysis of the accounting that the
3 receiver had presented and we found out that --
4 of course, Ruben had a lot of complaints and his
5 first complaint was that he had understood that
6 after Judge Carrillo qualified -- and now we are
7 getting into the third phase -- well, these things
8 happened in the second phase.

9 After Judge Carrillo qualified, the first
10 thing the receiver did, after a few preliminary
11 acts, was to make a motion to the court to
12 authorize the conveyance of these various lands.

13 Now the receiver didn't know anything about
14 these conveyances that had been made while the
15 property was in custodia legis. He only sought
16 to confirm all of these conveyances and everything
17 that had been made while the property was in the
18 custody of the court.

19 Of course, that was one of the reasons we
20 went ahead with the settlement. We knew that the
21 receiver was not a receiver in fact with a respon-
22 sibility of fairness and impartiality with our
23 clients, but he was taking orders from this liti-
24 gant, Manges.

25 He made this application that the Judge

1 approve a conveyance to Manges of the property
2 involved in the big deed except for these excep-
3 tions, that had to be made as a result of the
4 settlement.

5 Now, that would have been all right, except
6 for the fact that he provided in his application
7 and the Judge approved, that it be made without
8 creating any liens against the land, that it be
9 conveyed to Manges and that Manges was not required
10 to pay for the land at the time he got the deed
11 to it and therein lies our trouble.

12 When we reviewed the bookkeeping, we went
13 over it with an accountant who had worked out the
14 income tax matters for Ruben and the other part-
15 ners and had worked out the settlement on -- with
16 which the other parties had been involved and it
17 indicated that Manges, even at this point, taking
18 into consideration certain obligations of the
19 partnership, that he had assumed part of the pur-
20 chase price, that he still owed over three hundred
21 thousand dollars. We figured three hundred and
22 twelve some odd thousand dollars which, if he
23 paid that in there, there wouldn't be a necessity
24 to sell anything.

25 Q Now, this accounting report that you say ~~that~~ was

1 analyzed, was it one and the same report of Novem-
2 ber the 17th, 1972?

3 A Yes, that was.

4 Q All right.

5 A Now, the other thing that is important here is --

6 MR. MITCHELL: Excuse me, I thought the
7 witness testified October or November.

8 A He circulated it to the parties attempting to
9 get their approval prior to November the 17th.

10 MR. MITCHELL: All right.

11 A We had seen a copy of it before November the 17th
12 so I imagine it was in -- somewhere in late Octo-
13 ber or early November that the receiver first
14 circulated it.

15 MR. MITCHELL: Thank you.

16 Q Was this also -- was this also the motion to sell
17 the one-half interest in the minerals, was this
18 also filed November the 17th?

19 A Yes, that is right.

20 Q And that was a sale of the mineral reserve to
21 Ruben?

22 A Yes, sir.

23 Q M. A., Horace and Joe?

24 A That's correct, and Mrs. Jeffries and all of the
25 partners.

1 Q Was there a hearing date set for that motion to
2 sell?

3 A Yes, the hearing date was set for January the 15th,
4 1973, and now in -- now this commenced the beginning
5 and this is what brought on the motion to dis-
6 qualify the Judge.

7 At this point -- now, I didn't represent
8 Horace P. Guerra, Junior, the lawyer, which may
9 require the explanation; I had presumed I was
10 representing all three of them and had prepared
11 my pleadings in opposition to this accounting for
12 all three and sent a copy of it to Horace along
13 with a copy of my letter to the clerk to file it.

14 He called me back and asked me to remove him
15 from it. He didn't explain why, but I knew why
16 actually because his son, Horace the Third, was
17 about that time appointed by Clinton Manges, who
18 had finally gained control of the Groos Bank as
19 president of the Groos National Bank and he moved
20 to San Antonio and as a result of that -- of that
21 arrangement, Horace was no longer represented by
22 us and he represented himself. Actually what he
23 did was take a free ride on the pleadings and
24 wound up in the end recovering his interest in
25 the minerals as the other partners did, based on

1 the work that we did for Ruben and M. A. for
2 the matter.

3 Q Now, when you talk about the filing of the papers
4 then on behalf of Ruben, would this be in the
5 last or the third stage?

6 A Yes, that's right.

7 Q All right, let me halt a moment then to --

8 MR. ODAM: Let me ask the court reporter
9 to mark this document as Exhibit Number 14.

10 MR. MITCHELL: Excuse me, may I go
11 off the record a minute.

12 THE MASTER: Yes, while he is marking
13 that.

14 (Marked for identification by the
15 reporter as Exhibit E-3.)

16 (Discussion off the record.)

17 (Marked for identification as Exhibit
18 Number E-14.)

19 (Discussion off the record.)

20
21 THE MASTER: All right. Let's get
22 back on the record and you may proceed, Mr.
23 Odam.
24
25

1 Q (By Mr. Odam:) Mr. Smith, I show you what the
2 court reporter has marked as Examiner's Exhibit
3 Number 14 and ask you if you can identify the
4 style of this instrument?

5 A Yes, this is the document entered on November the
6 12th, 1968, in the original proceedings. I have
7 examined it many times. I was not a party to these
8 things, but that appointed the receiver and over-
9 ruled the pleas in abatement and so forth that
10 had been set up in opposition. I am not sure
11 whether the appointment of the receiver is included
12 in here or not, let's see.

13 MR. MITCHELL: Did you say 1968?

14 A Yes, I thought that appointment was made on
15 November the 18th, 1968, but he overruled the
16 pleas in abatement. yes, yes, he appointed James S.
17 Bates receiver in this order.

18 Q So what we have here, Examiner's Exhibit Number 14
19 is an order of November 12th, 1968, appointing
20 Senator Jim Bates as a receiver?

21 A That's right.

22 Q And this is a certified copy, I believe?

23 A Yes, that's correct.

24 Q And this is signed by Judge Woodrow Laughlin?

25 A Yes.

1 Q Appointing Senator Bates?

2 A Yes.

3 MR. ODAM: To bring us up to date
4 documentary-wise, I would like to offer in
5 evidence at this point the certified copy
6 appointing Senator Bates signed by Judge
7 Laughlin.

8 MR. MITCHELL: Only for technical pur-
9 poses would I object to it, it is irrelevant
10 and immaterial and those others, Judge.
11 Quite frankly I would like to have it in
12 the record.

13 THE MASTER: I admit it.

14 (Marked for identification by the
15 reporter as Exhibit E-15.)
16

17 Q You testified earlier about a supersedeas bond,
18 I will show you what has been marked as Examiner's
19 Exhibit Number 15 and ask you if you can identify
20 that document?

21 A Yes, this is the supersedeas bond that was made
22 on behalf of M. A. Guerra, R. R. Guerra -- well,
23 all of the -- well, M. A. Guerra, R. R. Guerra,
24 H. P. Guerra, Junior, M. A. Guerra signed again
25 as surety, and R. R. Guerra as principal insuror

1 and all of the Guerra partners and there is a
2 couple more, that I can't read the other names.

3 Q What was the purpose -- what is the effect of this
4 supersedeas bond now?

5 A It stays the hand of the receiver as far as taking
6 control of the property during the appeal. It
7 does not take it out of the custody of the court.

8 Q Okay.

9 MR. ODAM: We would like to offer into
10 evidence at this time the Examiner's Exhibit
11 Number 15, a certified copy of the supersedeas
12 bond in Cause Number 3953.

13 MR. MITCHELL: The same objections,
14 Judge.

15 THE MASTER: And the Exhibit is admitted.

16 (Marked for identification by the
17 reporter as Exhibit E-16.)
18

19 Q Mr. Smith, I show you what has been marked as
20 Examiner's Exhibit 16 captioned Order Authorizing
21 and Directing Receiver to Sell Real Estate and
22 Convey Partnership Land in Partial Distribution
23 and Dissolution of the Partnership of M. Guerra
24 and Son.

25 (Discussion off the record.)

