

**INQUIRY CONCERNING A JUDGE
NO. 5**

DECEMBER 10, 1975

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BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

DECEMBER 10, 1975

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

ORIGINAL

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8782
C3T45
V.20

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

2 MR. ODAM: Thank you, Your Honor.

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E X A M I N A T I O N

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BY MR. ODAM:

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Q Good morning, Judge Carrillo.

16

A Morning, John, how are you?

17

18

MR. ODAM: For the record, we will be asking questions on Paragraphs 7 through 12.

19

A Yes, sir.

20

21

Q Mr. Carrillo, I will show you a copy, and I will give the admitted copy to the Judge, and I show you this and let you look at it a moment.

22

23

A Yes, sir.

24

Q Can you describe for the record what E-65 is?

25

A E-65 is a check payable to the order of O. P.

1 Carrillo for one thousand eight dollars from
2 Benavides Implement and Hardware and signed by
3 R. N. Couling.

4 Q I take it by your testimony -- I find no
5 explanation for that check. It does not have a
6 recital on it. That was one of the ones on
7 Paragraph 7 where the record is absent as to an
8 explanation. I wonder if you could give us an
9 explanation today?

10 A Yes, I think I explained this. This check -- I
11 had rental equipment at the Farm and Ranch
12 Supply. I was never there and it was rented
13 through Cleofus Gonzalez and they would tell me
14 this is how much you have coming for the equipment
15 you have rented this month.

16 Q Who would tell you that?

17 A Mr. Couling would pay me and say this is what you
18 have coming for the equipment you have rented
19 this month. It might have been more or less, but
20 this is what they told me it was.

21 Q What equipment do you think this would be for that
22 Mr. Couling would be paying you directly for?

23 A I have no idea, sir.

24 Q Do you have any idea why he would not indicate on
25 that check it was for equipment rental?

1 A I don't have any particular recollection. These
2 checks were paid for rental on equipment I had
3 over there, but I have no recollection of any
4 particular check, unless it has a reason for the
5 check, then that might bring that back to me.

6 Q Now, the equipment that was at Farm and Ranch
7 Supply, who had the ownership of that equipment?

8 A I had personal ownership and partnership
9 equipment at the Farm and Ranch Supply.

10 Q I noticed in your earlier testimony you said you
11 were not involved with Benavides Implement and
12 Hardware. Do you know whether your brother
13 Ramiro or Cleofus Gonzalez would take your
14 equipment and rent it through Farm and Ranch or
15 why they would?

16 A Cleofus Gonzalez was running the Farm and Ranch
17 Supply and this was run through the Farm and
18 Ranch, so Cleofus would know about this more than
19 anybody else.

20 Q You are aware of Mr. Couling's and Mr. Cleofus
21 Gonzalez's testimony with respect to the exhibits
22 for that check, are you not?

23 A Yes, sir. Well, no, I am not aware of the
24 exhibits or what it is.

25 Q Well, I will show you a copy and I will hand the

1 Court the exhibits that pertain to this particular
2 check and to refresh your memory, there was E-61,
3 which is a statement prepared by Cleofus Gonzalez
4 for one thousand eight dollars.

5 A Yes, sir.

6 Q E-60 is a statement prepared from the Benavides
7 Implement and Hardware.

8 A Could I see it, please?

9 Q Yes. And the claim jacket is E-64. I have a
10 copy --

11 THE MASTER: Let me have the copies and
12 Judge Carrillo the originals. Perhaps the
13 originals will reveal more what it is.

14 Q (By Mr. Odam) All right. I will give you the
15 original copies and to Judge Meyers a copy of the
16 envelope, which is marked E-64, and the two
17 invoices marked E-60 and E-61.

18 Again, as you recall Mr. Gonzalez's testimony,
19 he testified he made up something that went on
20 that ticket and they didn't have any equipment to
21 rent, he made it up.

22 A There was equipment to rent.

23 Q Well, on this particular one --

24 A This was prepared by Mr. Gonzalez for Mr. Couling.
25 I have no knowledge whatsoever.

1 MR. MITCHELL: Pardon me, Judge
2 Carrillo, this that you have in your hand,
3 for the record, reflects E-60 and 61, I
4 presume.

5 THE WITNESS: E-60 and 61.

6 MR. MITCHELL: All right.

7 THE WITNESS: And E-64.

8 MR. MITCHELL: And would you please
9 refer, when you make that reference for the
10 record.

11 THE WITNESS: Yes, sir.

12 MR. MITCHELL: It is very critical
13 testimony so when you say, "this", please
14 refer to it for the record.

15 THE WITNESS: Insofar as E-60 and E-61,
16 and E-64, I had no personal knowledge what-
17 soever.

18 Q All right. Well, I will show you also what has
19 been marked as E-57 which is an admitted copy of
20 a check from the bank and the claim numbers on
21 there which coincide with the claim jacket number
22 which went to Benavides Implement and Hardware,
23 which is the same amount as for the contents of
24 the jacket itself, et cetera, for which the check
25 was issued.

1 My question to you is this is just a coin-
 2 cidence that there was a check for a thousand and
 3 eight dollars and the invoices for a thousand and
 4 eight dollars in the Benavides Implement and Hard-
 5 ware and Mr. Couling just wrote you out a check
 6 for this check that was over at the Farm and
 7 Ranch Store.

8 A Well, I have no personal knowledge of E57 either.

9 Q All right.

10 A But like I say, he might have submitted five or
 11 ten thousand dollars worth of rentals and only
 12 came over and said, "Look, this is what we rented
 13 from you is this amount, this is what you have
 14 coming."

15 Since I wasn't there and had no personal
 16 knowledge, I just took his word or Mr. Cleofus
 17 Gonzalez's word for it and that was it and if
 18 it was in 71, I would have had to have taken Mr.
 19 Couling's word for it when he handed me the
 20 check because I wasn't speaking to Mr. Gonzalez,
 21 I don't believe, at that time.

22 Q Well, did you actually receive the thousand and
 23 eight dollars?

24 A Yes, sir.

25 Q And that would have been evidenced on the E-66

1 which was the deposit slip for a thousand and
2 eight dollars.

3 A E-66 shows a deposit of a thousand and eight
4 dollars, yes, sir.

5 Q Well, is there -- well, do you have any other
6 explanation as to the series of these deposit
7 slips, the invoices the claim jackets, the county
8 check and the check from Mr. Couling to you?

9 A I had nothing whatsoever to do with the prepara-
10 tion of the invoices or anything, Mr. Odam. All
11 I have is equipment for rent and you come in
12 there and you need something, I will rent it to
13 you.

14 Q Well, why would Mr. Couling --

15 MR. ODAM: Well, strike that.

16 Q Would you agree there probably are, and I'm not
17 going into these checks at this time, but would
18 you agree that there may be some checks from Mr.
19 Couling to Farm and Ranch Supply made out to
20 the Farm and Ranch Supply?

21 A I don't know. I didn't have anything whatsoever
22 to do with the renting of the Farm and Ranch
23 Supply at all.

24 Q Well, did you receive any money from Farm and
25 Ranch Supply, any profits or any money at all

1 from that store?

2 A The Farm and Ranch Supply deposits and with-
3 draws were made by Mr. Gonzalez. He would make
4 tapes at the end of the year of all of the deposits
5 and take them to our accountant and our accountant
6 would divide up the profits fifty-fifty between
7 my brother and myself.

8 Q That is what I thought was the situation. Why
9 would Mr. Couling, for example, write out a check
10 for a thousand and eight dollars and make it out
11 to you personally as opposed to such as you just
12 described, money into Farm and Ranch Supply? Why
13 wouldn't he make it out to Farm and Ranch Supply?

14 A If he was renting -- Cleofus knew what belonged
15 to who. If he was running --

16 MR. MITCHELL: Excuse me, Judge Carrillo,
17 you said what belonged to -- what did you
18 say?

19 THE MASTER: To whom is what he said.

20 A To whom.

21 MR. MITCHELL: I'm sorry.

22 A If the equipment was -- if the equipment belonged
23 to Farm and Ranch Supply, it would be billed to
24 Farm and Ranch Supply, it would be paid to them
25 and if the equipment was my own equipment, it

1 would be paid to me.

2 Q To get right to the bottom line of the whole
3 thing, Mr. Gonzalez's testimony was he didn't
4 rent anything pursuant to this. He just made it
5 up pursuant to Ramiro's instructions for some-
6 thing plus or minus a thousand dollars and he
7 didn't rent any equipment and Mr. Couling stated
8 that he didn't get any equipment rented to him,
9 yours or anybody else's, that is his testimony.

10 Is it your testimony that both of these
11 gentlemen were lying through their teeth, that
12 they didn't rent that equipment for you or from
13 you?

14 A I would say that both Mr. Couling and Mr. Gonzalez
15 would like to have my head for Christmas.

16 Q My question is, which is the very heart of the
17 7 through 12, is it your testimony that what they
18 told this court is just -- must be just a bald-
19 faced lie, is that right?

20 A Well, they lied quite a bit insofar as facts
21 that were to my knowledge, they lied quite a bit.

22 Q All right.

23 A Now, on other matters that I have no knowledge of,
24 I can't tell you whether they lied or not.

25 Q You don't know whether or not they are lying on

1 this thousand and eight dollar transaction which
2 is your previous testimony?

3 A Personally, I think they were getting more money
4 than that, but I had no way of knowing and they
5 say, "Look, we owe you a thousand and eight dollars
6 or a thousand and twenty dollars, whatever it is,"
7 and I had no way of checking because I was not
8 there.

9 But personally, I would say that they were
10 getting a lot more money than that.

11 Q Well, what equipment, that was your personal
12 property, was over at the Farm and Ranch Supply
13 in 1971 that could have been rented pursuant to
14 this check?

15 A I have got tractors, trucks and I forget what all.
16 I have a warehouse that is -- that stores lots
17 of equipment.

18 Q For those tractors and trucks, were they actually
19 physically located at the commissioners precinct
20 warehouse where the Farm and Ranch Supply was?

21 A They would either be located there or they would
22 be located at the warehouse I have at the Vallejo
23 Sales Building which they had a key.

24 Q Once this particular vehicle that they had, what-
25 ever it was, was rented, pursuant to the check

1 Mr. Couling gave you, E-65, do you have any
2 idea what Mr. Couling might have done with that
3 particular vehicle once he got it in his posses-
4 sion?

5 A No, I have no idea about Benavides Implement
6 and Hardware or Mr. Couling's business.

7 Q All right, so you don't know if he rented it,
8 if he did rent it to the county?

9 A No, I don't have any idea what Mr. Couling did.

10 Q So you would have no idea why the county check,
11 E-57 for a thousand and eight dollars, do you
12 know if that would have any connection with your
13 check for a thousand and eight dollars?

14 A It would be in payment for rental of Benavides
15 Implement and Hardware that they had for me.

16 Q I'm talking about -- maybe I was confusing the
17 question, maybe Mr. Mitchell just looked at one
18 right there, E-57, is a county check for a
19 thousand and eight dollars?

20 A Yes.

21 Q Would it be your testimony that that check for
22 a thousand and eight dollars was this vehicle,
23 whatever it was, that was rented to the county?

24 A It might have been more, this is what I've got.

25 Q I mean --

1 A He might have owed me more on rental, but this is
2 what I got.

3 Q How much is that E-57 for?

4 A One thousand and eight dollars.

5 Q Why would Cleofus Gonzalez make up the separate
6 statement or invoices depending on who owned
7 equipment?

8 A I don't know.

9 Q Judge Carrillo, I show you a copy of E-169 and
10 ask you if you can identify this item.

11 MR. MITCHELL: May I speak to my client?

12
13 (Discussion off the record between Mr.
14 Mitchell and the witness.)

15 A E-169 --

16 MR. MITCHELL: Pardon me, Your Honor.
17 I simply want to object to questions on
18 E-169 and note that it was an item offered
19 to which an objection was made and the
20 Court sustained and I just simply don't
21 want the record to indicate any waiver by
22 my silence.

23 THE MASTER: I understood this to be
24 an additional effort to qualify 169. I
25 don't remember what 169 -- E-169 was. Is

1 that correct, Mr. Odam?

2 MR. ODAM: Yes, sir.

3 THE MASTER: Are you trying to get it
4 into evidence?

5 MR. ODAM: Yes, sir.

6 MR. MITCHELL: Do you want to see it,
7 Judge Meyers?

8 THE MASTER: No, I will find this in
9 my notes. I found it in my notes.

10 Q All right, now do you --

11 THE MASTER : It says -- my notes say
12 it is a copy of the judgment. My recollection
13 now is I sustained an objection to the rele-
14 vancy, not of authentication because it is
15 a certified copy.

16 MR. MITCHELL: Well, yes, Your Honor,
17 I believe I leveled the objection of hearsay
18 in addition. At any rate, the Court sustained
19 the objection.

20 THE MASTER: I didn't sustain a hear-
21 say objection to a certified copy, that I'm
22 sure of.

23 MR. ODAM: Well, do we have now an
24 objection to it, and if so --

25 MR. MITCHELL: You haven't asked the

1 question.

2 THE MASTER: It is not in evidence.

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

4 THE MASTER: It is not in evidence yet.

5 MR. ODAM: I thought by Mr. Mitchell's
6 comments he was making some objection.

7 THE MASTER: Go ahead.

8 Q (By Mr. Odam:) Judge Carrillo, can you identify
9 the item that you have in your hand, E-169?

10 A This is a judgement of United States District
11 Court for the Southern District of Texas.

12 Q What case is that in?

13 A United States of America versus O. P. Carrillo.

14 Q And what is the number there?

15 A 75-C-45.

16 Q And what is the -- I don't have a copy of it,
17 but it is divided into two parts -- well, is this
18 the case in which you were a party?

19 A Yes, sir.

20

21

22

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1 MR. ODAM: I would offer in evidence
2 at this time the conviction order, judgment
3 and probation.

4 MR. MITCHELL: Objection, hearsay,
5 best evidence, beyond the formal evidence,
6 beyond the amended notice, improper predicate,
7 irrelevant and immaterial; relates to matters
8 of a nonjudicial nature.

9 THE MASTER: What is the relevancy?

10 MR. ODAM: The relevancy of it is that
11 it is for impeachment on credibility. I do
12 have some case law on that.

13 THE MASTER: Of course, a felony
14 conviction impeaches, but I thought it had to
15 be a final conviction.

16 MR. ODAM: I have looked at the law and
17 if that is what it is, then that is the law,
18 but the research I had done on it did not
19 state that it had to be final. What I did
20 find was proof of statements of a crime could
21 be shown if and only they were involving
22 moral turpitude.

23 This is located at McCormick and Ray
24 at Section 660. I did not see a limitation
25 in the case discussed that it had to be a

1 conviction that had been up through the
2 appellate procedure.

3 THE MASTER: Well, I will have to defer
4 a ruling on that.

5 MR. MITCHELL: My objection would be
6 enlarged to include that it would be an
7 improper method of impeachment. It is not a
8 final judgment and may I ask my client a
9 question to further enlarge the record and
10 objection.

11 THE MASTER: Do you mean for support of
12 the objection?

13 MR. MITCHELL: Yes, to support.

14 THE MASTER: I don't believe anybody in
15 this room disagrees with the fact that the
16 appellate steps have been taken.

17 THE WITNESS: I would like to state I
18 am not guilty.

19 MR. MITCHELL: No present admission of
20 guilt. That, I believe, would preclude it
21 from coming in under the rules.

22 THE MASTER: That is, of course, a
23 different rule.

24 MR. MITCHELL: Thank you, Judge Meyers.

25 MR. ODAM: For the benefit of the record,

1 the law that I refer to is Volume I,
2 McCormick and Ray, on Section 660, Page 508,
3 in the pocket parts that are applicable and
4 the sections applicable. I did not find, in
5 my research there or in other sources, the
6 law on finality. If that is the law, then
7 I am subject to that, but I looked for that,
8 because I knew the question would come up.

9 We will hold that in abeyance and proceed
10 on to another matter.

11 MR. MITCHELL: May I also point out for
12 the record, the conviction is a 7206
13 violation, which is not an evasion violation,
14 but simply how the matters were reported on
15 the return. The taxes were all paid, so it
16 is a method of reporting.

17 THE MASTER: Well, when Mr. Odam read
18 that, I have been on both sides of that
19 question, but it seems to me it is the rule
20 now that it is firmly established that any
21 felony, plus a matter involving moral
22 turpitude -- did you do any further work on
23 that matter we looked at, Mr. Mitchell?

24 MR. MITCHELL: No, I did not.

25 For the record, the Judge and I were

1 talking about something and it deals with
2 the necessity of the formal Bill of
3 Exception. I am in the process of preparing
4 a memo on it to you, Judge Meyers.

5 MR. ODAM: Is that on this point?

6 THE MASTER: No, Mr. Mitchell and I had
7 our pride involved and we went back to the
8 library to see who was right.

9 I might add I have a toe-hold on it.

10 MR. MITCHELL: Yes, a case that is
11 squarely in point, as we say. I think you
12 should espouse the Court, because he has a
13 four square case.

14 MR. ODAM: I am sure that is the law --
15 is it on the Bill of Exception on cross-
16 examination?

17 THE MASTER: Yes.

18 MR. ODAM: All right. I will pass on
19 from Paragraph 7 to Paragraph 8, Judge
20 Carrillo, with the developments we have had
21 thus far.

22 Q (By Mr. Odam) Paragraph 7 dealt with this check
23 for one thousand eight dollars.

24 A Yes, sir.

25 MR. ODAM: I then move, for the benefit

1 of the record and the Court and counsel, to
2 Paragraph 8.

3 MR. MITCHELL: Thank you, Mr. Odam.

4 Q (By Mr. Odam) I show you what has been marked as
5 E-69.

6 THE MASTER: Excuse me just a minute.
7 You didn't read far enough, Mr. Odam.

8 Section 658 gives three requirements and
9 then the fourth, the conviction must be
10 final. Suppose the conviction had been
11 appealed, in Ringer versus State, Southwestern
12 Second, 137, 242 at 654. It was held that
13 where the appeal had not been decided, the
14 conviction could not be used to impeach.