1 Q This order in Cause No. 3953, a certified copy,
2 what is the date of this instrument and who is
3 the judge signing it?

4 A It is dated February 9, 1971, and signed by
5 O. P. Carrillo, Judge, and filed on February 11,
6 1971.

7 Q And what is the -- you referred in your previous
8 testimony to a number of orders or conveyances.
9 Could you describe what this conveyance is?

10 A This order -- I think the quickest way to do
11 this is to read this part of it. "It is for
12 authority to convey a portion of such real estate
13 in partial distribution and dissolution of the
14 partnership of M. Guerra and Sons, and it appearing
15 to the court and the court finds that J. C. Guerra,
16 Virgil H. Guerra, R. R. Guerra and H. P. Guerra,
17 Jr., the remaining general partners of M. Guerra
18 and Sons, have joined in such application and
19 therefore, having been fully advised as to such
20 actions and it further appearing to the court
21 from the evidence that the allegations and
22 statements made in the receiver's application to
23 sell and to convey partnership lands, are true
24 and correct, and that it would be in the best
25 interest of such receivership that the real estate

1 as described in the receiver's application be
2 sold and conveyed, free and clear of all liens
3 and encumbrances and that therefore, such
4 application should be granted."

5 Here is what he ordered. "It is therefore
6 ordered, adjudged and decreed that James S. Bates,
7 receiver, be and he is hereby authorized and
8 directed to sell at private sale, to Clinton
9 Manges, the following described real estate, to-wit:"

10 Here they describe the land. That was the
11 order that authorized it and it has these further
12 provisions. "It is further ordered that such
13 sale and conveyance shall retain for M. Guerra and
14 Son, an undivided one-half of any oil, gas or
15 other minerals or royalties now owned by said
16 partnership in said land, however, that such sale
17 and conveyance to Clinton Manges shall include
18 all executory rights in connection with said
19 minerals and royalties."

20 "It is further ordered that such sale and
21 conveyance of the real estate to Clinton Manges
22 shall be made by the cancellation of the outstanding
23 debts due Clinton Manges by M. Guerra and Son and
24 the credit due him by the partnership in a final
25 accounting herein and for the further consideration

1 of the interest of thirty-one point three three
2 two percent now owned by Clinton Manges in said
3 lands and that such sale and conveyance of said
4 real estate shall be made free and clear of all
5 liens and encumbrances against the same."

6 Q What judge signed this order?

7 A Judge Carrillo.

8 Q Is this what set up Mr. Manges' interests?

9 A Yes, sir.

10 MR. ODAM: I offer Examiner's Exhibit
11 16.

12 MR. MITCHELL: Do you have the order
13 from which such a motion comes from?

14 MR. ODAM: I doubt it.

15 MR. MITCHELL: Do you know whether this
16 was entered into on a joint motion?

17 THE WITNESS: I am sure there was a
18 joint motion by the partners who are mentioned
19 there. Bear in mind, the approval was not
20 of M. A. Guerra or Mrs. Jeffries. I explained
21 that in my memorandum, that they had both
22 sold their interest and Manges stepped into
23 their shoes. He was to pay the debts and
24 receive the benefits.

25 MR. MITCHELL: Fine. That is all right.

1 THE MASTER: You can get it later, if
2 you want.

3 MR. MITCHELL: I think with the explana-
4 tion just made into the record, it is satisfied,
5 that it was a joint motion and those parties
6 to whom they made the sale were represented
7 in the application.

8 THE MASTER: Examiner's Exhibit 16 is
9 admitted.

10
11 (The Examiner's Exhibit 16 was admitted
12 into evidence.)

13
14 MR. ODAM: Mark this, please.

15
16 (Whereupon, the above-mentioned
17 document was marked for identification as
18 Examiner's Exhibit No. 17.)
19

20 Q I show you what the court reporter has marked
21 Exhibit 17, and it is Cause No. 3953, styled,
22 "Application for Order Authorizing and Directing
23 Receiver to Sell Real Estate and Convey Partnership
24 Lands in Partial Distribution and Dissolution of
25 M. Guerra and Son."

1 I will ask you if you can identify this
2 application?

3 A This is another pleading in the case which was
4 filed by James Bates, receiver, on February 11,
5 1971. It is joined in by J. C. Guerra, Virgil
6 Guerra, R. R. Guerra and H. P. Guerra, Jr.

7 Yes, I have seen this and this is one of the
8 pleadings in this case.

9 Q Is that the application which was the basis for
10 the last order, which was Exhibit 16, or not?

11 A Yes, I would say so. I was just checking here
12 carefully to see if it also included the
13 application for approval of orders to convey the
14 interest of Ruben and the others, but this is the
15 basis of the application.

16 THE MASTER: Excuse me. As I understand
17 it, Mr. Smith, so the record is clear, the
18 order is dated two days before it is file
19 marked and two days before the motion or
20 application, which is Examiner's Exhibit 17.

21 THE WITNESS: Yes, that is what the
22 record shows.

23 THE MASTER: And the assumption that you
24 draw from this is that it was presented to
25 the judge on the 9th, but for various reasons,

1 was not filed with the clerk until two days
2 later?

3 THE WITNESS: That is right.

4 Q (By Mr. Odam) Again, to tie Exhibit 16 and 17
5 together, Examiner's Exhibit 16 is the order dated
6 February 9, 1971, filed February 11th, and it is
7 your testimony that it appears to you this is the
8 application upon which this order is based?

9 A Yes, that is right.

10 MR. ODAM: I offer in evidence Exhibit
11 17, the application.

12 MR. MITCHELL: My original objection
13 will still stand for this, Your Honor.

14 THE MASTER: It is admitted.

15
16 (Examiner's Exhibit 17 was admitted
17 into evidence.)

18
19 MR. ODAM: Mark this.

20
21 (Whereupon, the above-mentioned
22 document was marked for identification as
23 Examiner's Exhibit No. 18.)

24
25 Q I show you what the court reporter has marked as

1 Exhibit 18, which is an instrument in Cause No.
2 3953, styled Manges versus Guerra, and the
3 indication is that this is an application for
4 order authorizing sale and conveyance of partnership
5 lands in partial distribution and dissolution of
6 M. Guerra and Son.

7 This is a certified copy -- correction, this
8 is not a certified copy. This is a Xerox copy
9 from the court proceeding.

10 I will ask you if you can identify this
11 order?

12 MR. MITCHELL: What was the date of that,
13 please, John?

14 MR. ODAM: This order is signed
15 February 19, 1971.

16 MR. MITCHELL: Thank you.

17 Q Can you describe this next order, entered
18 February 19th?

19 A Yes, this was the order that authorized conveyance
20 of land to H. P. Guerra, Jr. and Ruben R. Guerra,
21 the land they were entitled to receive under their
22 conveyance. It refers to a conveyance to Ruben of
23 thirteen thousand four hundred twenty-five acres
24 and it doesn't specify the acreage to H. P., Jr.
25 Maybe these descriptions will take care of the

1 others.

2 H. P., Jr. is thirteen thousand seven hundred
3 ten acres and Virgil was to receive -- well,
4 Virgil, in the end, received some twelve thousand
5 acres. It is described in a number of tracts
6 here, but that is the order authorizing the
7 conveyance to the other partners.

8 Q This is the order signed by what judge?

9 A Judge Carrillo.

10 MR. ODAM: I offer in evidence
11 Examiner's Exhibit 18, as previously
12 referred to.

13 MR. MITCHELL: I make the same request,
14 that we show the application for the order
15 and I stand on the technical objection we made
16 at the outset.

17 THE MASTER: The exhibit is admitted.

18
19 (Examiner's Exhibit No. 18 was admitted
20 into evidence.)

21
22 MR. MITCHELL: Of course, Your Honor,
23 it is very important for counsel to show that
24 all of these orders were made on the joint
25 application.

1 THE MASTER: I understand what you are
2 saying, but I can't compel him to enter such
3 orders.

4 MR. MITCHELL: I understand that. I
5 happen to know that is the case and I would
6 like to have documents in evidence that show
7 this.

8 MR. ODAM: I don't have the application.
9 I didn't get certified copies of everything
10 in this case.

11 THE MASTER: Does the order reflect it
12 is a joint motion? If it does, that takes
13 care of it.

14 MR. MITCHELL: That is a very good
15 inquiry.

16 May I check it, please?

17 THE MASTER: Yes, sir.

18 MR. MITCHELL: Judge, it simply recites
19 that the application of James Bates as
20 receiver and it's signed by the Court.

21 THE MASTER: Over the afternoon recess,
22 if it can be found and produced, I think they
23 will accommodate you.

24 MR. MITCHELL: Excuse me. I was looking
25 at the wrong one.

1 THE MASTER: Let me look at it and I
2 will tell you if it is.

3 MR. MITCHELL: All right.

4 THE MASTER: Go ahead, Mr. Odam.

5 Q (By Mr. Odam) The orders we just referred to,
6 and those were the documents that set up the one-
7 half interest in Mr. Manges and one-half interest
8 in the other partners. Now, I will go back to a
9 line of questioning where Ruben Guerra had come
10 in and asked you to represent him. I believe you
11 said that was November 17, 1972, and a final
12 report and accounting had been filed and also there
13 was a motion to sell these one-half mineral
14 interests, which we just referred to, as set up
15 in these previous documents.

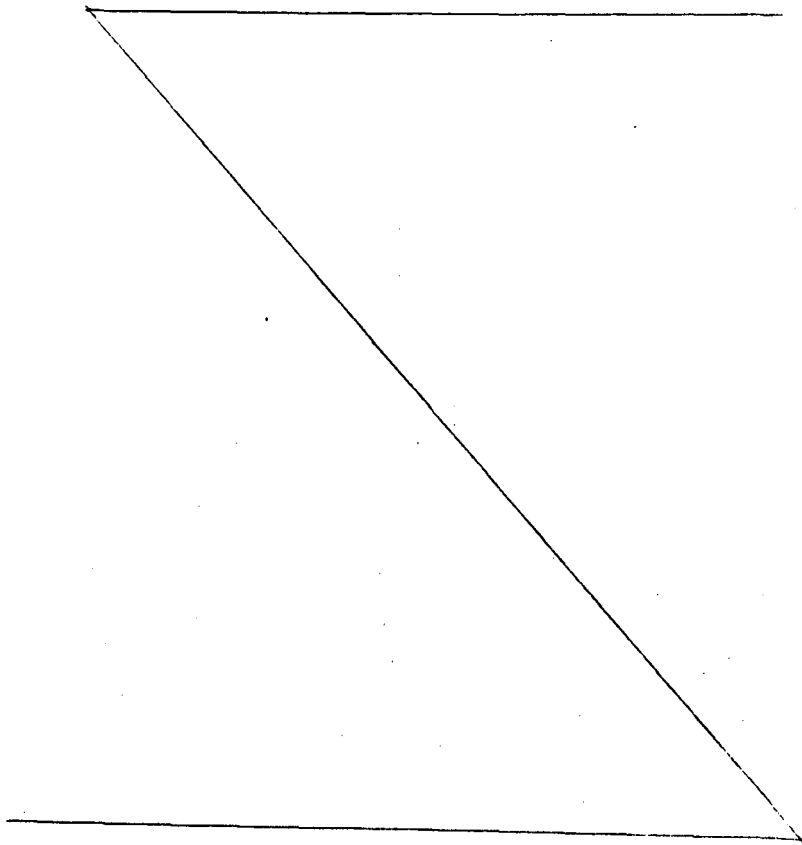
16 Now, I will go back to when Ruben Guerra came
17 in for you to represent him in November, 1972.
18 What action then did you take on behalf of Mr.
19 Ruben Guerra?

20 A After the motion of the receiver was set for
21 hearing on January 15, 1973, we realized that at
22 the conclusion of that hearing, the minerals would
23 be sold, if we didn't do something, and that was
24 the reason why we filed, on January 9, 1973, our
25 motion to have the judge disqualify himself. That

1 brings up the grounds and reasoning behind our
2 motion and we were convinced in our own minds,
3 if we didn't disqualify the judge, we would be in
4 a mess.

5 MR. ODAM: Mark these, please.

6
7 (Whereupon, the above-mentioned
8 documents were marked for identification as
9 Examiner's Exhibits 19 through 31, inclusive.)



1 THE MASTER: Now you have just asked
2 the witness a question about -- about an
3 answer that involved the filing on January
4 the 9th, 1972, of the motion to disqualify
5 and you may proceed.

6 MR. ODAM: Thank you.

7 Q (By Mr. Odam:) Mr. Smith, I ask you to examine
8 a document which is a certified copy and ask you
9 to identify it for the record, please, sir.

10 A Yes, this is the motion for disqualification or
11 recusation that we filed as against Judge Carrillo
12 in connection with further hearings on the receiver's
13 motion to sell the minerals, the half of the miner-
14 als to Mr. Manges.

15 Q All right, now the motion for disqualification or
16 recusation is filed in Cause Number 3953?

17 A That is right.

18 Q Manges versus Guerra?

19 A That is correct.

20 Q This is Exhibit Number 19, a certified copy.

21 (Handed to Counsel.)
22

23 A And that substantially answers the question Mr.
24 Mitchell first raised as to when I officially
25 appeared in this case. The answer to the receiver's

1 motion, and this motion were the first documents
2 I actually filed in 1953 because of the settlement
3 made prior thereto.

4 MR. MITCHELL: I am trying to see the
5 filing date, if someone has an independent
6 recollection.

7 THE MASTER: He said it was filed on
8 January 9.

9 MR. MITCHELL: He has previously testi-
10 fied, Your Honor, about a hearing, I wondered
11 if his recollection would serve him as to
12 when that hearing was had on that motion?

13 THE MASTER: I am sure Mr. Odam will
14 develop that.

15 MR. MITCHELL: He just said January,
16 I just wondered if he had -- only our techni-
17 cal objections that we previously had, Judge
18 Meyers, to Exhibit 19.

19 THE MASTER: Excuse me, Mr. Odam, you
20 did not formally offer it.

21 MR. ODAM: I offer in evidence Exhibit
22 Number 19.

23 THE MASTER: And subject to the objec-
24 tions that I think Mr. Mitchell made to
25 16 and 17, the same ones -- well, the

1 objection is overruled and it is admitted.

2 Q Mr. Smith, Mr. Mitchell asked you a question about
3 a hearing date, I believe you said that your
4 earlier testimony before the break was that a
5 hearing date had been set for January the 15th of
6 1973?

7 A Yes, that is right.

8 Q That date was set on the application and motion
9 which were filed on November the 17th, 1972. Then
10 you filed these papers on January the 9th?

11 A Yes, that is right.

12 Q Now, my question is then was there a hearing held
13 on the receiver's report and on the motion to sell
14 pursuant to that order setting it for January the
15 15th?

16 A Yes, there was a hearing held on January the 15th.

17 Q Now, was that a hearing on -- on what matter?

18 A Well, actually, this matter of the receiver's report
19 which came up on January the 15th, which was the
20 date set for the hearing on the merits of the
21 receiver's motion. The attorneys all attended the
22 court, including myself, Mr. Church for Clinton
23 Manges and at that point there had been a written
24 pleading filed by Harvey Hardy on behalf of Joe
25 and Virgil Guerra, but with the motions for recusation

1 or disqualification, the Judge didn't proceed to
2 take evidence on the merits of the case, as I
3 recall, but instead, later on that month on the
4 23rd I believe, he requested Judge Alamia of the
5 5th Administrative Judicial District to appoint
6 another judge to hear the issue of his qualifica-
7 tion.

8 Q Now, the motion which you filed, which is the
9 last Exhibit that was just referred to, the dis-
10 qualification or recusation, let me show you that
11 document once more.