15 MR. ODAM: I stand corrected on that
16 law and I certainly did not intend to mislead
17 the Court or counsel.

18 MR. MITCHELL: I didn't want the record
19 to indicate that I was saying anything further
20 to Mr. Odam concerning this or the Court,
21 but Mr. Odam is a fine lawyer and I do
22 understand.

23 THE MASTER: I don't know that is
24 authoritative, but we all respect this
25 treatise. I have not read the case

1 personally.

2 MR. MITCHELL: We had a recent occasion
3 to go into the question and the Court
4 confirmed the position now taken by this
5 Court. We feel sound in our position.

6 THE MASTER: At this stage, E-169 is not
7 admitted for any further questioning.

8 MR. ODAM: Yes, sir.

9 Q (By Mr. Odam) I show you the original item on
10 E-69 and ask you to identify this and I will show
11 to the Master the Xerox copy of E-69 and give you
12 a moment to examine it.

13 MR. MITCHELL: Pardon me, Counsel, do
14 you have the original E-151. It is the same
15 as this, as I recall.

16 MR. ODAM: I don't have it here.

17 MR. MITCHELL: I wonder if the witness
18 would rather have it.

19 May I give him the original, Your Honor?

20 THE MASTER: Yes, sir.

21 Q (By Mr. Odam) Judge Carrillo, you have in your
22 hand E-151, which is an original of E-69 and I
23 will ask you if you can identify what that item is?

24 A That is a check payable to the order of O. P.
25 Carrillo for one thousand eighteen dollars from

1 Benavides Implement and Hardware, R. N. Couling.

2 Q What is the recital on that check?

3 A There is none.

4 Q I know Mr. Mitchell asked you the question and you
5 say there was no conspiracy to receive that E-69,
6 but I find no explanation except that.

7 I am aware of your testimony, where there were
8 recitals, but these particular two did not involve
9 recitals.

10 What would be your explanation on this check
11 as to why Mr. Couling would give you this check?

12 MR. MITCHELL: May I take this
13 opportunity to reassert our objections?

14 THE MASTER: You have already done it
15 once this morning.

16 MR. MITCHELL: Fine. The record is
17 fixed and I am sorry I interrupted.

18 THE MASTER: All right, sir.

19 THE WITNESS: The explanation would be
20 the same as the previous one.

21 Q (By Mr. Odam) And that would be?

22 A That I had the rental equipment and this is what
23 they told me I had coming for the equipment
24 rented by Benavides Implement and Hardware.

25 Q Who is the "they" you are talking about?

1 A Mr. Couling.

2 Q What is the date on this check?

3 A July 27, 1971.

4 Are we talking about E-151?

5 Q Yes.

6 MR. MITCHELL: July what?

7 THE WITNESS: July 27, 1971.

8 Q (By Mr. Odam) Can you explain how Mr. Gonzalez,
9 for your Farm and Ranch Store, where this truck
10 or whatever it was was located and Mr. Couling
11 would carry out -- the problem is, if it was your
12 personal truck -- well, I will rephrase the
13 question.

14 Could you explain the circumstances on
15 Mr. Gonzalez renting to Mr. Couling your personal
16 vehicle?

17 A That is what they were there for. I have a lot
18 of equipment for rental.

19 Q Located at the Farm and Ranch Store?

20 A Or at the warehouse.

21 Q And you told Mr. Gonzalez to rent your personal
22 property?

23 A I don't remember telling him, it was just
24 understood. That is what they were there for and
25 they are there today.

1 Q Did you tell him to rent it to Benavides Implement
2 and Hardware?

3 A To whoever wanted to rent it.

4 Q I show you what has been marked as E-68 and ask
5 you if you can identify E-68.

6 A E-68 is a check that I have no knowledge of.

7 Q From whom is that check written?

8 A From the treasurer of Duval County to Benavides
9 Implement and Hardware.

10 Q What is the amount of money on that check?

11 A One thousand eighteen dollars sixty-five cents.

12 Q You recall the previous testimony was that
13 Mr. Gonzalez filled out what is marked in evidence
14 as E-62 and E-63?

15 A Yes, sir.

16 Q And you gave those to Ramiro Carrillo who gave
17 them to Mr. Couling and those appeared in the claim
18 jackets and this check was issued, so, my
19 question is, is this check you have in your left
20 hand, would it be your testimony that check for
21 one thousand eighteen dollars, the amount from the
22 county, would be the same from which you received
23 money from Benavides Implement and Hardware?

24 A I have no idea.

25 Q Would it be a coincidence as to these receipts

1 prepared by Mr. Gonzalez?

2 A I can't speculate. I can't tell you what it was.
3 All I know, I was told this was the money you have
4 coming for the rental of your equipment and I
5 received it.

6 Q And Mr. Couling told you that?

7 A Yes.

8 Q And again, you are aware of Mr. Couling's
9 testimony that he didn't rent any of your
10 equipment, yours or the Farm and Ranch Store
11 equipment to the county?

12 A Well --

13 MR. MITCHELL: I object to that. The
14 record indicates --

15 MR. ODAM: Strike that question.

16 Q (By Mr. Odam) You mentioned Mr. Gonzalez rented
17 your equipment personally. Did you pay
18 Mr. Gonzalez for renting the equipment?

19 A I think he paid himself.

20 Q How was that?

21 A He took things from the store that belonged to
22 us.

23 Q So you were not paying Mr. Gonzalez to rent the
24 equipment?

25 A I had nothing to do with the running of the Farm

1 and Ranch Supply.

2 Q Did you tell Mr. Gonzalez to rent your equipment?

3 A I don't recall telling him specifically.

4 Q Was he wrongfully renting your equipment or was
5 it okay with you?

6 A It was all right with me.

7 Q Was the Farm and Ranch Store renting any of its
8 equipment to Benavides Implement and Hardware?

9 A I didn't run the Farm and Ranch Supply. I went
10 by very seldom and I could not tell you exactly
11 what was going on. It would be purely guesswork
12 as far as I am concerned.

13 Q So you don't know whether or not, for example,
14 Benavides Implement and Hardware ever wrote out
15 checks to Farm and Ranch Supply for rental
16 equipment?

17 A No, sir.

18 Q As opposed to your personal account?

19 A No, sir.

20 Q I noticed the other day you said you have been
21 surprised twice, one time when Mr. Couling
22 testified in federal court about having slips on
23 the Zertuche Store and also surprised to find out
24 Mr. Couling had the slips on Benavides Implement
25 and Hardware.

1 Why would you be surprised when the check
2 was given to you that he had the particular papers
3 that I asked you about?

4 A The surprise was that Mr. Couling had invoices
5 belonging to the Zertuche General Store.

6 Q And that was in the federal case?

7 A Yes.

8 MR. MITCHELL: And in this case, also.

9 THE WITNESS: And that he had blank
10 invoices belonging to the Zertuche Store
11 that were supposed to be in the custody of
12 Cleofus Gonzalez.

13 Q (By Mr. Odam) Why would it surprise you to learn
14 that?

15 A I didn't know Mr. Gonzalez had anything to do
16 with the Benavides Implement and Hardware and if
17 they brought out in federal court that Couling
18 had invoices from Zertuche Store, why did they
19 remain silent as to Cleofus also having invoices
20 from Benavides Implement and Hardware. It seems
21 to me that there was some sort of a shenanigan
22 going on between Mr. Couling and Mr. Gonzalez.

23 Q You are aware of the fact Mr. Gonzalez testified
24 to the fact that Ramiro Carrillo gave him that
25 box from Benavides Implement and Hardware? You

1 don't know anything about Ramiro Carrillo giving
2 him the invoices on Benavides Implement and
3 Hardware?

4 A No, sir.

5 Q So to summarize, Paragraph 7 and 8, Paragraph 7,
6 you got a check for one thousand eight dollars for
7 rental of personal equipment from Farm and Ranch
8 to Benavides Implement and Hardware and on
9 Paragraph 8, you got one thousand eighteen dollars
10 for the same arrangement. That is a total of
11 two thousand twenty-six dollars on those two.

12 A Yes, and Mr. Couling had to pay me for a pickup
13 he bought at this same time.

14 Q And these total to two thousand twenty-six dollars
15 on Mr. Couling paying you rent?

16 A Yes, out of the four hundred thousand he received.

17 Q What are you talking about there?

18 A The money he received through the store.

19 Q Were you entitled to that four hundred thousand?

20 A No, I am not claiming I was entitled to it, but
21 that is what he received.

22 Q But you were not entitled to that four hundred
23 thousand or any part of it?

24 A Not unless he wants to give me that third he
25 claims I own in Benavides Implement and Hardware.

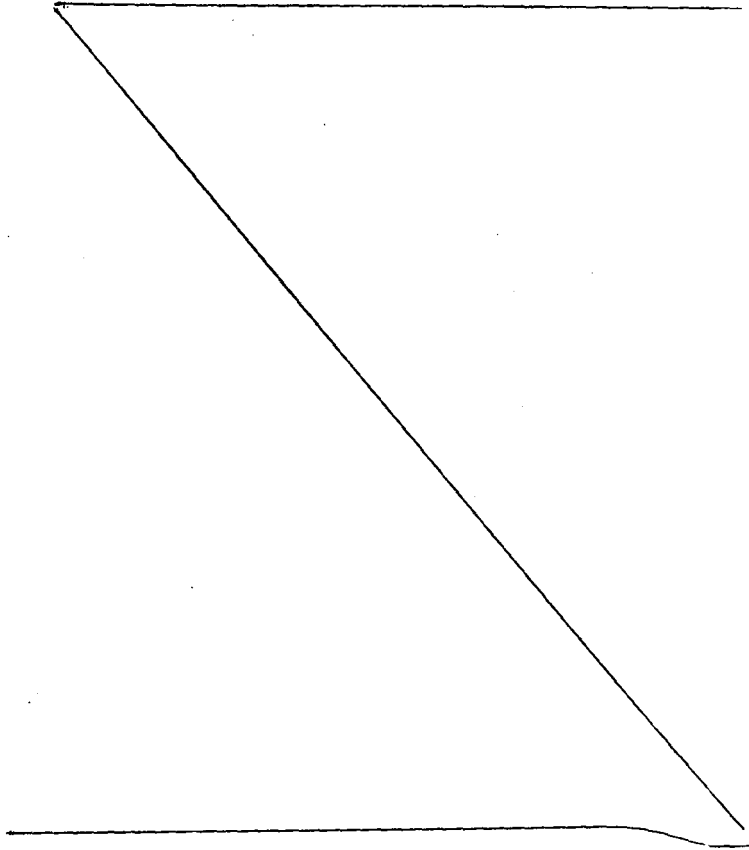
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I am not claiming it as a fact.

MR. MITCHELL: May I approach my client,
Judge Meyers?

THE MASTER: Yes.

(Whereupon, an off-the-record
discussion was had between Mr. Mitchell and
the witness.)



1 Q On these two checks that now total two thousand
2 twenty-six dollars, I know your previous testi-
3 mony was that the only time that you had any
4 business dealings with Benavides Implement and
5 hardware was when you bought some type of cylinder
6 from them, I believe. Did you go -- where were
7 you when you received these checks from Benavides
8 Implement and Hardware? Did you actually go to
9 the store and get them? Where did Mr. Couling
10 give you these checks?

11 A I have no personal recollection.

12 Q You don't know if you went to the store?

13 A I know I received them, but I have no personal
14 recollection.

15 MR. ODAM: I would like then to move
16 on to paragraph number 9.

17 Q I will show you the two checks involved that you
18 received here, Judge Carrillo. one is E-153, which
19 is also E-76, and I happen to have in front of
20 me E-76.

21 (Handed to the witness.)
22

23 MR. ODAM: Now I will hand to the
24 Master a xerox copy which has been marked
25 by the reporter when we were marking these

1 Exhibits as E-76.

2 THE WITNESS: I have the original.

3 Q That's right, and the originals you have should
4 be marked as E-153, is that correct?

5 A Yes, sir.

6 Q And what is E-153 and E-76?

7 A It is a check, pay to the order of O. P.
8 Carrillo three hundred and six dollars.

9 Q All right.

10 A Benavides Implement and Hardware Company, R. M.
11 Couling, for rent.

12 Q And I will also show you for the purpose of this
13 paragraph 9 the Exhibit which has been marked
14 as E-75 which is the same as E-152. Did Mr.
15 Mitchell pull E-152? Here is E-75.

16 MR. ODAM: I'll hand to the Master a
17 copy of E-75 which is the same as E-152.

18 (Handed to the Master.)
19

20 Q Now, first referring to the last item that I
21 just gave you, E-75, or if you want to, you can
22 look at E-152, which is the original, and E-75
23 is a copy of it. What is that document that
24 you have in your hand?

25 A It is a check pay to the order of O. P. Carrillo

1 seven hundred dollars from Benavides Implement
2 and Hardware Company, R. M. Couling for rent on
3 truck.

4 Q I notice you previously testified that when Mr.
5 Mitchell asked you, and I presume it is still
6 your testimony that there was no conspiracy to
7 get the money from the county, is that correct?

8 A Not on my part.

9 Q On whose part would it be?

10 A I don't know whose part it would be, but it is
11 not on my part, I didn't conspire with anyone.

12 Q And the recital there, that is the one that had
13 previously been written legal fees, you can
14 probably read it better on the original, which
15 is 152?

16 A Yes, sir.

17 Q That is rent on the truck?

18 A Yes, sir.

19 Q Now, on this particular check, could you please
20 describe for this particular paragraph, why you
21 would have received that check for seven hundred
22 dollars from Mr. Couling?

23 A For rent on truck.

24 Q Would this be another personal truck that -- the
25 same as paragraph 7 and 8 that had no recital on

1 them?

2 A I wouldn't know if it was the same truck.

3 Q No, I mean is it the same type of an arrangement
4 whereby Mr. Gonzalez would rent your personal
5 truck to Mr. Couling?

6 A I would imagine, I don't know.

7 Q Well, do you know what truck that would be that
8 you, through Mr. Gonzalez, rented to Mr. Couling?

9 A No, sir.

10 Q Well, what possibility of trucks would we have
11 back there, could you --

12 MR. MITCHELL: Pardon me, Your Honor,
13 I delivered to Counsel yesterday the original
14 or the only copies we have available of the
15 Farm and Ranch, and of the O. P. Carrillo
16 tax returns which have depreciation schedules.

17 May I request that they be given to the
18 witness to refresh his recollection. I
19 believe he would be in a better position to
20 answer the question. That is part of our
21 problem.

22 MR. ODAM: That would be fine and I have
23 them right here, and I will give him a
24 moment to examine those.

25 MR. MITCHELL: Thank you.

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(Handed to the witness.)

MR. MITCHELL: Thank you, Judge Meyers.

(Discussion of the record.)

THE WITNESS: Yes, sir, all right.

Q Now, my question again, Judge Carrillo, and I presume Mr. Mitchell has given you the tax return for the year 1971, is that what you are looking at?

A Yes, sir.

Q And what possible vehicles could you have rented through Mr. Gonzalez to the Farm and Ranch -- correction, to the Benavides Implement and Hardware?

A I wouldn't know which trucks they are. There are several here.

Q What are they, that are listed there?

A Among the trucks that are listed here is a 62 Chevrolet truck, a 1968 Bronco, a 1968 Ford truck, a 1967 Chevrolet carry-all, a 1972 Ford pickup, three Dodge pickups.

MR. MITCHELL: Pardon me, Your Honor, may I ask Counsel a question for information?

The return is for 71, am I correct,

1 Judge Carrillo, you are reading from?

2 A It is a return for 72, which is for income of
3 71.

4 THE MASTER: Yes, it is 1971 form
5 that you filed normally in April of 72?

6 MR. ODAM: In April of 72.

7 MR. MITCHELL: No, it is the 72 form
8 that reflects the property subject to depre-
9 ciation for return in 71.

10 THE MASTER: Is that the way they date
11 them, I just didn't recall.

12 THE WITNESS: They date them 72 for 71.

13 THE MASTER: I just don't recall.

14 Q I want to be sure we are talking about -- and
15 then my next question --

16 MR. MITCHELL: If it please the Court,
17 that Exhibit E-76 and E-75, relate to items
18 that were generated in 71, consequently we
19 are looking at a 73 return -- a return filed
20 in 73.

21 THE WITNESS: No, we are not.

22 THE MASTER: Judge Carrillo says no.

23 THE WITNESS: We are looking at a 72
24 return that was filed for 71.

25 MR. MITCHELL: As long as the record is

1 correct.

2 THE MASTER: This is 71 income that
3 you accounted for.

4 THE WITNESS: In April of 1972.

5 THE MASTER: In April of 1972, I just
6 didn't recall the forms were dated 72, rather
7 than 71, but you tell me that they are.

8 THE WITNESS: Yes, sir.

9 Q (By Mr. Odam:) The last one you mentioned were
10 three Dodge pickups. Does that complete the list
11 or is there some more?

12 A It goes clear to the end of the line.

13 MR. MITCHELL: Can we have them marked,
14 Mr. Odam?

15 MR. ODAM: Sure.

16 MR. MITCHELL: And let's just offer that
17 portion of the tax return, if it is --

18 MR. ODAM: Well, I have some other
19 questions about the tax return.

20 MR. MITCHELL: I am sorry, I don't mean
21 to run your case, Mr. Odam. I thought it
22 might facilitate what you are doing.

23 MR. ODAM: All right, that will be fine,
24 we can go ahead and mark what you are looking
25 at as an Exhibit and get his income tax into

1 evidence, too.

2 MR. MITCHELL: I would think that only
3 the relevant portions of the return at this
4 stage would be the depreciation schedule on
5 the individual returns as well as the 1065
6 form for Farm and Ranch, for the correspond-
7 ing year, which we have no objection, Your
8 Honor, on the depreciation schedules being
9 duplicated for the corresponding years on
10 the Farm and Ranch as well as on the O. P.
11 Carrillo's individual returns and put them
12 into evidence at this point if the Examiner
13 desires.

14 I do, however, feel that further por-
15 tions of it are not relevant and I would not
16 like to have the balance of the returns in
17 at this time.