12 This is marked as Exhibit 19, and was this --
13 this is a document of seven pages which is signed
14 by you?

15 A Yes.

16 Q And what was the basis that you set forth in the
17 motion for disqualification or recusation?

18 MR. MITCHELL: Well, the document speaks
19 for itself, Judge, and it has been admitted.
20 It would be repetitive.

21 THE MASTER: I am not sure, the ques-
22 tion was what?

23 MR. MITCHELL: What was the basis --

24 MR. ODAM: The question is what was
25 set forth in the document. I recognize it

1 speaks for itself. Again as I said before,
2 if we have a very voluminous stack and I
3 would like for Mr. Smith to speak in summary
4 form, in other words.

5 A Yes, sir.

6 MR. ODAM: In other words, Your Honor,
7 my question is to summarize what he stated,
8 as he set forth in his own document Exhibit 19,
9 just to summarize that document.

10 A We just recited that --

11 MR. ODAM: Just a second.

12 THE MASTER: I suppose I will permit a
13 very brief recitation of his understanding,
14 I suppose, of what he filed, but I do think
15 this is too duplicitous. I think the instru-
16 ment is in evidence and to start summarizing
17 them is a practice where there is no jury
18 that I do not like to follow.

19 Now a jury, of course, is a different
20 thing because it serves some function to
21 summarize it for a jury.

22 MR. MITCHELL: That is right.

23 MR. ODAM: Well, Your Honor, my purpose
24 is just that very one. I again recognize
25 we do not have a jury in this case but we

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do have a jury of nine before the commission
and, again, it was my thought that the record --

THE MASTER: I guess it is a question of
degree, Mr. Odam, we can start and if it is
too duplicitous, I will stop it.

MR. ODAM: All right.

MR. MITCHELL: We will level the addi-
tional objection, Your Honor, that the Judge
recused himself and another judge was appointed
and a hearing was had by another judge. An
order was entered and he disqualified him-
self. It would be irrelevant and immaterial
and he never did hear the matter.

THE MASTER: That goes to the very
heart.

MR. MITCHELL: Sure it does.

THE MASTER: -- of Article 2.

MR. MITCHELL: He completely recused
himself and never heard the matter and I
would say, therefore, it is immaterial and
irrelevant what the allegations are in
view of the fact that the Judge did recuse
himself and did not hear the matter.

MR. ODAM: Your Honor, he did not
recuse himself -- well, first of all --

1 THE MASTER: The charge in substance is
2 that he did not recuse or engage in this
3 conduct which was wrong and he did not
4 recuse himself voluntarily. Now, I think
5 there is quite frankly a law question here.

6 MR. MITCHELL: Yes.

7 THE MASTER: It is one that will not
8 be resolved by me.

9 MR. MITCHELL: That is right.

10 THE MASTER: In other words, your posi-
11 tion is very clear that one, he -- no judge
12 has a duty to voluntarily recuse himself.
13 He may choose to do so, but to call in another
14 judge to determine the issue of disqualifica-
15 tion is a legally permissible way to do it.

16 MR. MITCHELL: Right.

17 THE MASTER: And I see the point --

18 MR. MITCHELL: We submit, Your Honor,
19 an outstanding way to do it otherwise, the
20 litigates could by simply filing a motion
21 to disqualify --

22 THE MASTER: I understand that is your
23 position.

24 MR. MITCHELL: And we pled it.

25 THE MASTER: But again I consider that.

1 as I said yesterday, a plea in bar so to
2 speak.

3 MR. MITCHELL: Yes.

4 THE MASTER: And I am going to take the
5 evidence.

6 MR. MITCHELL: Okay, Judge.

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

8 MR. MITCHELL: All right, Your Honor,
9 we just --

10 THE MASTER: I understand your objec-
11 tion.

12 MR. MITCHELL: We just make the record
13 reflect our objection, Judge.

14 MR. ODAM: Well, I would --

15 THE MASTER: But the question was to
16 briefly state --

17 MR. MITCHELL: Excuse me, Judge, I
18 think the Judge had made a very succinct
19 statement of what the posture of the evidence
20 is, but we are not charged here in count
21 three --

22 THE MASTER: We are talking to count
23 number two only.

24 MR. MITCHELL: I am sorry, not number
25 three, but number two. we are not charged

1 in two of injudicious or unjudicious style
2 conduct for failure to disqualify ourself
3 instanter upon the motion. That is not what
4 they say, that is really what they are prov-
5 ing, what they say here aside from a long-
6 winded allegation of continued impropriety
7 is that there is an inter-relationship between
8 material benefits and some character of
9 persistent conduct while he was on the case
10 in this case and that, of course, is not what
11 the facts have shown.

12 THE MASTER: But they haven't rested on
13 paragraph two yet, Mr. Mitchell.

14 MR. MITCHELL: But it makes it very
15 difficult, Your Honor, for us to level what
16 I consider an intelligent objection, is what
17 I am driving at. I think I will just leave
18 it as it is and sit down and let Counsel
19 proceed.

20 THE MASTER: All right, sir. I dis-
21 agree with you a little bit, Mr. Mitchell,
22 I am reading the last paragraph on page
23 three and it pretty much says what I said
24 it said, I think.

25 MR. MITCHELL: Well, I understand.

1 THE MASTER: Go ahead, Mr. Odam.

2 MR. ODAM: All right, sir. If I might.
3 before I am going into the question, I don't
4 mean to unduly do so, we recognize the
5 legal question as set forth in part, in the
6 last paragraph on page three and that is
7 rather than voluntarily withdraw from the
8 case, that is recusation, Mr. Mitchell
9 referred to voluntary recusation and that
10 was recusing himself from hearing the
11 motion. I think there was another thing
12 from a legal standpoint as was stated in
13 the testimony yesterday of when -- I believe
14 the testimony was that a litigant, I
15 believe it was Mr. Canales had a motion
16 he was going to file for disqualification
17 and the judge in that case recused himself,
18 Judge Carrillo.

19 The only reason I go into that point
20 is to again draw the distinction of recusa-
21 tion voluntarily in light of what we think
22 the evidence was and will show or has and
23 will show in relationship of this particular
24 litigant Mr. Clinton Manges.

25 And with that, just to clarify our

1 position on that is to go ahead and very
2 briefly summarize what you set out in which
3 you filed before Judge Carrillo as the
4 basis for himself, for him to voluntarily
5 recuse himself from the case.

6 A I will try to be brief. I know you have trouble
7 with a lawyer as a witness, you ask him for a
8 drink of water and they give you one out of a
9 fire hydrant.

10 Q I'm not talking about voluntary recusing himself
11 from hearing that motion, I am talking about
12 recusing himself from the Manges versus Guerra
13 litigation.

14 A We wanted him to recuse himself from the Manges
15 versus Guerra litigation, we didn't care who
16 handled the motion.

17 Q Right.

18 A Whether the judge handled it, whether Judge
19 Carrillo or some other judge.

20 Q Right.

21 A That was a motion for disqualification or recusa-
22 tion. We included in there some material which
23 is not grounds for disqualification, but we do
24 think suggested recusation that the judge should
25 recuse himself such as the attaching the canons

1 of ethics of the American Bar for judges. That
2 was one of the attachments but the real grounds
3 for recusation, I think, is -- I mean for disquali-
4 fication would be the item which is attached as
5 Exhibit B showing that he had accepted a director-
6 ship in the First State Bank and Trust Company of
7 Rio Grande City.

8 Now this is a statement of condition of the
9 bank which it gave us the written proof that he
10 was a director in the bank and, of course, the
11 Judge would be required to take judicial notice
12 of the fact that the bank, and the shares of
13 stock owned by the M. Guerra and Son was part of
14 the res that was in custody of the court and
15 these proceedings and, therefore, I thought that
16 was clearly disqualifying.

17 Also, we pointed out -- we also pointed out
18 at that point that the same litigant, the Plaintiff
19 Manges not only conferred this favor on the Judge,
20 but attempted to have the receiver, who is an
21 officer of the court, and connected with the
22 decision-making process, a director for the
23 Groos National Bank, which was -- that is after
24 the date of February the 16th, 1971.