18 THE MASTER: Well, Mr. Odam should run
19 his own case.

20 MR. MITCHELL: That's right.

21 THE MASTER: And I urge you to proceed
22 with your examination of this witness.

23 MR. ODAM: All right, Your Honor.

24 Q (By Mr. Odam:) All right, Mr. -- or excuse me,
25 Judge Carrillo, do you have the depreciation

1 schedule that Mr. Mitchell has been referring to?

2 A Yes, sir, there it is.

3 Q Okay, do you have the depreciation schedule, is
4 that just one page?

5 A Yes, sir.

6 MR. ODAM: All right, this is off the
7 record.

8 (Discussion off the record.)
9

10 MR. ODAM: I'll ask the court reporter
11 to mark then this depreciation schedule as
12 the Examiner's Exhibit E-181.

13 (Marked for identification by the
14 reporter as Exhibit E-181.)
15

16 Q Now, Judge Carrillo, when you said runs on here,
17 that -- I guess you were talking about the entire
18 form. Is there some more items that could be
19 rented after the three Dodge pickups on E-181
20 or does that complete the list?

21 A Besides the pickups?

22 Q Yes, sir, on down the list, does it complete
23 what could have been possibly rented to Benavides
24 Implement and Hardware?

25 A Yes. Diesel tractors and equipment, a Massey-Ferguson

1 tractor. I have to get after my income tax man,
2 there are also some farm-all tractors that I know
3 that I own and they are there and they are still
4 there today.

5 Q All the equipment that is leased or listed there,
6 are all of those vehicles registered with the title
7 in your name?

8 A Yes, sir.

9 Q And on the list that you just referred to, I take
10 it that it would be one of these vehicles here
11 then that would have to have been rented through
12 Mr. Couling or, correction, through Mr. Gonzalez
13 to Mr. Couling or to somebody else?

14 A I wouldn't know which piece of equipment it was.

15 Q But it would have to be one of these right here?

16 A I would imagine, I don't know.

17 Q I mean is there some more equipment that he
18 possibly could have --

19 A Like I say, there is some equipment that I know
20 that is missing there. I would have to take
21 inventory completely to see what I have.

22 Q Okay. Now, when Mr. Couling paid you the thousand
23 and eight dollars and he paid you a thousand and
24 six dollars, and then he paid you seven hundred
25 dollars, would all of that be reported in your

1 income tax return as you testified to the other
2 day?

3 A Yes, sir.

4 Q And where would that income show up on the income
5 tax return?

6 A I'm afraid Mr. Kirkland would be the best one
7 to answer that thing. I never have been very
8 good at the interpretation of these things.

9 All of the checks, all of my checks are
10 deposited to my account and all of those bank
11 statements go directly to Mr. Kirkland and he
12 reports all of that, whichever way he decides,
13 you know, he is the auditor. So it is in there
14 and it is reported. But I wouldn't know --

15 Q Would it be -- on the return?

16 MR. ODAM: And I would like at this
17 point to have the return marked for identifi-
18 cation purposes, the entire income tax
19 return marked for identification and admitted
20 into evidence.

21 Mark it as E-182, and have the record
22 reflect that E-181 is a part thereof.

23
24 (Marked for identification by the
25 reporter as Exhibit E-182.)

1 (Discussion off the record.)
2

3 Q All right, now under -- on E-182, which has been
4 offered into evidence --

5 MR. ODAM: Is there any objection?

6 MR. MITCHELL: The objection at this
7 point would be relevancy on the other por-
8 tion of this return. We have no objection
9 to 181, but the -- which is the depreciation
10 schedule.

11 THE MASTER: E-181 is admitted. The
12 only reason to admit the entire return is
13 that this witness has not been able to identify
14 that portion where these monies are accounted
15 for. It might be that I can, an instrument
16 in that sense speaks for itself.

17 I am not curious about it, but that is
18 the purpose of the offer as I see it.

19 MR. MITCHELL: Yes, it was indicated
20 that it was prepared by Mr. Kirkland and he
21 has signed it as preparer and I will represent
22 to this Court he has testified under oath
23 that he has signed them all, signed them
24 all as preparer and this man will have no
25 personal knowledge where he allocated the

1 rental of equipment. But I assume he
2 carried it as gross income, I don't know.

3 THE MASTER: I would just have to look
4 at it and see.

5 MR. MITCHELL: This witness, I don't
6 believe has any personal knowledge of the
7 preparation of the witness Kirkland having
8 previously testified, we will be happy to
9 offer him, that he was the preparer.

10 THE MASTER: I will agree with you,
11 there are undoubtedly some portions of this
12 that wouldn't be relevant and I will give it
13 the proper weight, but I will admit it as
14 the income tax return.

15 Q Well, Judge Carrillo, on line 14 that is really
16 what we were most interested in right at this
17 point. I wonder if you could read for us what
18 line 14 is on the return, what the amount of
19 profit there would be or income?

20 A Income, other than wages, dividends and interest,
21 and it has a sort of a little parenthesis thing,
22 forty-six hundred and nineteen dollars and forty-
23 seven cents.

24 Q Well, of course, we can add up the figures and
25 see what they come to, but would you agree that

1 the brackets would indicate that that would repre-
2 sent a loss?

3 A Yes, sir.

4 Q That would be where the -- would that be on the
5 return, back on whatever line it is referred to,
6 would that be where the seven hundred dollars and
7 the one thousand eighteen and the one thousand
8 eight would go?

9 MR. MITCHELL: Excuse me, Your Honor,
10 I hate to continue to interrupt, but, of
11 course, the computation of income from the
12 properties subject to depreciation is a
13 highly complex procedure.

14 If there was a loss, it would be opposite
15 the depreciation schedule. The return
16 speaks for itself, this witness has no per-
17 sonal knowledge on it.

18 MR. ODAM: Well, Your Honor, but --

19 THE MASTER: Under the law, he is an
20 attorney and it is his return. If he can
21 explain it he can -- Mr. Odam has the
22 right to cross-examine him. The objection
23 is overruled.

24 Q Now, the loss there -- well, my last question to
25 you, would that be as far as you know, as an

1 attorney, where this rent from these trucks that
2 Mr. Gonzalez rented to Mr. Couling, that paid you
3 for , would that be where in the return that that
4 money would appear, if at all.

5 Do you have any personal knowledge
6 whether or not that would appear, why you would
7 have a net loss from other income, having, for
8 example, received this money that we are just
9 referring to?

10 A Mr. Kirkland would be the one who would have to --
11 because he prepared this thing. I don't know how
12 he arrives at whatever he arrives at.

13 Q So you don't know, for example, to your personal
14 knowledge what happened back in 1971 that would
15 have caused you to have a loss from other sources,
16 rather than income, is that correct?

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

18 Q But it is your testimony that these monies on
19 paragraph 7, 8, 9 would be reflected in that
20 return?

21 A Definitely, because every check that is brought
22 to me is deposited in the bank and all of the
23 checks, together with the bank statements are
24 taken to Mr. O. D. Kirkland and he prepares the
25 return and he tells me here it is and it is

1 ready, sign it, and I take him at his word for
2 it and rely on him completely one hundred per
3 cent, sign it and mail it in.

4 Q And just like paragraphs 7 and 8, it would be
5 your testimony that the deal that would have been
6 made for your -- the rental of your personal
7 truck would have been made by Mr. Cleofus Gonzalez
8 who testified here?

9 And I am now referring to the income tax
10 return.

11 A I have no personal recollection of what actually
12 happened, Mr. Odam.

13 Q Who would be the best source of information as
14 to how that all came about? Would that be Mr.
15 Gonzalez or Mr. Couling?

16 A Mr. Couling came to me and told me that this is
17 the money that I had coming from the equipment
18 that he had rented from me, but what else he is
19 doing I don't know.

20 Q When you went to Mr. Ed Lloyd, when you testified
21 pursuant to questions by Mr. Mitchell, did you
22 discuss with Mr. -- did you discuss with Mr.
23 Lloyd about renting equipment from Farm and Ranch,
24 your personal equipment to the Benavides Implement
25 and Hardware, as well as the Zertuche General Store?

1 A No, sir, it was just through Zertuche General
2 Store.

3 Q So you didn't discuss with Mr. Lloyd these par-
4 ticular types of arrangements?

5 A No, sir, it would have been the same arrange-
6 ment.

7 Q Where does Mr. Lloyd live now?

8 A He is deceased. He was an attorney in Alice, he
9 died about a year ago.

10 Q Now again, just to clarify this paragraph, this
11 seven hundred dollars would be in payment for
12 rental of a personal truck and not for a Farm
13 and Ranch truck, is that correct?

14 A That is what I was told.

15 Q By Mr. Couling?

16 A Yes, sir.

17 Q Well, now Mr. Mitchell had asked Mr. Couling
18 some questions to try to determine whether or
19 not the seven hundred dollars was the payment on
20 the pickup truck that was bought.

21 My question in light of that question
22 Mr. Mitchell posed of Mr. Couling, are you sure
23 this would be a seven hundred dollar payment on
24 that pickup truck or would you rather apply it
25 to rental on a truck?

1 A I don't remember how Mr. Couling paid me for that
2 truck. I remember that I -- I believe the sales
3 price was around fifteen hundred dollars.

4 Q And what kind of truck was that?

5 A It was a Chevrolet pickup, the one that is in
6 the picture there.

7 Q And what year was that -- well, I recall the
8 picture, what year model truck was it?

9 A 65.

10 Q And Mr. Couling bought it for one thousand five
11 hundred dollars?

12 A Yes, sir.

13 MR. MITCHELL: Excuse me, Your Honor,

14 A As best I can remember the figure.

15 MR. MITCHELL: May I get the Exhibit
16 number off of that picture so that the
17 record will be complete?

18 THE MASTER: Yes, sir.

19 Q And what is the year of that pickup truck that
20 Mr. Mitchell is trying to find?

21 A 1965 model.

22 Q And when did Mr. Couling buy that pickup truck
23 from you?

24 A I forget, because he was renting that truck and
25 he figured it would be better to buy it than to

1 pay rent on it and so --

2
3 (Handed to the witness.)

4 A Yes, sir, it is Red, a Chevrolet pickup. That
5 is the pickup that was sold to Mr. Couling.

6 MR. MITCHELL: Thank you, Judge.

7 THE MASTER: Of course it is in evidence
8 in at least one other larger picture, too.

9 THE WITNESS: Yes, sir.

10 MR. MITCHELL: Yes, sir.

11 THE MASTER: But that would be apparent
12 to the appellate procedure.

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

15 Q Now, Mr. Couling was renting this truck from you
16 also?

17 A He used to rent it.

18 Q He was paying you rent payments for it?

19 A That was one of the vehicles that I had for
20 rent.

21 Q Oh, I see. So that seven hundred dollars could
22 be for part payment on that pickup truck or it
23 could be for rent on that pickup truck or it
24 could be for some other truck?

25 A I don't know, yes, sir.

1 Q Now, I show you the items which we marked into
2 evidence -- or marked and admitted into evidence,
3 which were E-171 and E-172 and then which were
4 inside this claim jacket E-170 --

5 MR. ODAM: I'm sorry, if I was saying
6 E-171, I meant to say just E-71, E-72 and
7 E-73.

8 Then I'll show you the county check
9 which was E-74 and I will hand you those
10 and ask you to examine them for a minute.

11 (Handed to the witness.)
12

13 A Yes, sir.

14 MR. MITCHELL: Excuse me, John, that
15 is in connection with paragraph 9?

16 MR. ODAM: Yes, sir, that's right.

17 MR. MITCHELL: All right, thank you.

18 MR. ODAM: I will hand to the Master
19 the Examiner's copies while you're looking
20 at them.

21 (Handed to the Master.)
22

23 Q And while you have those in hand, as you recall
24 there was another payment, which was a check that
25 I earlier gave you which was for three hundred and

1 six dollars and that was E-76 and E-153, and
2 obviously the record can reflect that those two
3 checks for three o six and seven hundred dollars
4 add up to one thousand six dollars.

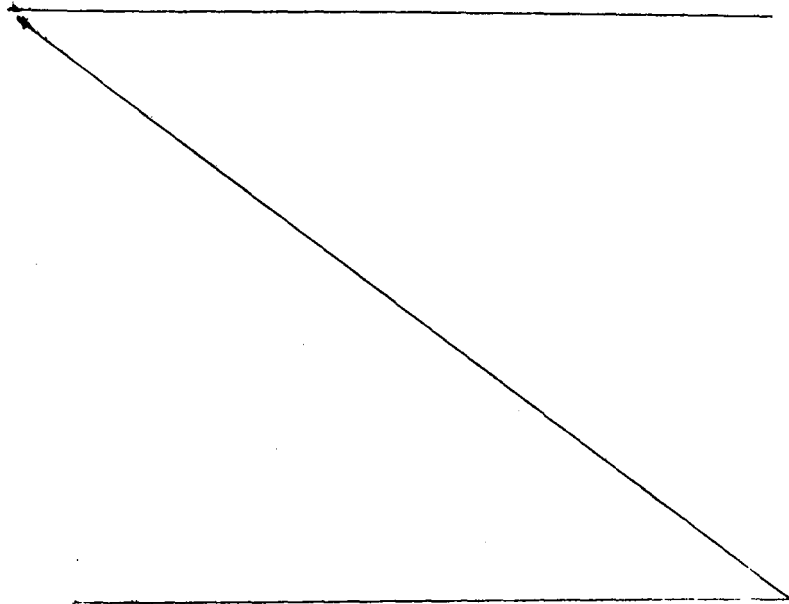
5 A I'm trying to find those checks now.

6 Q Yes, sir. I know.

7 A I'm getting a little overloaded here.

8 Q We have lot a lot of them up there. The ones I'm
9 particularly interested in now are the checks
10 for three hundred and six dollars and check for
11 seven hundred dollars, the ones that relate to
12 this particular paragraph.

13 A Here we go, I have got them.



1 MR. ODAM: Before I get into the
2 discussion on those invoices and this county
3 check, could you describe for the record,
4 please, the item which has been marked E-76,
5 the check?

6 A E-76?

7 Q (By Mr. Odam) Yes, sir.

8 A Well, E-76 is the check, or you can use E-153,
9 which is the original check, which are the same.

10 A Yes.

11 Q E-153 or 76, whichever you are looking at, one is
12 the original and one is not, how much is that
13 check for?

14 A Three hundred six dollars.

15 Q And to whom is it made out?

16 A O. P. Carrillo.

17 Q From whom was it received?

18 A R. N. Couling.

19 Q What is the recital on this one?

20 A Rent.

21 Q Your previous testimony, at Page 2852, was that
22 you had no idea what this relates to.

23 MR. MITCHELL: Excuse me, Your Honor,
24 I know he is reading from the record, but I
25 understood him to testify he didn't know what

1 equipment it related to.

2 MR. ODAM: I did want to clarify that.

3 Q (By Mr. Odam) What is your testimony today as to
4 what the three hundred six dollars is for?

5 A Rental of equipment.

6 Q And I believe this is the one where Mr. Mitchell
7 asked about real property and you said this did
8 not relate to this, but would be personal
9 property?

10 A Correct.

11 Q And would this be for some of this personal
12 equipment Mr. Gonzalez rented to Mr. Couling?

13 A Yes, sir.

14 Q And you are not sure what piece of equipment the
15 three hundred six dollars was for?

16 A That is correct, sir.

17 Q And you don't know whether or not this equipment
18 was ever rented to the county or not?

19 A No, sir.

20 Q Do you know whether or not the county paid
21 Mr. Couling for having rented that equipment?

22 A No, sir.

23 Q Now, the invoices and materials I gave you, that
24 was the slips made out by Mr. Cleofus Gonzalez,
25 how much were they totaled for, like E-161?

1 A One thousand six dollars.

2 Q What is E-72?

3 A One thousand six dollars.

4 Q And what is the amount on the front of that claim
5 jacket in your hand?

6 A One thousand six dollars.

7 Q Would it be your testimony that these particular
8 items that you have in your hand don't have any
9 relationship at all to the checks Mr. Couling gave
10 you for one thousand six dollars total?

11 A I don't know, sir.

12 Q Well, if we could summarize Paragraphs 7, 8 and 9,
13 Paragraph 7 was for one thousand eight dollars,
14 that rented equipment, and Mr. Couling paid you for
15 that and Paragraph 8 was one thousand eighteen
16 dollars and the same situation there, and now we
17 have Paragraph 9, one thousand six dollars and now
18 Mr. Couling has paid you a total of three thousand
19 thirty-two dollars for the equipment through this
20 type of procedure, is that correct?

21 A Yes, sir.

22 Q But your testimony is that all of these exhibits,
23 all of these invoices and county checks don't have
24 anything to do with Mr. Couling paying you this
25 amount of money?

1 A I can't say that, I don't know.

2 Q Well, let's go on to Paragraph 10 and you can set
3 those aside and I have some other exhibits I would
4 like to ask you about.

5 Paragraph 10 has to do with nine hundred
6 ninety-five dollars and I will show you Exhibit
7 E-82, which is a Xerox copy.

8 Did Mr. Mitchell give you E-154?

9 A Yes.

10 Q What is E-82?

11 A It is a check payable to O. P. Carrillo from
12 Benavides Implement and Hardware Company, R. N.
13 Couling.

14 Q And that is the same as E-154?

15 A Yes, sir.

16 Q I will hand to the Master a copy of E-85, which is
17 the same as E-154.

18 What is the date on that particular check?

19 A November 15, 1971.

20 Q Mr. Mitchell asked you a question the other day
21 on Page 2852, and the question was, "Can you, and
22 it has no recital on it, and I will ask you if it
23 serves your present recollection as to what that
24 is for?" And your answer was, -- could you read
25 that answer into the record.

1 A "No, sir, I don't have the slightest idea. It
2 has to be for some of the rented equipment I had,
3 unless it is for payment of the pickup I sold to
4 Mr. Couling."

5 THE MASTER: Mr. Mitchell, here is a
6 copy of the transcript.

7 MR. MITCHELL: Thank you, Judge Meyers.

8 Q (By Mr. Odam) Judge Carrillo, you said you didn't
9 have the slightest idea, except that, do you have
10 any other idea today?

11 A No, sir.

12 Q So your testimony is what you testified the other
13 day on this transcript, that it could be partial
14 payment on this pickup or it was for rental
15 equipment?

16 A That is right, I have no idea.

17 THE MASTER: For the record, the testimony
18 was given day before yesterday.

19 MR. ODAM: Yes, sir, December 8th.

20 THE MASTER: Today is the 10th.

21 MR. ODAM: I am sorry. It is getting
22 by.

23 Q (By Mr. Odam) Well, again, simply for the purpose
24 of this particular paragraph, what truck would it
25 have been or what equipment would it have been

1 Mr. Couling was paying you there for the nine
2 hundred ninety-five dollars?

3 A If it was, which I am not saying that it was, but
4 if it was, the only pickup I sold him was that
5 '65 Chevrolet pickup.

6 Q I take it from your previous testimony about
7 Paragraph 7, 8 and 9, there were no recitals on
8 those, were there?

9 A Yes, sir.

10 Q And it would have to be for the same equipment,
11 is that your testimony?

12 A Yes.

13 Q Now, I show you what has been marked as E-78,
14 E-79 and E-80 -- or, I am sorry, that was E-81,
15 I believe, is that right, instead of E-80?

16 A Yes, sir.

17 Q I will give to the Court for examination a copy of
18 E-78, 79 and E-81.

19 Would you agree with me, Judge Carrillo, that
20 the items which are the invoices are the invoices
21 in the amount of nine hundred ninety-five dollars?

22 A They are.

23 Q How much is the amount for the county claim jacket
24 E-81?

25 A Nine hundred ninety-five dollars.

1 Q And I will show you also what is admitted into
2 evidence, which is E-80 and just referring to the
3 one with the check mark on it, what is E-80?

4 A A check from the treasurer of Duval County to
5 Benavides Implement and Hardware for nine hundred
6 ninety-five dollars.

7 Q Is there any relationship between these exhibits
8 and the check Mr. Couling gave you for nine
9 hundred ninety-five dollars?

10 A I don't know.

11 Q Who would know?

12 A Mr. Couling.

13 Q So we would have to rely on what Mr. Couling and
14 Mr. Gonzalez say for that?

15 A I don't know whether you can rely on that or not.

16 Q Well, that is whether it is believable testimony?

17 A Yes.

18 MR. MITCHELL: That would be on the
19 weight of the testimony.

20 THE MASTER: My copy of E-80 is so
21 unclear, is there an indication on the --

22 MR. ODAM: This might be a better copy.

23 THE MASTER: Well, the question is, the
24 invoices from Benavides Implement and Hardware.

25 MR. ODAM: Yes, these are the ones

1 Mr. Gonzalez testified about.

2 THE MASTER: Well, and the statement --
3 both referred to Mr. Juan Leal, Duval County,
4 Precinct 2. The jacket refers to Precinct 3.
5 I was wondering if the check had any
6 indication as to which precinct?

7 MR. ODAM: No, sir, I don't believe the
8 check does so indicate.

9 THE MASTER: All right.

10 MR. ODAM: That was the next question
11 I had about this particular one.

12 Q (By Mr. Odam) If you will notice, Judge Carrillo,
13 you are looking at the jackets.

14 A Yes, sir.

15 Q And who would be the precinct commissioner of
16 Precinct 2?

17 A At that time, Mr. Juan Leal.

18 Q Who was the precinct commissioner at that time
19 for Precinct 3?

20 A Mr. Ramiro Carrillo.

21 Q Your brother?

22 A Yes.

23 Q And to clarify, to your own personal knowledge,
24 do you know why the invoices Mr. Gonzalez testified
25 to he filled out were made out to Precinct 2, why

1 they would be stated in the amount of nine hundred
2 ninety-five dollars and yet the jacket would be
3 made out to your brother's precinct, No. 3?

4 A No, sir.

5 Q And I think this is my last question I will have
6 to ask you on this.

7 Do you have any explanation why this series
8 of documents that you are holding, do you have
9 any explanation on those?

10 A No, sir.

11 Q Now, presuming for the moment there is some type
12 of tie-in and Mr. Gonzalez was not getting paid
13 anything except what you say he walked off with
14 from the store and Mr. Gonzalez made out those
15 invoices for nine hundred ninety-five dollars and
16 Mr. Couling made out a check for nine hundred
17 ninety-five dollars to you, what did Mr. Gonzalez
18 receive to do this, why would he do this if he
19 did that?

20 A I don't know.

21 Q Again, we see this series of nine hundred ninety-
22 five dollars, Mr. Gonzalez made out a nine hundred
23 ninety-five dollar check from the county and
24 Mr. Couling turned around and gave you a check for
25 nine hundred ninety-five dollars, what would

1 Mr. Couling get out of this, if anything?

2 A I don't know.

3 Q Mr. Mitchell asked, I believe on this particular
4 one, Mr. Couling some questions about cattle
5 payments and this left a question in my mind.

6 My question to you on this one, or previous
7 ones we have talked about, or any of these checks,
8 your testimony to be, for any of these cattle
9 payments, is that what you are saying?

10 A I don't believe so.

11 Q Which would comport with the answer Mr. Couling
12 gave they were not for cattle payments?

13 A I don't recall whether Mr. Couling paid me
14 personally or it was made through the auction. I
15 do know there is a bull that was not sold through
16 the cattle sale that was a personal sale to
17 Mr. Couling.

18 Q Now, up to this point, in Paragraphs 7 through 9,
19 we had a total of three thousand thirty-two dollars
20 and now, with the addition of the nine hundred
21 ninety-five dollars, we are up to four thousand
22 twenty-seven dollars that Mr. Couling paid you
23 for some trucks Mr. Gonzalez rented for Mr. Couling,
24 is that your testimony?

25 A I don't know what equipment was rented, but that

1 was what this total would be for the rental of
2 your equipment?

3 A Yes.

4 Q And all of this four thousand twenty-seven dollars
5 up to now would have been turned in to your
6 income tax returns?

7 A Yes, sir.

8 Q And reported on them?

9 A Yes, sir.

10 Q And it is still your testimony that taking 7, 8,
11 9 and 10, as a whole, you don't know of any
12 connection between the exhibits that relate to the
13 invoices and the county checks to the money you
14 received?

15 A That is correct, sir.

16 Q Now, there was a series of exhibits that I would
17 like to go into now that relate to Paragraph 7,
18 8, 9 and 10, and these exhibits Mr. Mitchell asked
19 you about. E-155, 156, E-157 and E-158. We all
20 recall these are admitted for the course of
21 conduct, on that basis. I would like to ask you
22 some questions about those and I will get those
23 from the court reporter.

24 MR. MITCHELL: Course of conduct, I
25 didn't recall that testimony.

1 MR. ODAM: These are the ones you asked
2 him about yesterday.

3 MR. MITCHELL: What are they, Mr. Odam?

4 MR. ODAM: 155 through 158.

5 MR. MITCHELL: I am sorry, I don't know
6 what they are.

7 MR. ODAM: Checks from Benavides Implement
8 and Hardware to Judge Carrillo in varying
9 amounts.

10 THE MASTER: They are the ones, I think,
11 are they not, you offered while Mr. Couling
12 was on the stand? You say it was course of
13 conduct and I don't think I admitted them for
14 that purpose. I think I admitted them to
15 rebut that these were certain checks --

16 MR. ODAM: No, no, sir, those checks are
17 the rebuttal checks -- those are the ones
18 recently, the 170 series.

19 These checks, 155 through 158, I recall
20 were offered upstairs in the second courtroom
21 we used.

22 THE MASTER: They are clearly in evidence.

23 MR. ODAM: Yes, sir, and I will go back
24 to the daily copy for the purpose of that
25 offer.

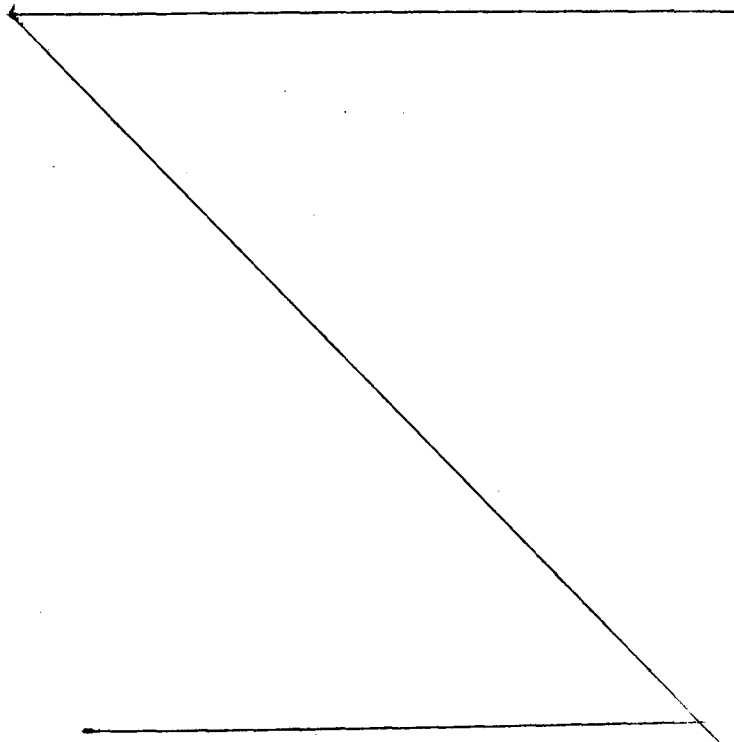
1 MR. MITCHELL: I don't have the exhibits
2 and they are not in the file.

3 THE MASTER: Well, no comment is
4 necessary. I am trying to see what day of
5 the week that came in.

6 MR. ODAM: Rather than take the Court's
7 time --

8 THE MASTER: Well, this is a good time
9 to break anyway.

10
11 (A short recess was taken.)



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

3 MR. ODAM: Yes, sir, I am ready to pro-
4 ceed. Are you ready, Mr. Mitchell?

5 MR. MITCHELL: Yes.

6 Q (By Mr. Odam:) All right, Mr. -- or correction,
7 Judge Carrillo, right before the break, I had
8 just completed asking you a question about para-
9 graph 7, 8, 9 and 10, as relates to those para-
10 graphs and I was getting ready to go into another
11 series of checks, E-155, 156, 157 and 158. I
12 then became aware that Mr. Mitchell had also
13 handed you these checks before the break, that
14 is the reason I could not find them.

15 All right, now do you recall --

16 MR. ODAM: And the record reflects what-
17 ever it was.

18 Q Do you recall that after I had completed the
19 examination of Mr. Couling on paragraphs 7, 8, 9
20 and 10 I then asked him if there were any other
21 checks which he had given to you, and that is
22 where we got into this discussion on the -- on
23 my direct examination of Mr. Couling of 155
24 through 158.

25 A Yes, sir.

1 Q That is these checks here?

2 A Yes, sir.

3 Q And then, Mr. Mitchell asked you a series of
4 questions?

5 A Yes, sir.

6 Q Now, my questions will pertain then to the ques-
7 tions asked by Mr. Mitchell and then I asked Mr.
8 Couling.

9 A All right, sir.

10 Q I would like to take first of all the check which
11 is E-155 and I will hand you all of them, 155,
12 156, 157, and 158.

13
14 (Handed to the witness.)

15 MR. ODAM: I am sorry, Your Honor, I
16 don't have a xerox copy of these.

17 THE MASTER: That is all right.

18 Q And I believe 155 was --

19 MR. MITCHELL: Excuse me, pardon me,
20 Mr. Odam, I have some that I can give to
21 the Court.

22 MR. ODAM: All right.

23 MR. MITCHELL: Just go ahead.

24 Q 155 is the check that you testified to the other
25 day, and what is the recital on E-155?

1 A Loan.

2 Q And I believe you testified the other day that
3 this was a loan that Mr. Couling gave you because
4 of a drilling rig, is that your testimony?

5 A They owed me money on this drilling rig.

6 Q Who is "they"?

7 A Mr. Couling, through Mr. Couling this drilling
8 rig was rented and there was no rent coming in.

9 Q Do you know -- now who did the drilling rig belong
10 to?

11 A My brother Ramiro and myself.

12 Q Did it belong to the Farm and Ranch Store or would
13 it belong to you individually?

14 A I believe it was carried as Farm and Ranch Equip-
15 ment.

16 Q And who, for you and your brother, or for the
17 Farm and Ranch Store, negotiated with Mr. Couling
18 to get this water rig, or how did it come into
19 his possession that he was renting it in the
20 first place, if that is what he was doing?

21 A I don't remember rightly. I just remember that
22 it was.

23 Q And who was Mr. Couling renting this water rig
24 to?

25 A The county used it for a while and Mr. George Parr

1 and Archer Parr were drilling irrigation wells on
2 their property.

3 Q Would this be a water rig that you bought in, say,
4 1965, when you and Luis Elizondo and your brother
5 went up to George West, Texas, to buy the water
6 rig? Is this one and the same as that one?

7 A I don't know, I don't remember Mr. Luis Elizondo
8 going with us.

9 Q Who operated this --

10 A I don't believe I went myself to tell the truth.
11 I think that Ramiro was the one that handled it.

12 Q And he went by himself, you think?

13 A I don't know.

14 Q Do you know who Luis Elizondo is?

15 A Yes, I do.

16 Q And what is his job, for whom does he work?

17 A I don't know who he works for.

18 Q Is he any kin to Roberto Elizondo?

19 A Half-brother.

20 Q And half-brother to Tomas Elizondo?

21 A Yes, sir.

22 Q Do you know whether or not Luis Elizondo would
23 have ever worked this water rig that you talked
24 about?

25 A I think when it was leased to the county he

operated it for the county, as the driller.

Q This was back on that property that you are talking about the other day when Judge Meyers corrected the record on the condemnation type proceeding?

A Wherever it went.

Q And you did not negotiate with Mr. Couling for the rental of this rig through the Benavides Implement and Hardware Store?

A No, sir, it was negotiated through Farm and Ranch but they weren't paying the rent.

Q Well, how -- who for Farm and Ranch got it in the hands of Mr. Couling, where Mr. Couling was renting it to these people?

A I don't know. All I know is that they told me that they were having trouble collecting the rent on it.

Q And when you say "they".

A And they weren't getting anywhere with the Farm and Ranch, my brother and Cleofus were supposedly having trouble. There was no money coming in on the rental of the rig.

Q Did they rent it to Benavides Implement and Hardware?

A That's right, it was going through them and so they told me that Benavides Implement and

1 Hardware had it and they weren't getting any
2 money, so I just flat went out there and laid my
3 foot down. I said, "We are not going to let this
4 rig operate for free, an' either we get money
5 that is coming or we are going to get the rig,
6 one of the two."

7 Q Now, that rig that was carried in the name of
8 Farm and Ranch, why would Mr. Couling write out
9 a check to you for one thousand two hundred dollars
10 as a loan on that rig?

11 A I asked him that I needed some money, and I said,
12 "Unless I get some money, the money that we have
13 coming for the rental of that rig, we want the
14 rig, we are going to go out there and get it."

15 Q Where was it at that time when you are talking
16 about getting it?

17 A I think it was drilling wells for George Parr at
18 the time, I don't know. But, anyway, I said,
19 "We are going to go get it." And he didn't know
20 the exact amount owing and he said, "Well -- ".
21 That is why I refer to this as sort of a loan.
22 It was sort of an advance, not knowing how much
23 was owing.

24 He said, "I'll give you twelve hundred
25 dollars now and let's figure this thing out and

1 we will get you your money", and that was fine
2 because we needed to get either the money or the
3 rig, one of the two.

4 Q So it would probably be -- it would have to be
5 Ramiro Carrillo that made the arrangements for
6 the Benavides Implement and Hardware?

7 A Or Cleofus Gonzalez.

8 Q Or Cleofus Gonzalez?

9 A Yes.

10 Q You recall the testimony that this particular
11 check for one thousand two hundred dollars was
12 just another one of these checks where he was
13 giving you the money that he received from the
14 county, you recall that testimony?

15 A I recall the testimony, but I also recall the
16 facts.

17 Q And so, this has nothing to do with getting money
18 from the county as the evidence was on the para-
19 graphs 7, 8 and 9?

20 A No, sir.

21
22
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25

1 Q What is the date on that check, please?

2 A June 21st, 1971.

3 MR. MITCHELL: May I ask a question?

4 THE MASTER: Yes.

5 MR. MITCHELL: Is the Examiner
6 contending there is a check from Duval County
7 to Mr. Couling for that amount of money, a
8 twelve hundred dollar check?

9 MR. ODAM: There was not one in
10 evidence, but there was testimony that was
11 part of the general scheme. We did not
12 attempt to track down everything on this.

13 MR. MITCHELL: May I request a
14 stipulation from counsel that there is no
15 check from the county for that amount of
16 money?

17 MR. ODAM: No.

18 MR. MITCHELL: None in evidence.

19 MR. ODAM: I will stipulate to that.

20 MR. MITCHELL: Thank you, Mr. Odam.

21 Q (By Mr. Odam) Who would have been the operator
22 of this water rig that Farm and Ranch was renting
23 to Benavides Implement and Hardware that it in
24 turn was renting out to other people?

25 A We rented out the rig itself. It was bought and

1 fixed up and whatever goes with the rig and
2 fixed up for drilling and for drilling irrigation
3 wells, also. It was a tall, long rig mounted
4 on a trailer.

5 Q All right.

6 A And it was leased to the county before my
7 brother became a commissioner, for the purpose of
8 drilling those wells, and they were going to pay
9 the labor for the personnel who operated, or crew
10 who operated the rig. We just rented the rig to
11 them.

12 Q Why would you and your brother, with this rig,
13 why would you have the Farm and Ranch Store rented
14 to Benavides Implement and Hardware and they in
15 turn rent it to someone else? Why would you go
16 through Mr. Couling to do that?

17 A I have not the slightest idea. It was originally
18 rented to the county, but it ended up drilling
19 wells for Mr. George Parr.

20 Q Why would you rent it through Benavides Implement
21 and Hardware and then to the county?

22 A I don't know.

23 Q If you all owned it, it looks like the straightest
24 way would be to go through the Farm and Ranch
25 Store.

1 MR. MITCHELL: May I approach the
2 witness?

3 THE MASTER: No, Mr. Mitchell, you may
4 not?

5 THE WITNESS: I don't know.

6 Q (By Mr. Odam) Now, this loan or advance payment
7 on that water rig, would the income from that be
8 in your personal account for that year or would
9 that be in the Farm and Ranch account?