25 We feel like the litigant, tampering with

1 not only the judge, but an officer of the court,
2 such as a receiver who can go and talk to the
3 judge behind my back, and who has as much respon-
4 sibility to my client as he does to Mr. Manges,
5 legally speaking, that when he starts doing favors
6 for the receiver under those circumstances, that
7 is not only compromising the judge, but compromis-
8 ing officers of the court who are in a position to
9 do you in.

10 You will notice that in the end, this final
11 report that Mr. Bates filed would have really done
12 us in. It would have sold to Mr. Manges for
13 three hundred thousand dollars minerals that we
14 thought were worth over two million.

15 Q Now -- would you characterize then the motion for
16 recusation aside from -- and disqualification
17 aside from the receivership aspect you just men-
18 tioned, the "tampering with the receiver" primar-
19 ily to be some stock that the judge had received?

20 A Well, yes, it was based on the stock he had --
21 he had to have the stock to be appointed receiver
22 and --

23 THE MASTER: You mean director.

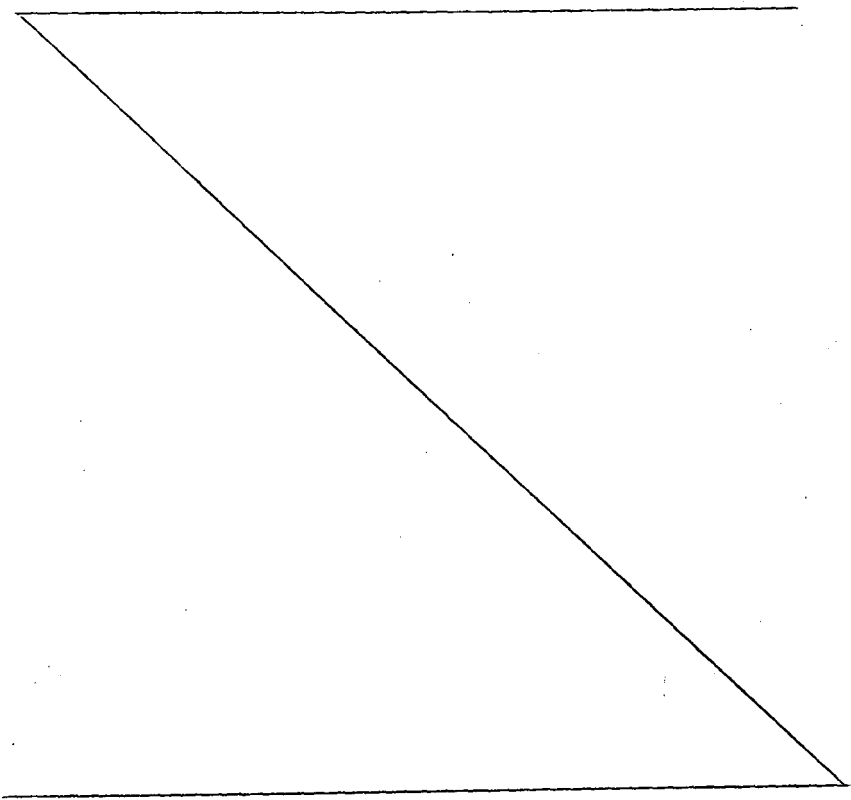
24 A I mean to be appointed director of the bank and
25 the directorship in the bank as the evidence will

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show, it is in the statement of facts, did provide a monetary director's fee of fifty dollars per month.

Well, of course, fifty dollars per month is a thing of value under the Constitution and the statutes. it is enough in and of itself without anything further.

At this time we had additional grounds that we did not allege because we didn't think we would need to allege it.



1 Q Well, you filed the motion for disqualification
2 or recusation, and that was a matter that came up
3 on January 15th at this hearing?

4 A Yes.

5 Q What took place on January 15th?

6 A At that time, the judge, Judge Carrillo, either
7 reset it or took it under advisement, I am not
8 sure what happened.

9 Anyway, in the interim, I have a notation
10 here -- February 5th was the date he wrote his
11 letter to Judge Alamia to appoint another judge
12 to hear it.

13 Q Hear what?

14 A The motion for disqualification or recusation.

15 On February 7, Judge Alamia appointed Judge
16 Mangus Smith to hear the motion. I believe Judge
17 Alamia either reset it for February 17th or
18 Judge Carrillo, because I think even a
19 disqualified judge can do that. Either or Judge
20 Smith reset it for February 20, 1973.

21 Q So it was reset for February 20th, 1973?

22 A Yes.

23 Q Was a hearing held or set for the motion for
24 disqualification or recusation?

25 A Yes, that is true, and at that time at the hearing,

1 Mr. Clinton Manges appeared with his San Antonio
2 law firm representing him and Mr. Church was
3 there and it was obvious that the motion was going
4 to be fought tooth and claw all the way.

5 Q I refer at this time to a document marked by the
6 court reporter as Examiner's Exhibit 25, styled
7 Manges versus Guerra, Cause No. 3953, Volume 1
8 of the transcript of evidence.

9 Can you identify this?

10 A Yes, this is a copy of the statement of facts
11 taken by D. A. VanDresser. He was the court
12 reporter for Judge Mangus Smith.

13 THE MASTER: You mean the testimony
14 taken in the motion to disqualify or recusation?

15 THE WITNESS: Yes, that is the oral
16 testimony.

17 THE MASTER: But, of course, the case
18 itself was tried a long time ago?

19 THE WITNESS: Frankly, it is limited to
20 the hearing before Judge Smith. It doesn't
21 include the hearing on February 15th.

22 Q (By Mr. Odam) What you were interested in, the
23 Master asked if the case had been tried, yet
24 there was still to be tried, with the approval of
25 this application another part of it.

1 A Yes, to sell the minerals.

2 Q And the motion on the final accounting?

3 A Yes.

4 Q And you were attempting to disqualify Judge
5 Carrillo to rule on that?

6 A Correct.

7 Q And this is a certified copy of that testimony?

8 A Yes.

9 MR. ODAM: We offer Exhibit 25, a
10 transcript of the hearing on motion to
11 disqualify, beginning February 20th, 1973.

12 MR. MITCHELL: For the record, it should
13 be noted it is February 20th to March 30th,
14 1973 and April 23rd to March 18, 1973.

15 Other than our original objection, we
16 have no further objections.

17 THE MASTER: Well, now, is it offered --
18 I don't know whether your earlier objection
19 is to hearsay or not, is it?

20 MR. MITCHELL: Yes.

21 THE MASTER: In one sense it is hearsay
22 in this hearing, is it not, Mr. Odam?

23 MR. ODAM: I believe we could get it
24 in for the truthfulness of the matters
25 asserted as to truthfulness of matters.

1 THE MASTER: No question about that,
2 that is admissible, but I was thinking
3 perhaps as for the other witnesses, it would
4 not be admissible.

5 MR. ODAM: We are using it for Judge
6 Carrillo's testimony and Clinton Manges'
7 testimony. It is our point to --

8 THE MASTER: Well, it is admitted as
9 the transcript of the testimony at that
10 hearing. Of course, anything Judge
11 Carrillo testified to, as far as it
12 constitutes an admission -- I don't admit it
13 at this point for the truth of any of the
14 other testimony until you show me some
15 additional evidence on that.

16 MR. ODAM: Fine.

17 Q (By Mr. Odam) Prior to the time of this hearing
18 held on February 20th, had you sent out to
19 Judge Carrillo any request for admissions?

20 A Yes, I had. I requested admissions on some other
21 matters of which we had -- our clients had
22 knowledge of and hearsay evidence we wanted to
23 clear up one way or the other.