10 A It would be in my personal account, since it was
11 made out to me.

12 Q For 1971?

13 A Yes.

14 Q So that would be in evidence, E-82?

15 A Yes.

16 Q I would like to move to E-156.

17 A Yes, sir.

18 Q Can you describe for the record what that is?

19 A A check payable to O. P. Carrillo for one thousand
20 for one store counter from O. P. Drugstore.

21 Q What is that date?

22 A 5-20-71.

23 Q Now, on or about that date, did you personally
24 negotiate with Mr. Couling to buy this drugstore
25 counter?

1 A To sell it.

2 Q Well, for him to buy this counter?

3 A Yes.

4 Q Why would Mr. Couling buy this counter from your
5 drugstore?

6 A For his business, I guess.

7 Q What did this drugstore counter look like?

8 A These counters that I had here, when I bought
9 Vallejo Sales Company and when I bought the
10 Vallejo Lumber Company and the Vallejo Sales
11 Company was a big furniture, appliance and what
12 have you, business, I bought -- included in that
13 sale were a lot of fixtures, counters and things
14 like that. This was one of the counters I had
15 in the store. As a matter of fact, I still have
16 some of them.

17 Q Mr. Couling said he never bought a drugstore
18 counter from you.

19 A It was not a drugstore counter. It was a display
20 counter.

21 Q His testimony was he didn't buy any counter
22 pursuant to that check.

23 A Yes, I know.

24 Q Where would that counter be located today?

25 A I don't know.

1 Q Who delivered it?

2 A I did.

3 Q You actually took it over to the Benavides
4 Implement and Hardware Building?

5 A I made the deal with him and told him here you
6 are, this is yours. I made the deal with him.

7 Q Who actually took it to the Benavides Implement
8 and Hardware Store?

9 A I don't remember.

10 Q Was it taken out of your store?

11 A Yes, it was taken out.

12 Q Do you know whether or not that display counter
13 is over at the Benavides Implement and Hardware
14 Building now?

15 A I have been there once and I have not the
16 slightest idea whether it is there or not.

17 Q Now, would this sale of this display counter,
18 would that also be part of your income for 1971?

19 A Yes.

20 Q That personal check, would that be in your
21 personal account, also?

22 A Yes.

23 Q I would like to move to 157 then, E-157.

24 A Yes, sir.

25 Q What is the recital on that check?

- 1 A Tubing.
- 2 Q How much money is shown on that check?
- 3 A Nine hundred eighty-two dollars.
- 4 Q And what is the date of that check?
- 5 A July 2nd, 1971.
- 6 Q And what -- could you explain to the Court -- I
7 don't recall this, but could you explain about this
8 tubing you sold?
- 9 A It was tubing which would have to do with
10 drilling wells and things like that.
- 11 Q It would be well tubing?
- 12 A Or water tubing.
- 13 Q And what would Mr. Couling do with tubing, once
14 he received it?
- 15 A I guess he had a use for it; he bought it.
- 16 Q Did you actually deliver this tubing to the
17 Benavides Implement and Hardware Store?
- 18 A Yes.
- 19 Q After he got the tubing, you don't know what he
20 did with it?
- 21 A I don't know.
- 22 Q Do you recall his testimony that this was another
23 just something he wrote on the check to give you
24 the money, that there was no tubing involved?
- 25 A Yes.

1 Q And it is your testimony that is not correct,
2 what Mr. Couling testified to?

3 A That is correct, sir.

4 Q If you would, look at E-158 and describe that for
5 the record, please.

6 A A check payable to O. P. Carrillo for two hundred
7 sixty-seven dollars from Benavides Implement and
8 Hardware, R. N. Couling.

9 Q And the notation on there is what?

10 A There is no notation. It is endorsed by the
11 Cash Store.

12 Q This was the check you said Mr. Couling was
13 probably paying for his portion of the groceries
14 on a hunting trip at that time?

15 A Not probably, he was.

16 Q I noted you said the other day, other than the
17 root plows, you had no connection with Benavides
18 Implement and Hardware. It looks like you rented
19 personal trucks to the store and sold them a
20 drugstore counter and also you had this deal, or
21 somebody had this deal on the water rig. How
22 could you describe now, in light of all of these,
23 what type of business relationship, if any, you
24 had with Benavides Implement and Hardware?

25 A My relationship was with Mr. Couling, but insofar

1 as the store, Benavides Implement and Hardware,
2 I don't know how he rented or what he rented or
3 what.

4 Q Now, I believe that these checks here, 155, 156,
5 157 and 158, they total two thousand forty-nine
6 dollars. That gives us a total of seven thousand
7 two hundred fifty-seven dollars of rental of these
8 trucks, selling of tubing, loan on that water rig
9 and the sale of that counter, is that correct?

10 A Yes. -- Well, I don't know about your adding.

11 MR. MITCHELL: Well, Your Honor, I
12 don't want to be picky, but counsel is using
13 the tricky language for tax purposes.

14 THE MASTER: Revenue.

15 MR. ODAM: Yes, I thought it was on the
16 twelve hundred dollars, that it was a loan.

17 MR. MITCHELL: Well, however --

18 MR. ODAM: I understand it states for
19 whatever it is, rental income or revenue.

20 Q (By Mr. Odam) Now, 182, that you showed me
21 earlier, -- this is -- E-182, over at the right,
22 it says 1972.

23 A Yes, sir.

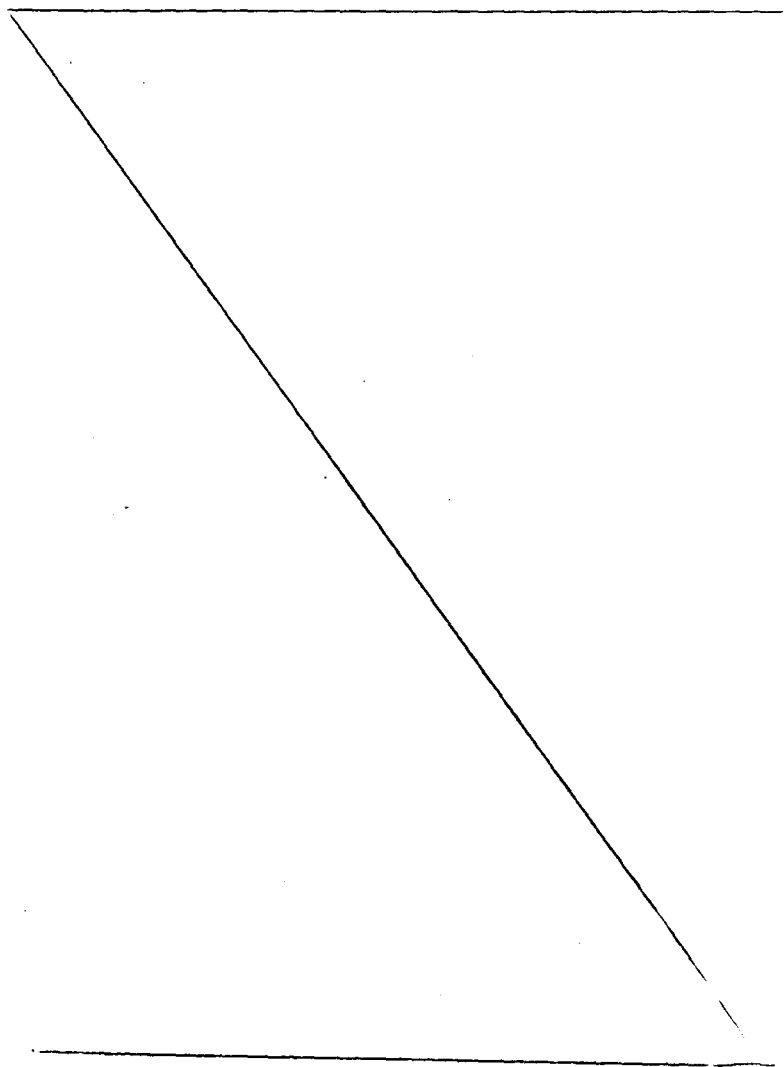
24 Q And says for the year January 1st, through
25 December 31st, 1972. Would this not be your tax

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return for the year of 1971, but as it states there, would it be for 1972?

A I stand corrected, I am sorry.

MR. MITCHELL: I tried to clear it up and the Court would not allow it.



1 Q 182 then is income for 1972. I would show you,
2 and it is going to be a little repetitious and
3 I would apologize for that, but it won't be as
4 involved as before and it will be more relevant
5 now.

6 I show you what you earlier gave me which
7 says 1971 on it.

8 A Yes, sir.

9 Q And ask you if you can identify this particular
10 item.

11 A This is my individual income tax return for O. P.
12 Carrillo.

13 Q All right, sir.

14 A Which is --

15 Q It doesn't have an Exhibit number.

16 A It doesn't have an Exhibit number, that's right.

17 Q All right.

18 MR. ODAM: I would ask the court
19 reporter to mark this as our next Exhibit
20 number.

21 MR. MITCHELL: Your Honor, the only
22 objection we would have as the court well
23 knows on the tax returns, the relevancy rule
24 applies very strictly on them.

25 We have no objection as regards the

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1 depreciation schedule, for example, or
2 where items of income can be segregated
3 into income from rents or capital gains and
4 so forth, but under the -- we would object
5 to it generally on relevancy and would
6 withdraw those objections as irrelevancy
7 is shown.

8 THE MASTER: And you may certainly be
9 permitted to do that. And I only admitted
10 it in order, in effect, to see if a tracing
11 can be effectuated of income into the returns
12 and depreciation out of, and that sort of
13 thing.

14 MR. ODAM: And for clarification, those
15 are the two purposes for which I intend to
16 offer it.

17 MR. MITCHELL: With the understanding
18 also, Your Honor, that Mr. Kirkland is the
19 preparer of the return, and I understand
20 the rule where the taxpayer signs --

21 THE MASTER: Yes, sir.

22 MR. MITCHELL: But the preparer also
23 has very strict obligations under the law
24 as the Court well knows.

25 THE MASTER: And Judge Carrillo has

1 testified that he furnished the information.

2 MR. MITCHELL: Correct.

3 MR. ODAM: And I offer into evidence
4 183.

5
6 (Marked for identification by the
7 reporter as Exhibit 183.)

8 THE MASTER: And it is admitted with
9 the understanding as we have earlier stated.

10
11 (Whereupon Exhibit 183 was admitted
12 into evidence.)

13 THE MASTER: Mr. Mitchell, of course,
14 this entire record at this stage, and before
15 the Judicial Qualifications Commission is
16 confidential so that does not become a
17 matter of public knowledge.

18 It might be that if this goes into the
19 Supreme Court, that you will want this
20 return put in a sealed envelope and only
21 those portions that become relevant will
22 become public record.

23 MR. MITCHELL: Yes, sir.

24 THE MASTER: I don't know that I have
25 the authority to tender that to you.

1 MR. MITCHELL: Very good.

2 THE MASTER: That is a request that
3 has to be made before the Judicial Qualifica-
4 tions Commission.

5 MR. MITCHELL: And for the record, I
6 would make a request that the Master put
7 them in an envelope and do as we do in many
8 cases --

9 THE MASTER: We don't have to now, the
10 whole record is confidential.

11 MR. MITCHELL: All right.

12 THE MASTER: You are going to make that
13 request, if it goes to the Supreme Court.

14 MR. MITCHELL: That is what I was
15 going to do is make that request into this
16 record of the Supreme Court.

17 THE MASTER: Sure.

18 MR. MITCHELL: If it is to be made
19 public, which it can be, of course, when the
20 opinions are written, that it be sealed.

21 Thank you, Judge Meyers, for that
22 suggestion.

23 Q (By Mr. Odem:) Now, Judge Carrillo, I have handed
24 you and the Master a copy of Exhibit E-183 and
25 I ask you if you can identify just for the purpose

1 of clarification what this, "CAR-71", is down
2 there on the front page?

3 A Individual income tax return for O. P. Carrillo
4 for the year 1971.

5 Q No, sir, I'm sorry. The little tab that is down
6 in the lower righthand corner that was added on.

7 MR. MITCHELL: He probably doesn't know
8 what it is, Mr. Odam. It is a -- may I,
9 Judge, answer that?

10 It is a designation of a Carrillo
11 Exhibit for another procedure -- or proceed-
12 ing.

13 THE MASTER: And, I suppose, that is
14 true of 6-75, what I take to be Walter Hick-
15 man's initials?

16 MR. MITCHELL: Yes, sir.

17 THE MASTER: I am just asking.

18 MR. MITCHELL: Well, I don't -- I think
19 they are, Judge. I have introduced them at
20 at least two other proceedings and one was
21 the one of the House Select Committee level,
22 that I furnished the members of the House
23 of Representatives. So I think that is what
24 it is, Mr. Odam.

25 Q (By Mr. Odam:) Now, Judge Carrillo, on 183, the

1 income that you got from the check in paragraph
2 7 and paragraph 8 and paragraph 9 and paragraph
3 10, those four checks as well as the other four
4 personal checks that Mr. Couling gave you, it was
5 your testimony that those would be reflected
6 somewhere in this income tax return that is
7 prepared, is that correct?

8 A Yes, sir.

9 Q You would have given to Mr. Kirkland all of the
10 information to prepare this income tax return,
11 is that correct?

12 A Yes, sir.

13 Q All right.

14 MR. MITCHELL: Well, pardon me, Your
15 Honor, that, of course, would not apply to
16 the Exhibit Number -- I believe it is 158
17 which I believe the witness testified was
18 a check given to the -- E-158, yes, would
19 be a check given to the Cash Store.

20 Mr. Odam, out of fairness to the record,
21 that, of course, went to the Cash Store
22 and would not come across his personal books.

23 MR. ODAM: Who is the check made out
24 to?

25 MR. MITCHELL: O. P. Carrillo, but

1 endorsed by Abel Yzaguirre.

2 THE MASTER: It would come back.

3 MR. ODAM: No, it would not, Judge.

4 THE MASTER: No, you are right.

5 THE WITNESS: It was endorsed over to
6 the Cash Store.

7 Q Who endorsed it over to the Cash Store?

8 A I did.

9 MR. MITCHELL: And pardon me, Mr.
10 Odam, as evidenced by the endorsement of
11 Abel Yzaguirre.

12 MR. ODAM: I'm not as concerned about
13 that two hundred and sixty-seven dollars
14 as I am some of the other checks.

15 MR. MITCHELL: Yes, but the question is
16 over broad and I just didn't want the evi-
17 dence to reflect that that was the testimony
18 of this witness.

19 Q As to all other checks, if you look at line 15
20 on the front page.

21 A Yes, sir.

22 Q On your income tax return where it says income
23 other than wages, what is the amount of loss
24 stated on line 15 there?

25 A Loss of fifteen thousand three hundred and

1 sixty-two dollars and fifty-six cents.

2 Q Now, could you explain to me why, if you received
3 all of this income, why all of these dealings in
4 1971 with Mr. Couling, why you would have a loss
5 during that year?

6 A As a whole, I was having a loss at the ranch.

7 Q Okay, and I see on the front page on line 15,
8 it says from line 40 and I would ask you to turn
9 over to line 40, which I believe is on the third
10 page.

11 A Yes, sir.

12 Q And that is a total figure?

13 A Yes, sir.

14 Q That is where the fifteen thousand appears?

15 A Yes, sir.

16 Q And that simply is a recap of the income of lines
17 34 through 39, is that correct?

18 A Yes, sir.

19 Q Now, the money that you received from Mr.
20 Couling, would that be on all of those vehicles?
21 Would that be under farm income or would that be
22 under business income or where would that be
23 reflected?

24 A I just turn over everything to Mr. Kirkland and
25 he fixes up the returns and if he has any questions,

1 he would ask us about them, and he fixes them up.

2 Now where he puts them, I don't know.

3 Q All right.

4 A How he carries them --

5 Q All right, well, I look over on line 34, it
6 says refer to Schedule C and I would ask you to
7 turn over to Schedule C and look at line 1 there,
8 the gross receipts or gross sales, two thousand
9 nine hundred and thirty-six --

10 A Let me find the Schedule C.

11 Q I am sorry.

12 A Schedule C is which one?

13 Q It is the one that says services, products, attor-
14 neys.

15 A All right, I have got it.

16 Q And the -- how much are the gross receipts there
17 on line 1?

18 A Two thousand nine hundred thirty-six dollars.

19 Q And then, there is the depreciation down on
20 line 11, would you agree with me that probably
21 the amount of checks that we went through which
22 totaled over seven thousand dollars, that seven
23 thousand dollar income went into that line of
24 gross receipts from your business then, would it?

25 A I am not going to guess where it is at. There is

1 a -- in line 37, pensions and annuities, ranch,
2 partnerships, estates and so forth, there is
3 seven thousand three hundred and fifty-eight
4 dollars and sixteen cents, but I can't tell you
5 where Mr. Kirkland placed what.

6 Q Okay, but with respect to -- and I will get to
7 those in just a moment, but with respect to the
8 profit or loss from the business, the gross
9 receipts was two thousand nine hundred and thirty-
10 six dollars and the amount of money we recapped
11 on 7, 8, 9 and 10, plus those other checks came
12 to around seven thousand dollars, so just with
13 respect to this one schedule, my question is is
14 it your testimony that the seven thousand dollars
15 would be reflected on this Schedule C or not?

16 A No, sir, I do not know.

17 Q Okay. Okay, let's move over to the next schedule
18 which is schedule on my copies of --

19 MR. MITCHELL: Judge, I don't have any
20 desire to restrict -- are we now going to
21 try the tax case? I don't know what the
22 relevance of the tax return is.

23 The man has not prepared it, he has
24 testified he hasn't prepared it and whether
25 or not he prepared it or not, how does that

1 relate to 8, 9 and 10?

2 THE MASTER: I think I can answer that,
3 Mr. Mitchell. He has testified that this --
4 these several checks, all represent rental
5 on income with the exception of one or two
6 perhaps, the gross receipts and maybe the --

7 MR. MITCHELL: The counter and the
8 loan.

9 THE MASTER: But he testified that really
10 was an advance on rental basically.

11 MR. MITCHELL: All right.

12 THE MASTER: Now, Counsel is undertaking --
13 has also testified that everything that was
14 rent was put on his income tax.