24 MR. MITCHELL: May I ask a question at
25 this point?

1 THE MASTER: Yes.
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7 V O I R D I R E E X A M I N A T I O N
8

9 BY MR. MITCHELL:
10

11 Q Was a request for admissions sent to Judge
12 Carrillo?

13 A Yes, sir.

14 MR. MITCHELL: Well, that --

15 THE MASTER: That is unusual.

16 MR. MITCHELL: It was to me, too.

17 I am going to object to request for
18 admissions sent to a judge.

19 THE MASTER: Well, we will have to see
20 what they look like. As you well know, a
21 party to a proceeding, it says, as far as it
22 constitutes an admission, it is admissible.
23 If I write a letter and say things that
24 constitute an admission, that is admissible.
25 If these are admissions he signed, then they

1 can be put in evidence.

2 MR. MITCHELL: That is true.

3 The only question is whether or not the
4 quality of the judgment of stepping down or
5 the hearing of the issue is the question. He
6 never did hear the case.

7 THE MASTER: I need to see what we are
8 talking about before I can rule.

9 MR. MITCHELL: I am sorry, I can't
10 believe there was a request for admissions
11 filed against a judge.

12 Now, I know that is what we are
13 probably facing now, so thank you, Judge.

14 THE MASTER: Fine.
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E X A M I N A T I O N

(CONTINUED)

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4 BY MR. ODAM:

5
6 Q I show you what the court reporter has marked
7 Exhibit 20 and ask you if you can identify this?

8 A That is a request for admissions that I directed
9 to Judge Carrillo, and according to the certificate
10 of service, it was directed on the 23rd of January,
11 1973, under Rule 169.

12 MR. ODAM: I will offer into evidence
13 at this time what has been marked as Exhibit
14 20, a request for admissions, addressed to
15 Judge O. P. Carrillo.

16 MR. MITCHELL: I am going to object to
17 the request for admissions to be offered.

18 THE MASTER: The objection is sustained
19 at this time.

20 You will have to tie it in to some
21 answers, Mr. Odam. The request, unless
22 answered, are not anything.

23 MR. MITCHELL: The Court is going to let
24 them in under the General Admissions Rule,
25 I imagine.

1 THE MASTER: It may well be,
2 Mr. Mitchell, that Judge Carrillo didn't have
3 to answer them, but if he did, you have got
4 to show me something that makes it admissible,
5 because if he had written a letter to a
6 friend that Mr. Smith had gotten, that would
7 be admissible.

8 MR. MITCHELL: That is correct. So the
9 law takes care of us to that extent. If he
10 said he didn't do it --

11 Q (By Mr. Odam) Let me ask you this question: We
12 offered in evidence, Exhibit 20, which objection
13 has been made to, and the Master has stated his
14 ruling depends on what is next coming.

15 I now pose the question to you, looking at
16 Exhibit 21, which is captioned, "Statement in
17 Response to Request for Admissions," in Manges
18 versus Guerra, Cause No. 3953. Can you identify
19 this?

20 A This is Judge Carrillo's answer to the request
21 for admissions which I just identified.

22 Q Does that appear to be signed by Judge O. P.
23 Carrillo?

24 A Yes, I received a copy of it and a copy was filed
25 in the case.

1 MR. MITCHELL: We object to 20 and 21
2 on the grounds they are hearsay and
3 irrelevant and immaterial and the ultimate
4 issue on Roman Numeral III is --

5 THE MASTER: On two.

6 MR. MITCHELL: May the record show that
7 where I said three, that should be two.

8 THE MASTER: Yes, the record will
9 reflect that this entire proceeding is
10 relating to Roman II.

11 MR. MITCHELL: And further, in view of
12 the fact that the record, I think is without
13 question, that Judge Carrillo did not preside
14 over the matter and was disqualified and
15 obeyed the disqualification, that the
16 allegation and the request for admissions
17 certainly become totally irrelevant and
18 immaterial.

19 THE MASTER: Let me see the answers.

20 MR. ODAM: Yes, sir.

21 THE MASTER: Well, the objection is
22 overruled. Exhibits 20 and 21 are admitted.

23
24 (Examiner's Exhibits 20 and 21
25 admitted into evidence.)

1 MR. MITCHELL: I didn't get to see the
2 answers.

3 THE MASTER: Here they are, Mr. Mitchell.

4 Q (By Mr. Odam) Now, getting back to the sequence
5 of events, as I understand it, you had made the
6 request for admissions, which was just entered into
7 evidence as an exhibit, and Judge Carrillo
8 responded by a statement of those requests for
9 admissions, which was just entered into as an
10 exhibit --

11 MR. ODAM: Mr. Reporter, what was that
12 number?

13 MR. MITCHELL: Exhibit 21.

14 THE WITNESS: Yes, sir.

15 MR. MITCHELL: Let me explain for the
16 record, I didn't wish to step on the
17 reporter's answer, but I held the exhibit
18 in my hand and I answered that instead of
19 him, because I had it right here.

20 MR. ODAM: I take it -- off the record.

21
22 (Whereupon, an off-the-record
23 discussion was had.)
24

25 Q (By Mr. Odam) Mr. Smith, I take it from your

1 just-completed testimony that the primary basis
2 for your motion for disqualification or recusation
3 was the ownership of stock in the bank, is that
4 correct?

5 A That was the primary basis in the first motion.
6 I did file other motions.

7 Q The primary motion, the motion we have in evidence
8 thus far, is based on the ownership of stock and
9 receiving of the stock?

10 A Yes.

11 Q And you generally agree with the statement that
12 the answers and the request for admissions go to
13 the elements of the ownership of the stock and
14 that is all, or was the purpose of the admissions
15 more expansive?

16 A I asked him about the grazing leases, which we
17 had -- our clients live there and they knew the
18 judge's cattle were grazing on lands in the
19 lawsuit.

20 Q Were the grazing lands in the first motion?

21 A No, not the first motion.

22 Q You were asking him about ownership of stock and
23 what else?

24 A Ownership of stock and that Cadillac transaction.

25 Q Is that Cadillac transaction referred to in your

1 first motion?

2 A Not the one in evidence. I asked the question
3 about that Cadillac in the request for admissions,
4 because we had evidence of that and we didn't know
5 what was true and what was not, so we wanted to
6 ask and so we asked him.

7 Q So the responses pertained to those items, the
8 Cadillac, stock and grazing leases?

9 A Yes, and we did investigate his answers.

10 Q At this time, I would ask you if you can identify
11 what has been marked as Exhibit 22, which is an
12 instrument styled Manges versus Guerra, Cause No.
13 3953, a supplemental motion for disqualification
14 or recusation.

15 I will ask you if you can identify that?

16 MR. MITCHELL: What was that number?

17 MR. ODAM: Exhibit 22.

18 MR. MITCHELL: Thank you.

19 THE WITNESS: Yes, this is a copy of a
20 motion which we filed and I notice it was
21 mailed on February 21st, 1973, and we, in
22 that supplemental motion, we raised the issue
23 of the grazing leases and the Cadillac
24 transaction.

25 MR. ODAM: I offer in evidence at this

1 time the supplemental motion, Exhibit 22.

2 MR. MITCHELL: The same objection as
3 previously made.

4 Is this an unsigned copy?

5 THE WITNESS: Yes.

6 MR. MITCHELL: We object, Your Honor,
7 on the same grounds as previously objected
8 to for the purpose of protecting our record.

9 THE MASTER: Yes, and the objection is
10 overruled and it is admitted.

11
12 (Examiner's Exhibit No. 22 was admitted
13 into evidence.)

14
15 Q (By Mr. Odam) Now, the instrument we just
16 referred to, Exhibit 22, is that a supplemental
17 motion that was for consideration at the hearing
18 we are talking about that took place on
19 February 20th?

20 A Well, those things came out in the hearing on
21 February 20th as a result of some of the testimony
22 and it may be at that hearing -- I believe it was
23 at that hearing where Mr. Manges testified that
24 his giving the shorter lease for twelve to fourteen
25 hundred acres for a ninety day period was as a

1 courtesy to the judge. I believe you will
2 find that testimony on Page 72 of the record.

3 Q (By Mr. Odam) At this point, if I could interrupt
4 you, you referred to a statement of facts in the
5 February 20th hearing.