15 MR. MITCHELL: All right.

16 THE MASTER: And I think that shows
17 you the thrust of it.

18 MR. MITCHELL: Well, Your Honor, but
19 the Farm and Ranch return for that very
20 same year shows a tremendous amount of
21 rental income.

22 THE MASTER: But he testified that these
23 were his individual units.

24 MR. MITCHELL: But the Farm and Ranch --
25 but the accountant, Your Honor, who allocated --

1 has previously testified that the allocation
2 on rental income was on Farm and Ranch.

3 THE MASTER: Where has he previously
4 so testified?

5 MR. MITCHELL: He has previously testi-
6 fied, and from that information --

7 THE MASTER : Where did he previously
8 testify?

9 MR. MITCHELL: He has previously testi-
10 fied as recently as September.

11 THE MASTER: There is nothing in this
12 record, there is no point in making that
13 comment here.

14 MR. MITCHELL: But, Judge, I have no
15 objection to him questioning him. It is a
16 question in my mind, so we try him for the
17 next five months on five tax returns, which
18 is what we are going to end up doing. Where
19 are we getting with it? It is just a ques-
20 tion of relevancy with me.

21 THE MASTER: Well, I appreciate that
22 last comment with respect to the length of
23 time.

24 MR. MITCHELL: Sure.

25 THE MASTER: But I can only -- I see

1 the thrust of where he is going.

2 Now, you say you know something that
3 Mr. Kirkland will testify to, I do not.

4 MR. MITCHELL: I just have -- you just
5 force me to bring him in.

6 THE MASTER: But do you understand my
7 ruling?

8 MR. MITCHELL: I understand, Judge
9 Meyers. I understand the Court's ruling,
10 Judge, and I think the question is -- I
11 think we are going afield, and I just want to
12 lay the predicate because that is what I am
13 going to have to do is to call him in and
14 have him reconstitute the returns for 1964
15 and forward, which is what I'll have to do
16 and I'll have to issue a subpoena for him.

17 THE MASTER: Let's not do that, we are
18 going to have a recess shortly, not shortly,
19 but in a while, and if you wish to request
20 a subpoena, I will certainly sign the request.

21 Q (By Mr. Odam:) Now, these checks that were per-
22 sonally made out to you, to O. P. Carrillo for
23 all of this equipment, that was out on your
24 ranch and the tubing that you sold, and the
25 drug store that you sold or drug store counter

1 that you sold, and the water rig rental, the
2 personal checks made out to you for all of that
3 rental, if you look at Schedule E, and R, and I
4 particularly refer to part 2 that states rental,
5 royalty, there are three items that are identified
6 there.

7 A I don't have the page.

8 Q I am sorry, they are not numbered, but at the top
9 of them is says Schedules E and R.

10 A Yes, sir.

11 Q And if you look down at Part 2, it says rent?

12 A Yes, sir.

13 Q And my question is, if the water rig, your per-
14 sonal water rig, or a check was given to you for
15 that water rig and a check was given to you on
16 the rentals of those personal pickups.

17 Now, my question is, does that rental income
18 appear in that Part 2 of the schedule?

19 MR. MITCHELL: Excuse me, Counsel, now
20 you know that water rig is carried on the
21 depreciation schedule for Farm and Ranch.

22 MR. ODAM: I do not know that.

23 MR. MITCHELL: It is. I handed you
24 that two days ago. It is not on that personal
25 return.

1 MR. ODAM: I do not have it for 1971,
2 you gave me 1972 and you gave me 1973.

3 MR. MITCHELL: The water rig is on the
4 Farm and Ranch return depreciation schedule
5 and not on the individual one.

6 THE MASTER: Well, he can --

7 MR. ODAM: All right, let me --

8 MR. MITCHELL: It assumes facts that
9 are not in evidence. Of course, I am hard
10 put to refer to the Exhibit because he hasn't
11 introduced the Farm and Ranch returns.

12 THE MASTER: The question to this wit-
13 ness, and I don't think he testified, it is
14 not in evidence, he asked do the rentals on
15 the water well rig appear on that page?

16 MR. MITCHELL: Okay.

17 THE MASTER: I think that was his only
18 question.

19 MR. ODAM: That was what my question was.

20 MR. MITCHELL: All right, Your Honor,
21 if that is the question.

22 Q (By Mr. Odam:) Let me take them one at a time.
23 Does the rental for all of those trucks or
24 vehicles other than the water rig, does that appear
25 here, all of this -- having rented all of these

1 trucks to Mr. Couling, does that rent income, is
2 that on here somewhere?

3 THE MASTER: Where are you?

4 MR. ODAM: Part 2 of the schedule, E and
5 R, sir.

6 THE MASTER : All right.

7 A I don't see it, sir.
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1 Q Okay. Now, I will ask you, with respect to Part 2
2 of this schedule, my question is, the rental for
3 that water rig, does that appear here?

4 A No, sir.

5 Q Now, with respect to those store counters, or
6 that store counter you sold to Mr. Couling and he
7 gave you this personal check, where would that
8 one thousand dollars appear as income?

9 A Again, the only one that can tell you would be
10 Mr. Kirkland. I am sorry, I can't. I am not
11 trying to be evasive, but I know they are reported.

12 Q Now, turn the page to a depreciation schedule.
13 You should have Form 4562.

14 A Yes.

15 Q And consistent with what Mr. Mitchell asked you,
16 would you agree there is no depreciation for this
17 water rig?

18 A The depreciation is carried over in the Farm and
19 Ranch, the partnership schedule.

20 Q Okay. And the depreciation on these -- if you
21 turn further over in this schedule, and we are
22 just about complete with this exhibit, to the
23 depreciation schedule for the farm equipment, you
24 have another depreciation schedule?

25 A Yes, sir.

1 Q Is that depreciation schedule and the copy I made --

2 MR. ODAM: Judge, do you have one there?

3 THE MASTER: Yes, sir.

4 MR. ODAM: On the copy I have, I didn't
5 get one Xeroxed.

6 THE MASTER: Is this the one you are
7 referring to?

8 MR. ODAM: No, sir.

9 THE MASTER: It is the other one, I have
10 it, too, that one.

11 MR. ODAM: Yes, sir, that is the one.

12 Q (By Mr. Odam) So it would be -- the vehicles that
13 you rented to Mr. Couling, they would be
14 depreciated in here somewhere, is that correct?

15 A Well, yes, sir. Well, I will say I don't know.

16 Q But those would be items that are depreciated on
17 your farm equipment, I take it?

18 A Mr. Kirkland is the only one that can explain this
19 instrument to anybody.

20 Q Do you own any other tractors and trailers and
21 equipment that is not listed there?

22 A Yes, this equipment gets old and you depreciate it
23 out and I still have them, but the depreciation
24 has been worked out and you phase them out, but
25 you don't throw them away, you keep them.

1 Q Well, if you rented some of this equipment that
2 is on that depreciation schedule and that would be
3 some of these items here -- plus the other
4 equipment that I have that is there.

5 Q Where is that reflected on the farm depreciation,
6 where you depreciated them?

7 A Mr. Kirkland is the only one that can explain that.
8 I am sure, with his working papers, all of your
9 answers would be answered satisfactorily.

10 THE MASTER: I have one question.

11 I would have, and this is not a major
12 point, but I would have considered the sale
13 of the display counter as a sale of a capital
14 asset and I don't find any capital gain sales
15 in that return.

16 Do you have any comment on that?

17 THE WITNESS: The comment I have is this,
18 Judge.

19 For the purpose of trying the federal
20 case, I hired another accountant, or two
21 other accountants. They went over this
22 income tax return, all of these, and they
23 have told me, as they have told Mr. Mitchell
24 and my brother, that in their opinion,
25 Mr. Kirkland, who has been our accountant for

1 years, they didn't agree with him in the way
2 he handled our returns and the way he
3 handled the cattle and the way he depreciated
4 things and what have you. They figured we
5 would have had more money coming if they had
6 handled it.

7 In other words, they didn't agree with
8 the procedure he used, how he did it or
9 carried it or what, I don't know.

10 THE MASTER: I am through.

11 Q (By Mr. Odam) Now, this drilling rig, I take it --
12 Mr. Mitchell has informed me, or your testimony
13 was, that the drilling rig was carried in the
14 Farm and Ranch account.

15 A Yes, sir.

16 Q And depreciated in that schedule?

17 A Yes, sir.

18 Q Now, I do not have, for 1971 --

19 MR. ODAM: You didn't give me '71.

20 MR. MITCHELL: No, I do have it
21 available. I will subpoena Mr. Kirkland
22 to bring his work papers in. I have had them
23 introduced in about eight trials now.

24 THE MASTER: Yes, sir, I understand.

25 Q (By Mr. Odam) For the year 1972, can you identify

1 the item I hand you now?

2 A It is a partnership return of income for O. P. and
3 Ramiro Carrillo for 1972.

4 Q Would this also be a return that Mr Kirkland
5 prepared?

6 A Yes, sir.

7 Q I will ask you if you can identify the item that
8 I hand you now?

9 A O. P. and Ramiro Carrillo partnership return for
10 the year 1973.

11 MR. ODAM: I will ask the reporter to
12 mark these two items, the '72 and '73
13 returns that you have in your hands.

14 THE MASTER: If you have copies, would
15 you mark those.

16 MR. MITCHELL: Please, Judge, that is
17 fine.

18 I am running short of tax records.

19
20 (Whereupon, the above-mentioned items
21 were marked as Examiner's Exhibits E-184
22 and E-185 for identification.)

23
24 Q (By Mr. Odam) E-184 is the partnership return for
25 you and Ramiro Carrillo, is that for the Farm and

1 Ranch Store?

2 A Yes.

3 Q And E-185 is for the year 1973?

4 A Yes, sir.

5 MR. ODAM: We would offer those.

6 MR. MITCHELL: Relevancy and beyond the
7 scope of the specifications contained in the
8 amended notice.

9 THE MASTER: Overruled.

10 MR. ODAM: I will hand to the Master,
11 while they are not marked for referral, E-184
12 and E-185. Judge Carrillo has the copies.

13 THE MASTER: E-184 and E-185 are
14 admitted.

15 Q (By Mr. Odam) First of all, Judge Carrillo, turn
16 to E-184, which is the return for 1972.

17 A Yes, sir.

18 Q And turn to the depreciation schedule. On my
19 copy it is the third page over.

20 A Yes, sir.

21 Q And the first item there --

22 THE MASTER: It is the second page on
23 mine.

24 THE WITNESS: It is the third page on
25 my copy.

1 Q (By Mr. Odam) What is the first item depreciated
2 there?

3 A Water well rig.

4 Q What was the cost basis there?

5 A Four thousand five hundred dollars.

6 Q What was the year it was acquired?

7 A 1963.

8 Q And I will ask you if you will, please, pick up
9 E-185 and pick up the depreciation schedule there,
10 which is several pages over in my copy, the fifth
11 page.

12 A Yes, sir, I have it.

13 Q And the first item on that depreciation schedule
14 is a water well rig.

15 A Yes.

16 Q Is that the same item as referred to on the 1972
17 return?

18 A Yes, sir.

19 Q Now, let's take it back to 1972, and if you look
20 on the first page of E-184, the first section is
21 on income and Line 1-A, which is gross receipts.

22 My question is this, where the -- strike
23 that.

24 Look at Line 7.

25 A Yes, sir.

1 Q Line 7 is for rents?

2 A Yes, sir.

3 Q Or rental income?

4 A Yes, sir.

5 Q And how much rental income is there for 1972?

6 A It doesn't show any.

7 Q Look for Line 7 on E-185, Line 7 there, what would
8 be the rental income for the Farm and Ranch Store
9 that year?

10 A It doesn't show any.

11 Q For the year 1972 and '73, my question is to you,
12 did you also rent this water well rig to Benavides
13 Implement and Hardware in 1972 and '73, as you
14 said you did in 1971?

15 A That water well rig has never been returned to
16 this day.

17 Q Where is it now?

18 A We have located it in Victoria, Texas, where it
19 was sent for repairs by Archer Farr. We are making
20 arrangements to get it back presently.

21 Q My question was, did you receive any rental income
22 in 1972 and '73? We have just talked about 1971.
23 Did you receive any income from it for 1972 and
24 '73?

25 A I don't know.

1 Q Now, if we had the return here for 1971 -- would
2 you agree that if the water well rig was rented
3 through the Farm and Ranch Store, that rent would
4 show up there in the '71 return?

5 A That rent paid to me, I reported it in my income
6 tax return. I used the money and I also reported
7 it.

8 Q The water well rig is carried as a partnership
9 item?

10 A That is right.

11 Q So your 1971 return, which is E-183, somewhere in
12 that would be where you got the income from
13 renting that water well rig to Benavides Implement
14 and Hardware?

15 A I beg your pardon, sir?

16 Q Let me rephrase it.

17 You got money from Mr. Couling and you said
18 it was either a loan or advance payment and you
19 said you reported it on your personal income tax
20 return.

21 A Yes, sir.

22 Q But you depreciated it under your Farm and Ranch
23 Store account?

24 A Yes, sir.

25 Q And it was rented, from your previous testimony

1 today, to the Farm and Ranch account?

2 A Yes, sir.

3 Q Why would you report it personally and not through
4 the Farm and Ranch account?

5 A I needed the money and I paid income tax on the
6 money and I spent it.

7 Q Your understanding was that Mr. Couling stated,
8 and I didn't ask him about it on direct,
9 Mr. Mitchell did, but he stated he didn't know
10 anything about it except that he knew you had
11 one.

12 A He said there was one in existence, but he didn't
13 know who owned it.

14 Q Well, to summarize very briefly, the amounts of
15 money for Paragraphs 1 through 9, I calculate them
16 to be a total of four thousand twenty-seven
17 dollars, plus these other checks, 155 through 158,
18 three thousand two hundred forty-nine and the
19 total up to date is seven thousand two hundred
20 fifty-six dollars.

21 A I am sure your calculator is correct. I have no
22 quarrel with that figure.

23 Q Now, back on these vehicles that we have talked
24 about in Paragraphs 7, 8, 9 and 10, did you pay
25 any sales tax to the comptroller's office after

1 you rented those trucks and equipment?

2 A That was work through Farm and Ranch and I don't
3 know -- they were renting it and bringing me the
4 checks, but I didn't know who paid what.

5 Q Did you carry liability insurance on those personal
6 trucks that you rented to Benavides Implement and
7 Hardware through Mr. Gonzalez over at Farm and
8 Ranch?

9 A I don't know.

10 Q Would your personal income tax returns show the
11 payment of those insurance payments as a business
12 expense?

13 A I don't know that I had insurance on them.

14 Q When you rented trucks to Benavides Implement and
15 Hardware, did you have a contract with Mr. Couling
16 on the rental of those trucks?

17 A It was just an understanding we had. The
18 agreements -- you must understand that at the
19 time Mr. Couling and I were very close friends.

20 Q Did you have a contract regarding the assumption
21 of liability in case there was an accident on
22 those trucks?

23 A Not that I know of.

24 Q Why would Mr. Couling pay you varying amounts like
25 that as he did pay you?

1 A That is what he told me he owed me. That is what
2 he said I had coming. I took him at his word.

3 Q I would like at this time to move to Paragraph 11
4 on this station wagon.

5 A Yes, sir.

6 Q I refer you --

7 MR. ODAM: For the record, E-84, E-85,
8 E-88 and E-90 are the exhibits referring to
9 this paragraph.

10 Q Now, Judge Carrillo, for the purpose of refreshing
11 your recollection on these, I will hand you the
12 item marked E-84 and --

13 A Yes, sir.

14 Q And E-85, E-88.

15 A Yes, sir.

16 Q And E-90?

17 A Yes, sir.

18 Q I will hand a Xerox to the Master of all of these.
19 I believe those are the ones my questions will go
20 to.

21 I believe you previously testified, when
22 Mr. Mitchell asked you, that you had no agreement
23 with anybody to get any claim to be paid for
24 this station wagon, is that correct?

25 A That is correct.

1 Q And you also deny you told Ramiro Carrillo the
2 water district would pay for his station wagon?

3 A Yes.

4 Q Did you have any conversation with anyone with
5 the water district, particularly D. C. Chapa or
6 Jose Tovar, did you have any conversations with
7 them at all?

8 A No, sir.

9 Q Did you have any conversations with Mr. Couling
10 about a station wagon, either?

11 A No, sir.

12 Q If you look at E-84 and describe for the record
13 what E-84 is.

14 A It is a check to the Benavides Implement and
15 Hardware Company from the Duval County Conservation
16 and Reclamation District in the amount of five
17 thousand six hundred twenty-five dollars.

18 Q What is the date of that check?

19 A January 11, 1972.

20 Q And who are the two individuals whose names appear
21 on that check?

22 A D. C. Chapa and Jose Tovar.

23 Q And D. C. Chapa is your father?

24 A Yes, sir.

25 Q And you never had a conversation with him about

1 that?