6 A Yes, Page 72. Mr. Manges testified he let the
7 judge graze his cattle on over a thousand acres --

8 MR. MITCHELL: We renew our objection
9 previously made and further add now it is in
10 the record and it speaks for itself,
11 Exhibit 25.

12 THE MASTER: Yes, it is appropriate for
13 him to call the pages to the attention for
14 the record rather than for someone to thumb
15 through it.

16 MR. MITCHELL: He is calling on his
17 examination and none of the cross. That puts
18 me to the test of coming in and saying how
19 about Page 42 and so on.

20 THE MASTER: That is right.

21 Mr. Mitchell, this has not raised the
22 question of dignity of evidence, and unless
23 Mr. Odam does that --

24 MR. MITCHELL: I understand.

25 Q (By Mr. Odam) You testified as to February 20th.

1 A Yes.

2 Q You referred to testimony by Clinton Manges?

3 A Yes, I might add that Judge Carrillo, in his
4 testimony, said he was to pay a dollar an acre a
5 year.

6 MR. MITCHELL: I assume I have a running
7 objection?

8 THE MASTER: Yes, and really, I am not
9 sure what you are doing here, Mr. Odam.

10 Encompassed in the objection is that it
11 is hearsay and I agree it is hearsay.

12 MR. ODAM: Well, Your Honor, Mr. Mitchell
13 asked me earlier who the next witness would
14 be and my next witness is Clinton Manges and
15 I am trying to lay a predicate through this
16 witness that this sworn testimony -- that I
17 have the predicate laid for them, if and when
18 I get Mr. Manges on the stand to testify.
19 I am laying a predicate for that testimony.

20 MR. MITCHELL: I submit the procedure is
21 in reverse. Is he attempting to impeach him
22 before he comes on the stand?

23 The transcript itself is the best
24 evidence.

25 THE MASTER: The best evidence comes in

1 to describe an instrument and has nothing
2 to do with that.

3 All I understand you are doing is having
4 this witness refer to, on the record, where
5 certain pages are located where his and her
6 partition of the testimony of Mr. Manges
7 is such and such and I suppose you intend to
8 put Mr. Manges on, and if he denies it, read
9 him back the testimony?

10 MR. ODAM: That is correct, Your Honor.
11 Also, it appears to me at this time that this
12 Exhibit 25 has been offered for what it is,
13 that is a transcript.

14 The testimony Mr. Manges gave earlier
15 should be considered for the truthfulness of
16 the statements he gave under oath of another
17 hearing at the time and he had counsel present
18 at the time.

19 THE MASTER: But you are now to the
20 question of when is a record in another
21 proceeding admissible in a subsequent
22 proceeding involving at least somewhat
23 different matters. This is a proceeding to
24 determine whether or not ultimately the
25 Judicial Qualifications Commission should take

1 any action with respect to Judge Carrillo,
2 and if so, what action to take.

3 Judge Carrillo, was he represented in
4 that proceeding?

5 MR. ODAM: No, sir.

6 MR. MITCHELL: He was not present.

7 The testimony came by telephone.

8 MR. ODAM: That was another time.

9 MR. MITCHELL: Well, it is two different
10 times.

11 THE MASTER: I think the law is that
12 that record is not now admissible. You will
13 have to convince me it is.

14 Under certain circumstances, it becomes
15 admissible, for example, when the witness in
16 this instance, Mr. Manges, is dead or
17 unavailable.

18 MR. MITCHELL: There was no identity of
19 cross-examination and identity of parties.

20 THE MASTER: It doesn't have to be
21 completely identical. This was a motion to
22 recuse him and there is some identity, I
23 suppose, but I am doubtful about the
24 admissibility of that, Mr. Odam. That is one
25 thing we can do this afternoon, but I think

1 you are on weak ground.

2 MR. ODAM: What we had in this
3 proceeding was a motion to disqualify and
4 supplemental motions for disqualification or
5 recusation.

6 THE MASTER: In a particular case?

7 MR. ODAM: That is right.

8 THE MASTER: The allegation here is
9 that he was guilty of misconduct because he
10 did not voluntarily recuse himself and that
11 may be redundant from that case. He was not
12 represented in that case, he gave his
13 testimony, and he had no opportunity to
14 cross-examine Mr. Manges.

15 MR. MITCHELL: Judge Meyers, in addition
16 to that, the record will reflect Judge Smith
17 stated in the record that Judge Carrillo was
18 taking his docket and was presiding in another
19 trial. They traded dockets is what they did.

20 We would object further, if there is
21 some attempt to bolster this Exhibit 25 with
22 the verbal testimony of the witness. I also
23 want to object, Your Honor, to some
24 character of bolstering of testimony.

25 THE MASTER: That is an objection I

1 would sustain if we had a jury, and that
2 doesn't bolster it in my mind now, however.

3 MR. MITCHELL: Thank you, Judge.

4 MR. ODAM: My purpose for what is in my
5 mind is to hear Clinton Manges' testimony
6 and we have heard who he is. There are certain
7 motions, and here is Mr. Manges testifying as
8 to his relationship with Judge O. P. Carrillo.
9 Judge O. P. Carrillo exercised his right
10 yesterday to take the Fifth Amendment and not
11 confirm or deny any of that.

12 It is my feeling that this evidence is
13 what was in the state of mind of Judge
14 Carrillo. He knew what we were talking about
15 and what it is.

16 THE MASTER: It may be that it is
17 admissible for some limited purpose of
18 showing -- I am not sure I understand that.

19 MR. ODAM: I would say the state of
20 mind or intention.

21 THE MASTER: Whose?

22 MR. ODAM: O. P. Carrillo, when he did
23 not recuse himself at the time of the
24 hearing. These are matters that he was
25 aware of in his own mind.

1 THE MASTER: How do you know that,
2 because Manges says he was aware of it
3 doesn't make him aware of it.

4 MR. ODAM: The testimony itself relates
5 to transactions, I mean, having a lease
6 agreement and payments on a Cadillac --

7 THE MASTER: I agree anything Judge
8 Carrillo testified to in those proceedings
9 is admissible as an admission, but now, if
10 Mr. Manges says yes, we had a lease, that is
11 not binding on Judge Carrillo. That may be
12 totally false testimony and that is a
13 transaction that never occurred in Judge
14 Carrillo's eyes; I don't know that, but it is
15 like what happens so often in divorce cases
16 that just chills my blood.

17 A witness will get on the stand and say
18 my wife has been unfaithful to me with Joe
19 Dokes and Joe is not there to say I don't
20 know the woman. That is a transaction, you
21 see, and that goes to Joe's state of mind.
22 That doesn't make it admissible against Joe
23 Dokes and doesn't against Judge Carrillo.

24 MR. ODAM: This is at a hearing where
25 Judge Smith sat as presiding judge. This

1 evidence was admitted, the testimony of
2 Judge Carrillo, of Clinton Manges and others.
3 It would appear to me that Judge Smith, in
4 ruling on this, would have some bearing in
5 the case of the Master here, because this
6 is the testimony and Judge Smith did
7 disqualify Judge Carrillo on that basis.

8 THE MASTER: To prove the truth?

9 MR. ODAM: Yes.

10 THE MASTER: No, sir, you have to go to
11 the books and convince me. I don't understand
12 it, but I don't think it is good. It is
13 testimony taken in a prior proceeding and
14 to a limited extent such testimony is
15 admissible. I am not sure of the limit, but
16 I am pretty sure of them, and you are going
17 to have to do some more work, but the witness
18 is available, that is, Mr. Manges is
19 available, and there was certainly not a
20 complete identity of parties or no identity,
21 some perhaps identity of issues, but Judge
22 Carrillo was not represented and did not have,
23 or at least didn't take the opportunity to
24 be there and cross-examine. He may not have
25 had the opportunity.

1 MR. ODAM: What would be the limited
2 purposes at this time that the Master could
3 see that the testimony of Clinton Manges
4 would be admissible?