2 A No, sir.

3 Q And you notice the invoice numbers on that check,
4 do you not?

5 A Do you mean on the left?

6 Q Yes, on the left of E-84, the invoice numbers on
7 the check itself. It says on the check from the
8 water district.

9 A E-84 -- I am sorry, I do see them, but I don't
10 have an invoice.

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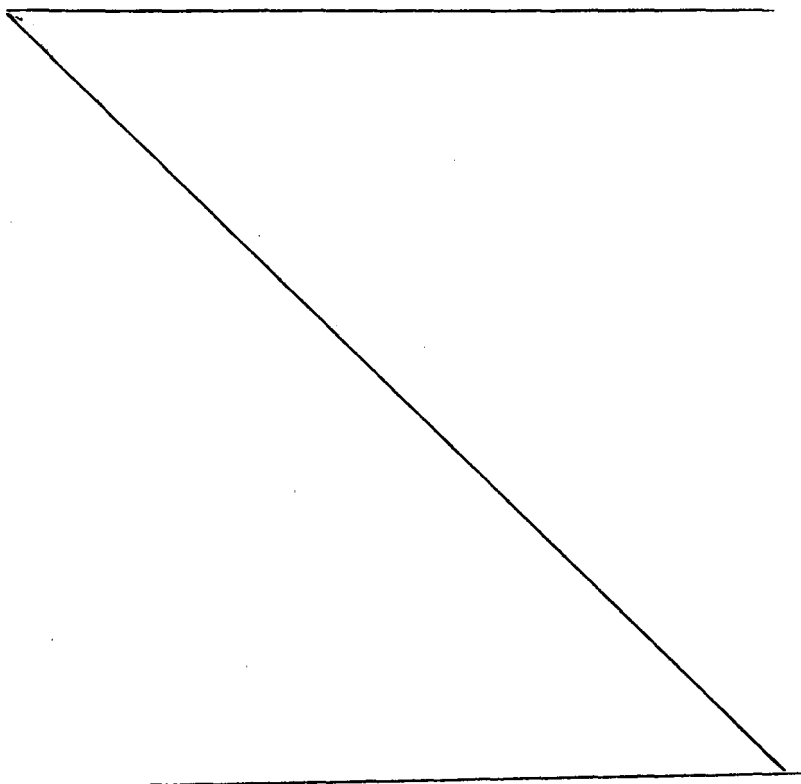
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1 Q I am sorry, it just says invoice on it.

2 A Oh, oh, I'm sorry, I was looking for invoices.

3 Q No, invoice 289, 290.

4 A Yes.

5 Q And 292 and so forth?

6 A Yes.

7 Q Do you recall Mr. Couling says there was no
8 work performed for the water district to get this
9 check and that they were just typed on there
10 when he got it? Do you recall that testimony?

11 A Yes, sir.

12 Q Do you also recall his testimony that either
13 Rogelio Guajardo or you delivered that check to
14 him, do you recall that testimony?

15 A I did not deliver that check to him.

16 Q That was my question to you, did you personally
17 deliver that check to Mr. Couling?

18 A No, sir.

19 Q Had you ever seen that check before we got into
20 this proceeding here?

21 A No, sir.

22 Q Do you have any idea why the water district
23 would pay Benavides Implement and Hardware five
24 thousand six hundred and twenty-five dollars?

25 A No, sir.

1 Q Now I show you, or you have in your hand there,
2 E-85 and ask if you can identify for the record
3 what E-85 is?

4 A That is a check, the First State Bank of San
5 Diego, the First State Bank and Trust Company,
6 Rio Grande City, five thousand seven hundred and
7 twenty-five dollars and thirty-four cents, R. M.
8 Couling.

9 Q Do you recall Mr. Couling said that he gave you
10 that check in blank and that he didn't fill in
11 anything except his name?

12 A Yes, sir.

13 Q All right, who filled in the amount of money --
14 who filled in the amount of money on it?

15 A That is Mr. Couling's handwriting.

16 Q I believe he had testified, and of course the
17 record can speak for itself, but my recollection,
18 in going back through the records, he said he
19 gave you -- gave it to you in blank.

20 Let me ask you this, why, if that is Mr.
21 Couling's handwriting, why would Mr. Couling give
22 you a check in the amount of five thousand
23 seven hundred twenty-five dollars and thirty-
24 four cents?

25 A I had come again to Mr. Couling complaining -- I

1 am saying again, I had come to Mr. Couling, com-
2 plaining about the rental on the water well rig
3 and the money that they owed us, and I had pur-
4 chased a station wagon and I had it financed at
5 the First State Bank and Trust Company.

6 I had a note that was coming due, I needed
7 some money, I went over there and I pressed him
8 for some money and that is what he couldn't come
9 up with was the whole amount and I told him that
10 we were just going to have to get some money in
11 here because that is it and he came up with this
12 check.

13 Q Do you recall why he happened to make out the
14 check, if he did make it out, for five thousand
15 seven hundred and thirty-five dollars and thirty-
16 four cents?

17 A He gave me this check on account of that water
18 well rig.

19 Q I know, but why did the rental, if it did, for
20 that water rig, come out to such a very specific
21 amount?

22 A I needed this money to pay off this note that I
23 had.

24 Q So you told him that you needed this specific
25 amount of money?

1 A No, this is -- I wanted ten or fifteen thousand
2 dollars, this is what I managed to get out of
3 him.

4 Q Well, did you tell him to make out a check for
5 five thousand seven hundred and twenty-five
6 dollars and thirty-four cents?

7 A I forget the amount of the note, Mr. Odam. It
8 is probably in here somewhere, whatever the amount
9 of the note was.

10 I told him, I'm going to have to go and
11 pay a note that is coming due this amount, and
12 I need this money and that is what I got.

13 Q Now, when he gave you this check, it says "station
14 wagon" on it. Who put station wagon on it?

15 A I don't have the slightest idea who did. Because,
16 this check should have been deposited to my
17 account.

18 Q Did you put station wagon on there?

19 A No, that is not my handwriting.

20 Q Did Mr. Couling put station wagon on there?

21 A I don't know.

22 Q Well, once you got this check, which was payment
23 for advance, I guess it was, on rent on that
24 water rig.

25 My question to you is if it was payment on

1 this water rig, and again, for the purpose of
2 that question, I will recall Mr. Couling saying
3 that you said you -- the water district was going
4 to pay for a station wagon.

5 But, now, if it were in payment for rent
6 from the water district, would it be correct then
7 that five thousand seven hundred and twenty-five
8 dollars rental would just like that other rental,
9 show up on your income tax return for that year?

10 A Yes, sir.

11 Q All right.

12 A Yes, sir, it will.

13 Q Now, the date on the check from the water dis-
14 trict, is January the 11th of 1972 -- well, I
15 take that back, this is --

16 The date on the check is January 11th of
17 1972 and what is the date of your check that you
18 got from Mr. Couling?

19 A January the 13th.

20 Q Of 1972?

21 A Yes, sir.

22 Q So, that income from that water rig would show
23 up in your 1972 tax return.

24 A This check, in this amount, would show up as part
25

1 of my income.

2 Now, where Mr. Kirkland put it, we are just
3 going to have to get Mr. Kirkland to explain that.

4 Q But we already went through earlier, when I thought
5 it was 1971, we had 1972. We went through 1972
6 and we found out that for income other than wages
7 on your personal return, that you had a loss there
8 of four thousand six hundred nineteen dollars and
9 forty-seven cents.

10 A Yes, sir.

11 Q But Mr. Kirkland, if he came in, he would testify
12 as to how you could get five thousand dollars
13 rent on that water rig but yet come out with a
14 loss for 1972?

15 A Yes, sir.

16 Q I believe you testified that at one point the
17 county was using this water rig?

18 A Yes, sir.

19 Q And that in 1972, who would have been using the
20 water rig then that Mr. Couling was allegedly
21 paying you this rent for in 1972?

22 A I think Mr. George Parr and/or Archer Parr.

23 Q Mr. George Parr is deceased and Mr. Archer Parr
24 is in the penitentiary?

25 A Yes, sir.

1 Q Do you have any idea who would have been operating
2 that rig, that drilling rig on the Parr Ranch in
3 1972?

4 A No, I don't. Like I say, they took care of --
5 they took the rig, and they -- I would say they
6 appropriated it to their own use and they had it
7 out there.

8 I don't know what they were doing, except
9 that they weren't paying on it, and they were
10 getting all of their irrigation wells and working --
11 they worked it until they ruined it.

12 Like I say, if I rent, like that thing is
13 supposed to have been rented, and to this day it
14 has not been returned, and as far as I am concerned
15 they owe us rent to this day.

16 Q You didn't have a deal with Mr. Parr where you
17 would just loan him that rig?

18 A No, sir, I am not in the loaning business.

19 Q How much did you intend to rent it for? Who paid
20 the --

21 A I don't know the original agreement, who made the
22 agreement or how much it was for or stuff like
23 that because I didn't attend to that business.

24 I attended to the business of collecting
25 because I was able to press them a little bit

1 harder and threaten to go and get it.

2 Q Well, who would have dealt with George Parr then
3 to have rented him, if it were rented, this water
4 rig, who would that be, Ramiro or would that be
5 Mr. Couling?

6 Of course, Mr. Couling testified he didn't
7 do it, but would Ramiro be the one that dealt
8 with Mr. Parr?

9 A I don't know.

10 Q You testified at page 2947 that somebody owed
11 you twenty-five thousand dollars or twenty or
12 twenty-five thousand dollars.

13 A I say that is my figure, figuratively speaking,
14 Mr. Odam. That figure is what I figured that
15 they owed us money.

16 Q Who is it that owes you the money?

17 A The county, Mr. Couling, George Parr Estate,
18 or Archer Parr, somebody does.

19 Q Because of rental of this particular rig, this
20 drilling rig?

21 A That's right.

22 Q At page 2948 Mr. Mitchell asked you a question
23 about a pear burner and that came up on another
24 check.

25 A Yes, sir.

1 Q But he asked you about it at this point?

2 A Yes, sir.

3 Q And the answer was there is a check for the
4 pear burners and I don't recall buying them from
5 him because I can get them from the Farm and
6 Ranch and get a discount.

7 Mr. Couling testified that he just put pear
8 burner on there and he didn't say he sold you or
9 rented you a pear burner, that was another way
10 to get money to you. My question is --

11 A Wait a minute, wait just a minute. That is a
12 check from me to Mr. Couling.

13 MR. MITCHELL: That is right.

14 Q That's right, that is right.

15 A So that is not to get to me.

16 MR. ODAM: I am sorry, strike that.

17 Q That was a check from you?

18 A To Mr. Couling, to Benavides Imolement and Hard-
19 ware.

20 Q Right, and I will rephrase the question. His
21 testimony was he didn't buy a pear burner from
22 you, I believe that was his testimony.

23 A No, I didn't buy a pear burner from him.

24 Q All right. Your check was to him and it had a
25 recital for a pear burner?

1 A Yes, sir.

2 Q And you say you didn't buy a bear burner from
3 him?

4 A That's right, sir.

5 Q Now, I go back to what Mr. Couling --

6 A I said I don't recall buying any bear burners
7 from him because we handled them at our own
8 store.

9 Q Well, then my question is again why would it say
10 bear burner on it?

11 A I don't know.

12 Q Who put -- do you recall who put the bear burner --

13 A I would have to see the check.

14 Q Okay, we will get to that check in just a few
15 minutes.

16 A All right.

17 Q Now, I take it from your testimony a while ago
18 that the amount on that check that Mr. Couling
19 gave you, that is for the exact amount of money
20 that was owing on this note over at the bank
21 on your automobile, that is the --

22 A Again, I don't know that either, sir.

23 Q The five thousand seven hundred and twenty-five
24 dollars and thirty-four cents?

25 A I don't know. I know the note was paid off.

1 Q Okay. Well, there is obviously a bit of a gap,
2 assuming that there was any connection, which
3 Mr. Couling testified there was between this
4 E-84 on January the 11th, this amount of five
5 thousand six hundred and twenty-five dollars
6 that he -- but he testified to either you or
7 your nephew, brought over, there is a bit of a
8 gap in connecting that up with the check that
9 you got dated January the -- I believe it is
10 January the 13th, E-85.

11 I believe you testified the other day that
12 Mr. George Parr had somehow gotten involved in
13 that and somehow the payment was going to be
14 made for this amount of money. Do you recall
15 that testimony?

16 A I said that as far as I could remember that rig
17 was drilling wells over at the Atlee Parr Ranch
18 or somewhere that they had it and I went and I
19 told them, I am either going to get some money
20 or I am going to get the water rig back. I was
21 going to go in there and haul it back.

22 Q Well, your answer was, at page 2946, "I had
23 written my own personal check before this trans-
24 action and I made a note at the bank and it was
25 coming due and I went over there to get some

1 money and they said well, you will get your money,
2 don't worry about it. So the next thing I knew
3 Mr. Couling produced me a check in that amount
4 which was that check and I took it to the bank
5 and paid it off, and that was it."

6 A Yes, sir.

7 Q Now, my question to you, did -- when you say, "they,"
8 I went and paid a note at the bank and it was
9 coming due and I went over there to get some money
10 and they said you will get your money.

11 Who said you would get your money, who is
12 the "they"?

13 A George Parr, as I recall, told me I would get my
14 money.

15 Q Well, is it your testimony that you think that
16 George Parr and Mr. Couling arranged to get money
17 from your father for this payment?

18 A From my father?

19 Q Well, from --

20 A No.

21 Q From the water district?

22 A Not from my father.

23 Q Was Mr. George Parr controlling the water dis-
24 trict at that time?

25 A George Parr controlled everything at that time.

1 Q So, "I went over there to get some money and they
2 said, well, you will get your money, don't worry
3 about it, so the next thing I knew Mr. Couling
4 produced me a check in that amount".

5 Really my question, the bottom line of it,
6 can you explain how you think that the check
7 for the water district came for five thousand
8 six hundred and twenty-five dollars and then they
9 turned around and wrote you out a check? What
10 is your explanation for how that came out?

11 A I don't have any explanation for the check that
12 came in for the water district because I have no
13 knowledge of it.

14 Q Where do you think that Mr. Couling got the five
15 thousand seven hundred and twenty-five dollars
16 two days later to pay you the money for that
17 water rig?

18 A I am not going to think. They scolded me yester-
19 day for doing so.

20 MR. ODAM: I would like to move at this
21 point, Your Honor, to paragraph 12, which
22 will be our last series of questions.

23 THE MASTER: We will be in recess until 12.

24 (Whereupon the hearing was in recess at
25 11:40 a.m. until 12:00 noon.)

1 THE MASTER: You may proceed.

2 MR. ODAM: We will now proceed to the
3 last paragraph, Paragraph 12.

4 Q (By Mr. Odam) Paragraph 12 deals with a specific
5 amount of money and the testimony has been under
6 this paragraph about the Massey-Ferguson tractors
7 and the root plows and Caterpillars. I believe
8 you said last Monday, on December 1st, when you
9 testified, that you had originally wanted a
10 Caterpillar and Mr. Couling wanted a Caterpillar.

11 A Yes, sir, I had bought one originally, or entered
12 into a rental-purchase contract for one.

13 Q The rental-purchase agreement we have in evidence,
14 E-160, was for two Caterpillars.

15 A Yes, sir, it was reworked. The first one was
16 destroyed and the second one entered into.

17 Q The first one was destroyed?

18 A I guess it was.

19 Q And when Mr. Kurtz testified, and he testified
20 on November 20th, in checking back through his
21 testimony -- that is Mr. Red Kurtz, the man you
22 dealt with, was it not?

23 A Mr. Duran.

24 MR. MITCHELL: Your Honor, I think the
25 confusion comes from another man on the two

1 different exhibits.

2 MR. ODAM: Yes, I see.

3 Q (By Mr. Odam) When you first went in this, it is
4 your testimony that you wanted a Caterpillar and
5 Mr. Couling wanted one and you first made up a
6 contract on one and then it was changed to two.

7 A Yes, sir.

8 Q And that is the exhibit that pertains to the
9 Benavides Implement and Hardware?

10 A Yes, sir.

11 Q And that is E-160?

12 A Yes.

13 Q Who were you dealing with at that time?

14 A Mr. Duran, Mr. Efrin Duran.

15 Q When Mr. Kurtz was here on November 20th --

16 A Yes, sir.

17 Q When he testified, for example, at Page 1818,
18 Mr. Kurtz said, "It was two dozers and I think the
19 Judge came in talking about those two."

20 Then again, he said, "He definitely made up
21 his mind he wanted them." So there must have been
22 some dealings initially with Mr. Kurtz.

23 A Yes, sir, I heard Mr. Kurtz's testimony to that
24 and my recollection was not as he said, you know.
25 He would not intentionally lie, I know him very

1 well, but I think he was mixed up a little bit,
2 because I don't remember coming over to look at
3 the bulldozers whatsoever myself personally.

4 Q I believe Mr. Jerry Parme. testified he came over
5 with you at one time to look at some bulldozers
6 with you.

7 A Yes, I heard Jerry Parmer say that, but as I
8 recall, this trade was made in my office in
9 San Diego. I might have, Mr. Odam, come over, but
10 I don't recall having done so.

11 Q Well, when you first came over and you wanted to
12 have one and you said Mr. Couling wanted one, is
13 that correct?

14 A I was the one that first came up with the idea
15 of getting one of the two.

16 Q What did Mr. Couling tell you about that?

17 A He wanted to clear some brush, also, and he liked
18 the rental-purchase idea of doing it. We thought
19 it was going to be a cheaper way of doing the
20 work, so we discussed buying both of them so we
21 could get a better figure on the bulldozers.

22 Q So when you got the rental-purchase agreement,
23 it is your understanding one was yours and one
24 was his?

25 A No, the idea was, whoever used them would pay the

1 rental on them and the maintenance on them. In
2 other words, if I was using both tractors, I would
3 pay fifteen hundred dollars and if something went
4 wrong, like it did on several occasions, I would
5 pay the maintenance and repair jobs to keep them
6 in good working condition and if he used them, he
7 would pay for them.

8 Q He testified he never used either one of them.

9 A Well, I don't believe he ever did, to tell you
10 the truth. It was George Parr who was using them.

11 Q I understand that.

12 Both Caterpillars were delivered out to your
13 ranch?

14 A Yes, they were.

15 Q Why would two of them be delivered to your ranch
16 if one of them was going to Mr. Couling?

17 A We were going to use the same operators and clear
18 up one place and then move over.

19 Q So you don't disagree with the statement that
20 Mr. Couling never had the use of or never had one
21 of those bulldozers? I am not talking about the
22 time Mr. Parr had them, but Mr. Couling never had
23 one of them, did he?

24 A I never saw him use it, I agree with that.

25 Q Now, who would you have dealt with at Plains

1 Machinery that made you think you were going to
2 get two of them cheaper than one?

3 A Well, it was a fact that it happened. It was
4 Mr. Duran.

5 Q How do you spell his last name?

6 A D-U-R-A-N.

7 Q I believe his name appears on the contract, does
8 it not?

9 A It could be, because he was the man that went over
10 there and when we found out he had the bulldozers,
11 he was a salesman, and we went over to visit with
12 him. After we agreed on the first one, we changed
13 the order and agreed on both of them.