5 THE MASTER: Well, I don't know, that
6 it is admissible for anything. I just
7 admitted that for whatever worth it was
8 as the transcript of that testimony because
9 you can't sift out what Judge Carrillo says,
10 I suppose you could, I don't see any point
11 in it, you couldn't sift out what Judge
12 Carrillo says from what the other witnesses
13 say. Judge Carrillo's testimony is --

14 MR. ODAM: Let me withdraw at this
15 point any attempt to get into evidence for
16 the truthfulness of the matters asserted
17 the statements that were made by Clinton
18 Manges, the Plaintiff in this lawsuit, as
19 to his business dealings with the Judge
20 on the case.

21 Let me step over to page 106 of the
22 testimony which is the testimony of Judge
23 O. P. Carrillo who was examined by Mr.
24 Smith and I would offer the testimony of
25 Judge O. P. Carrillo for the truthfulness

1 of the statements that Judge Carrillo made
2 in his testimony that was sworn to.

3 THE MASTER: Well, then, that is
4 admissible insofar as it contains admissions.

5 MR. MITCHELL: We would object to the
6 entire admission, Your Honor, on the grounds
7 that to do so would be to violate the
8 explicit language of the rules governing
9 the hearing in this case, that is, that
10 Judge Carrillo first need not take the stand,
11 and secondly, he has the right to invoke
12 all of the privileges, self-incrimination
13 and, too, the same is hearsay and there are
14 no viable exceptions under which it can be
15 offered.

16 THE MASTER: Excuse me, I want to be
17 sure I understand that one. I did not --
18 you say that a man who takes the stand in
19 other proceedings and testifies can suppress
20 that testimony if it tends to incriminate
21 him?

22 MR. MITCHELL: Yes, sir, particularly
23 in this type of case. Judge, where it is
24 a sort of a sui generis proceedings, Judge,
25 where it is implicit that the guidelines

1 are those of due process --

2 THE MASTER: I say this is -- it is
3 not in my view but let's assume that this
4 was a criminal case, and let's don't use
5 Judge Carrillo, but let's use somebody else,
6 but a person is charged with an offense --

7 MR. MITCHELL: Right.

8 THE MASTER: He testified in a prior
9 proceeding voluntarily and incriminated him-
10 self, it cannot be used?

11 MR. MITCHELL: Right. Why, Your Honor,
12 because where the testimony is offered at
13 a criminal case, which is in the form of
14 an admission in a civil case, becomes what
15 we call a confession and being a confession
16 has to come in under one, two, three, four,
17 five, six, seven reasons.

18 THE MASTER: Even though at the time
19 he gives his testimony there is --

20 MR. MITCHELL: That is right.

21 THE MASTER: -- accusations?

22 MR. MITCHELL: That's right. our posi-
23 tion is, Judge Myers, if it is used as an
24 admission, it becomes a confession, and if
25 it becomes a confession, it has to come in

1 under the rules of confessions.

2 THE MASTER: I will overrule that
3 objection and admit what Judge Carrillo
4 testified to in the trial proceeding.

5 Now, you are welcome to note for the
6 record those pages if you wish.

7 MR. ODAM: That is what I was going
8 to do now, Your Honor. Let the record
9 reflect that the general index to the pro-
10 ceedings indicates that beginning on page
11 106 to approximately 128 is the testimony
12 of Judge Carrillo. Judge Carrillo was again
13 examined beginning at page 136 to approxi-
14 mately 142 and that on April the 23rd the
15 second pages reflects that Judge Carrillo
16 testified by way of a telephone statement
17 beginning at page 214 and running to page
18 217.

19 Again, we would offer the admissions
20 that are contained with respect to these
21 matters which are raised in our proceedings
22 for the truthfulness of the matters asserted
23 therein in Exhibit Number 25.

24 MR. MITCHELL: The same objections,
25 Your Honor.

1 THE MASTER: Yes, sir, they are
2 overruled.

3 MR. ODAM: Mr. Smith, I will ask you
4 to --

5 MR. MITCHELL: Pardon me, Mr. Odam,
6 did you offer the Carrillo examination at
7 136 to 140?

8 THE MASTER: Well, he may have missed
9 it but the index is also before the commis-
10 sion and before me.

11 MR. MITCHELL: All right, Judge.

12 THE MASTER: And he has offered all
13 of Judge Carrillo's testimony, I think, is
14 that correct?

15 MR. ODAM: Yes, sir, and if I did omit
16 calling out Judge Carrillo's testimony on
17 pages 136 to 140 --

18 MR. MITCHELL: That was my only reason
19 for inquiry, Judge Meyers. I just wanted to
20 know if he offered it.

21 THE MASTER: That is all right, then
22 you are entitled to know.

23 Q (By Mr. Odam:) Mr. Smith, I ask you to look at
24 what has been marked as Examiner's Exhibit Number 23
25 which is captioned, A Brief of Defendant R. R. Guerra

1 and M. A. Guerra Supporting Their Motion for
2 Disqualification or Recusation and ask if you
3 can identify that document?

4 A Yes, sir. This is a copy of a brief we filed on --
5 in support of our motion and we filed it on
6 February the 8th, or mailed it on that date,
7 1973, a copy to everybody, all of the attorneys
8 in the case, and to Judge Carrillo.

9 THE MASTER: You said it is Exhibit 23?

10 MR. ODAM: Yes, sir.

11 Q This is a certified copy?

12 A Yes, sir, it is a certified copy.

13 Q And this is your handwriting as submitting it?

14 A Yes, sir.

15 Q In the pleadings?

16 A Yes, sir.

17 MR. ODAM: Offer at this time the
18 brief supporting the motion for disqualifi-
19 cation and recusation which is a certified
20 copy.

21 MR. MITCHELL: Judge, I'm tempted to
22 object, but on the grounds that this is a
23 question of arbitration, I am not going to
24 object if it is a brief to support what the
25 man should be doing, it is pretty good

1 evidence it is not clearcut, so I am not
2 going to object on that. I am going to let
3 it come in.

4 THE MASTER: All right

5 MR. ODAM: This is Exhibit Number 23.

6 THE MASTER: I will admit it.

7 Q I will show you at this time what the Examiner
8 has marked as Exhibit Number 24 which is a certified
9 copy of what document?

10 A This is a second supplemental motion for disquali-
11 fication or recusation that was filed by me; filed
12 on March 30th. that was the day we held a hearing
13 and this raises the additional grounds of our
14 right to a fair trial before an impartial judge
15 under the provisions of the Fifth and the Fourteenth
16 Amendment to the Constitution of the United States,
17 that was an equal protection clause. That was
18 our ticket to the Supreme Court if we had to go
19 that far.

20 Q And this was the certified copy signed by you?

21 A Yes, that is right.

22 Q All right.

23 MR. ODAM: I offer it.

24 MR. MITCHELL: Same objections as
25 previously made, Judge.

1 THE MASTER: Overruled and it is
2 admitted. Do you want to quit or can you
3 do anything in the next forty-five seconds?

4 MR. ODAM: I will quit for the day,
5 Your Honor, and resume with this witness
6 tomorrow morning.

7 MR. MITCHELL: Is there any change,
8 Judge Meyers, that I might have permission
9 to withdraw the Exhibits? I have been, as
10 the Court knows, under a terrible disability
11 trying to read some of them along and if I
12 would give my oath to this Court that I
13 would bring them back in the morning --

14 THE MASTER: I don't doubt that. The
15 alternative would be if you would mind coming
16 back here and working in this rather plea-
17 sant atmosphere.

18 MR. MITCHELL: I don't mind that at
19 all, Judge. I wonder what time it will be
20 open, until five?

21 THE MASTER: I am sure until five, yes.

22 MR. MITCHELL: All right, that is fine,
23 Your Honor, that is satisfactory. We will
24 just leave everything here.

25 THE MASTER: All right. We are off the

1 record.

2
3 (Whereupon the hearing was in recess
4 from one o'clock p.m. Tuesday, November 4,
5 1975, until eight-thirty a.m. Wednesday,
6 November 5, 1975.)
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