14 Q Now, -- and so Mr. Couling was not intending --
15 it was never your position that since Mr. Couling
16 never used the Caterpillars, that he had an
17 obligation to make rental payments on them, except
18 when Mr. Parr used them?

19 A He was collecting the rent from Mr. Parr.

20 Q Mr. Couling was collecting the rent from Mr. Parr?

21 A He was.

22 Q Did you ask him to collect the rent from Mr. Parr?

23 A No, I stated that after I changed the contract,
24 after the bulldozers were changed over to me, he
25 came back, because I had explained to Mr. Parr the

1 tractors were on a rental-purchase contract
2 through Mr. Couling and he said I will take care
3 of the rent, I will pay you for the rental and
4 keep them up.

5 Fine, he took one, and then that went on --
6 he would take them and bring them back and take
7 them and bring them back and that is the way it
8 went.

9 He was supposed to be paying the rental and
10 I was complaining, because there was no rental
11 being paid on them. Mr. Parr had told me there
12 was.

13 Q Do you mean paid to Plains Machinery?

14 A To Mr. Couling. Mr. Couling told me there was no
15 rent paid on them.

16 When they went in default and I transferred
17 them to my name, Mr. Parr came over to get both
18 tractors and I told him, I said, these are not
19 under Mr. Couling and I have bought the contract
20 for the bulldozers and you did not pay the rental
21 on these tractors and I had to myself, so we will
22 have to make a different arrangement with me
23 personally. He said we will work it out the same
24 way I worked it with Couling, we will give you a
25 check from the county and I said no, sir.

1 Q When -- strike that.

2 It is your testimony then that the period of
3 time that these checks Mr. Couling testified to
4 that came from the county, the checks that went to
5 the Rio Grande City bank account --

6 A Yes, sir.

7 Q -- that was the deal whereby you think Mr. Parr
8 arranged for Mr. Couling to get money from the
9 county to pay for the two bulldozers?

10 A Not the two, the one he was using.

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1 Q So you think that Mr. Parr was arranging for one
2 of those bulldozers to be paid by the county?

3 A Through Mr. Couling, I didn't know that at the
4 time. I know it now, I didn't know it at the
5 time.

6 Q But yet Mr. Couling testified that you told him
7 that you wanted to buy some Caterpillars?

8 A Yes, sir.

9 Q And these two Caterpillars were delivered out
10 to your ranch?

11 A Yes.

12 Q And they worked out on your ranch?

13 A For a while both of them, for a very little while,
14 and then Mr. Parr took one of them and then he
15 took both of them.

16 Q Now, when you had these Caterpillars, there was
17 a time when two were out on your ranch then?

18 A Yes, sir.

19 Q What period of time was that?

20 A It is hard for me to tell you exactly when they
21 were, because all of a sudden Mr. Parr would
22 send a truck out there and say that he needed
23 the bulldozers, and I am going to take them, and
24 take the bulldozers and root plows and racks and
25 everything, the whole works.

1 Q And I guess that you paid -- I think you said
2 you paid something like eighteen thousand
3 dollars?

4 A Twenty thousand dollars.

5 Q Twenty thousand dollars to Benavides Implement
6 and Hardware.

7 A Yes, sir.

8 Q To have these Caterpillars work out on your
9 ranch?

10 A That was supposed to be -- I was supposed to have
11 been -- I should have been paying, if I only
12 had the use of one tractor, it would have been
13 half of it, about seven hundred and fifty dollars,
14 but I was paying for both of them and the rental
15 wasn't coming in.

16 I was having to pay for both of them, then
17 when he went into default, I had too much money
18 invested to let those bulldozers go, and I went
19 out there and bought -- talked to Guling and said,
20 "What's going on, they are coming over to pick
21 up these bulldozers, they are looking for them."
22 And he said, "I can't make the payments, I cannot
23 make payments on these things any more."

24 Q Wasn't that about the time he said he stopped
25 making payments because of you all's split about

1 that time?

2 A No.

3 Q That is what, in April --

4 A He didn't have the money come in to make the
5 payments, he said he couldn't make the payments
6 and I said that I am going to take over the
7 whole thing and he said that's fine with me.

8 Q That was about the time he was having trouble
9 with the Internal Revenue Service about the
10 problems of what money they were going to count
11 as income and which checks they were going to
12 count, and he talked to Ramiro?

13 A I don't know when Mr. Couling had trouble with
14 his income tax problems. It was about the time
15 that Mr. Parr was having his income tax problems.

16 Q Well, when you were renting these one or two
17 bulldozers, I guess it is -- what -- was the
18 rental payment on one of them or was it going
19 to be on two of them?

20 A On two of them.

21 Q All right.

22 A Fifteen hundred dollars on two of them.

23 Q When were you making the rental payments, the
24 two thousand dollar figure, I suppose that would
25 be rental expense to -- that you would report on

1 your income tax, right?

2 A Yes, sir. However, I had -- I had bought some
3 land, I had bought three thousand acres and Mr.
4 Kirkland will testify to this, I'm sure. I
5 wanted to show -- I wanted to deduct that from
6 my income tax, I had a loss.

7 Q The purchase of this land?

8 A I had the purchase of the land, and I was working,
9 and I had all of this diesel expense, the operator
10 expense on it, the repair job expense on it and
11 everything else and he said that we are going to
12 hold these amounts and hold these checks until
13 you get through clearing all of the land and
14 then when you get through clearing the land, we
15 are going to add this amount of money to the value,
16 you know, you pay so much per acre and we are
17 going to add this to the value of the land so
18 that you can -- it is a tax problem, or whatever.

19 Now, he said that I don't need to deduct
20 this as rent because I'm going to have a loss
21 anyway with all of the money that I was paying
22 out and he said, "This is improvement on the
23 ranch and we are going to --" . He was going
24 to handle it some way or another.

25 They are all in there, all of the checks

1 and all of the expenses for the diesel, for the
2 operators, for the repairs and everything else.

3 Q And when was that, in 1973, that you purchased
4 this land?

5 A I purchased the land in -- a little before this
6 bulldozer operation came in because I purchased
7 the three thousand acres and then I decided I was
8 going to clear the land and I purchased it with
9 the idea of clearing it.

10 Instead of contracting it out, I thought it
11 would be cheaper if I did it myself.

12 Q Well, the -- in what year then was Mr. Kirkland
13 going to take care of working that to where these
14 rental payments paid in on that land?

15 A Well, we -- when I concluded the clearing, what-
16 ever work I was going to do, I would take the
17 whole expense amount and add it to the amount of
18 the purchase price of the land and he had some
19 kind of a tax maneuver that he was going to use
20 or do, or say or whatever.

21 Q And when was that that it was totally cleared
22 and he did that, for what year?

23 A Totally cleared?

24 Q Well, whenever he did that maneuver, as you
25 call it.

1 A No, I showed him the checks.

2 Q Right.

3 A You know, I showed him this is the checks for
4 bulldozer operators on it, this is the check
5 here for the rentals on it and this is the check
6 for the diesel on it and this is the check for
7 the fuel on them and this is the truck, for the
8 truck that carries the operators back and forth
9 and what have you.

10 Q All right.

11 A He said these are going to keep -- that he was
12 going to keep these ones separate, and that we
13 are going to do it this way and when you get
14 through clearing the land, then we will do that.

15 Q My question is then when did he do that? When
16 did he apply this?

17 A I'm not through clearing the land.

18 Q Okay, that is my question.

19 A Yes, sir.

20 Q He has not computed that in yet?

21 A Whatever it is, I'm still -- and now my checks
22 are scattered all over the country and I hope I
23 can get them back together whenever he needs
24 them.

25 Q Did you ever see George Parr talking with Mr.

1 Couling about this deal of Mr. Parr paying the
2 rental on one of your Caterpillars to Benavides
3 Implement and Hardware?

4 A Mr. Parr told me he would make the arrangements
5 with Couling and then after Couling was out of
6 the picture, he tried to make the same arrangement
7 with me and that is when I balked.

8 Q Well, these same arrangements you are talking
9 about, it is those arrangements that you think
10 that George Parr arranged for the county to pay
11 back in 1973?

12 A George Parr told me that the county -- that he
13 had arranged -- that Couling was getting his
14 money, he was getting it through the county and
15 he said, "We will work it out the same way with
16 you", and I said, "No, you're not going to do
17 it the same way with me, I would rather you
18 would use them free without any charge than to
19 do that", and he said, "Well, in that case, as
20 soon as I get through, I'm going to need them
21 for about four months and when I get through,
22 I am running about ten bulldozers out there".

23 He wanted to clear something like four or
24 five thousand acres of land, and he wanted it
25 ready for planting in grain, and he wanted to

1 get all of the equipment that he could in there.

2 Now, he said, "As soon as I get through
3 with whatever we have done, and it is time to
4 come and start planting on this, I will send
5 all of the bulldozers, together with your two,
6 to make up for the use of your two bulldozers,
7 to go and clear your land."

8 Q Who said the operators while they were on there
9 working his property?

10 A I did, on my bulldozers, I did.

11 Q You recall -- well, obviously Mr. Parr is dead,
12 I cannot call Mr. Parr in here to ask him about
13 it.

14 The story that you are telling about the
15 bulldozer and Mr. Parr paying for them, is just
16 diametrically opposed to what Mr. Couling testi-
17 fied to.

18 A You will discover that those bulldozers were at
19 Mr. Parr's place when he took his life.

20 Q I don't doubt that.

21 (Discussion off the record.)
22

23 Q Well, speaking about getting people in here,
24 maybe I should have gotten Mr. Gene Powell in
25 here. Mr. Powell -- did you ever tell Mr.

1 Powell that you had loaned these bulldozers to
2 George Parr and that is the way that Mr. Parr
3 got these bulldozers in the first place, it is
4 just back at that time in 1973 or 1974 is that
5 you loaned him the drivers and that you paid for
6 them while they were being used on his ranch,
7 and that they were loaned by you to Mr. Parr?

8 A Well, I'm testifying in effect to that very same
9 thing right now, that he told me that he was
10 going to have the county pay for them and I said,
11 "No, I would rather you just use them free of
12 charge", and that is loaning them, and that is
13 why they were there.

14 Q But you think that you loaned them to him, that
15 he arranged even though you loaned them to him,
16 he was going to get money from the county in
17 light of this loan from you to him?

18 A No, no, no, wait a minute. You are -- when
19 Couling -- when they were in the name of
20 Couling that was a different arrangement.

21 Now, when they were in my name, the last
22 time that he took them over there they were
23 loaned to him and I was paying the operator.

24 Q But, they weren't loaned the first time?

25 A But they were not loaned the first time, they

1 were not supposed to be loaned and he insisted he
2 was paying the rent on them. And then he admitted
3 to me that he had paid the rent to Couling through
4 the county.

5 Q Well, let's talk about these root plows for a
6 few minutes.

7 A All right.

8 Q I believe you testified the other day that --
9 well, let's just go back into that. Could you
10 explain to me about how Mr. Ramiro Carrillo called
11 B. D. Holt to get a root plow for one of these
12 Caterpillars that presumably belonged to Benavides
13 Implement and Hardware?

14 A Yes, sir.

15 Q Can you explain that please?

16 A He called because Ramiro Carrillo is a very good
17 friend, a very good close personal friend of Ted
18 Moore, the salesman for B. D. Holt.

19 Q Yes, sir, and what did he say to him?

20 A I don't know, I wasn't there.

21 Q Well, are the root plows yours or do the root
22 plows belong to Benavides Implement and Hardware
23 or who do they belong to?

24 A They are mine.

25 Q Well, how did you get the root plows in the

1 first place?

2 A The root plows and the bulldozers were purchased
3 under the same agreement that we had with the
4 Caterpillars and I ended up paying all of this
5 money, and all of the money that I was going to
6 assume, Couling said that he could no longer
7 pay for them, that he didn't have the money to
8 pay for them, and he turned over the whole thing
9 to me.

10 Q And why was Benavides Implement and Hardware
11 paying for them if they belonged to you, because
12 you were making the rental payments to him?

13 A Because he made a little money on the side. If
14 you will add up -- if you put a tape to all of
15 those figures, you will find out that there is
16 a little bit of money being made on the side.

17 Q Well, if you paid over twenty thousand dollars
18 in rental, which would be the price for more
19 than one of the Caterpillars, why didn't you,
20 prior to the time of rental purchase agreement,
21 why didn't you change the name of one of the
22 Caterpillars totally into your name pursuant
23 to the rental agreement?

24 A Well, Plains Machinery having a lien on both
25 bulldozers, wasn't about to give up the title

1 to one and lose the collateral.

2 They were going to keep them until the
3 contract was paid out on both of them.

4 Q Well, you testified the other day that there
5 was some kind of a letter that was sent.

6 A Yes, sir.

7 Q I believe you said that there was a letter sent
8 by Plains Machinery?

9 A To Benavides Implement and Hardware.

10 Q Well, Mr. Couling didn't know about the letter
11 nor did Mrs. Driska.

12 A Yes, it was, it was a letter to them. There was
13 a statement with a written notation on the
14 bottom, "Please let us know --", "send the money
15 immediately or let us know where the bulldozers
16 are so we can send our trucks over to pick them
17 up", signed Red Kurtz.

18 Q Because they missed two months payments?

19 A They were about four months in arrears.

20 Q What months were those?

21 A There is an Exhibit here and I would like to
22 see that, and it will show the months.

23 Q Okay.

24 A And it would also show that I had paid Mr.
25 Couling thirty-five hundred dollars the month

1 of January of 1973 and that I don't think he made
2 the payments until February for three thousand
3 dollars and I paid him thirty-five hundred.

4 Q All right.

5 A But there is an Exhibit there that letter, the
6 computation of the four months, it probably has
7 the months over there that it was delinquent,
8 I don't know exactly.

9 Q Okay. Did they repossess those bulldozers?

10 A In effect they did.

11 Q How did they repossess them?

12 A Through paperwork. In other words, I bought
13 the note.

14 Q You mean because you bought the note Plains
15 Machinery in effect had repossessed the --

16 A That is the effect of it.

17 Q Well, do you think that there is anything unusual
18 about --

19 A You don't repossess something that belongs to
20 you, because this is a rental, known as the --
21 the contract says that at the end of the payment,
22 the bulldozers will be returned to the rentor,
23 which is Plains Machinery.

24 Q I understand.

25 A In other words, now that I am making these last

1 payments, these bulldozers are supposed to go
2 back to Plains Machinery because they are only
3 being rented.

4 But since I have completed the rental pur-
5 chase thing, they will, I believe, for one
6 dollar transfer the consideration of the title
7 to me.

8 Q Do you think it was an unusual arrangement for
9 a rental purchase agreement to be made for
10 Benavides Implement and Hardware and they didn't
11 make a few months payments and you come in and
12 take over the contract? What did Mr. Couling
13 say about taking over the contract?

14 A He told me.

15 Q He told you?

16 A And Couling testified to it right here.

17 Q About what?

18 A He told me that he had transferred the thing
19 over to me. He told me couldn't make the pay-
20 ments.

21 Q Did he say why he couldn't make the payments?

22 A He didn't have any money.

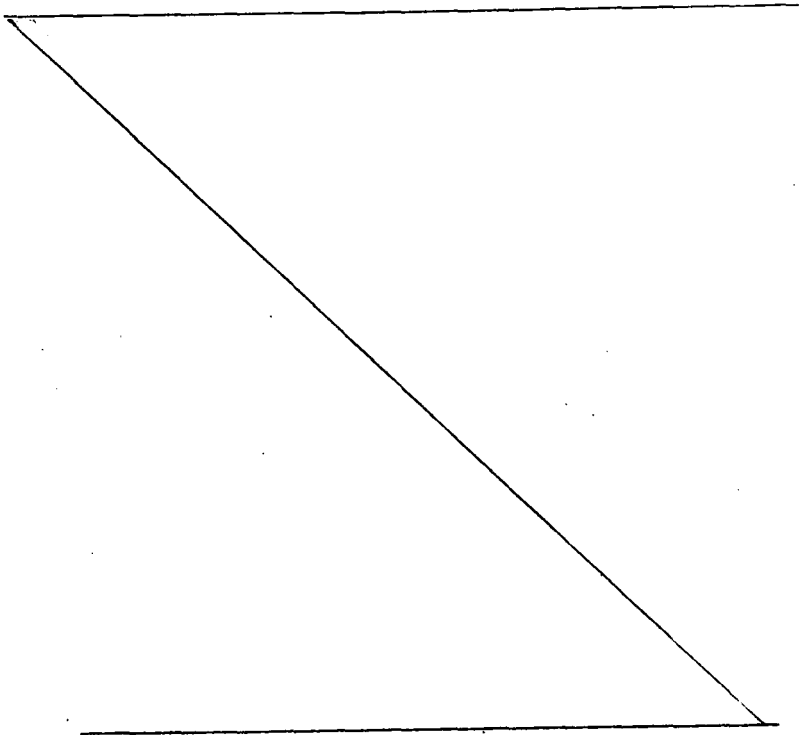
23 Q Because he stopped making money out of the
24 county to pay for the two Caterpillars?

25 A George Parr was having financial difficulties

1 and the Internal Revenue Service was there, and
2 a lot of folks were there, and the baskets had
3 climbed a little taller, a little higher, and
4 he couldn't get to it. So, no money.

5 Q Just like the Caterpillars, these Caterpillars
6 that were out there on Mr. Parr's ranch, Mr.
7 Couling was doing the Caterpillars, he was taking
8 money out of the county to pay for the Caterpillars
9 he had, just like he was -- had these water rigs
10 on the lands, pursuant to the earlier testimony?

11 A Yes, sir.



1 Q I believe you testified earlier, at Page 2873,
2 about the bulldozers. You said one of them was
3 redelivered and the other was totally burned and
4 returned and the parts amounted to three thousand
5 dollars.

6 A I said the repairs would cost me about that. It
7 is not repaired yet. I have just now started to
8 receive the parts. They were scattered all over
9 the shop when Mr. Parr committed suicide. He had
10 sent the bulldozer over to the county shop to be
11 repaired.

12 Q How long in 1973 did Mr. Parr have one of the
13 bulldozers out on his ranch that caused the county
14 to be paying those rental payments for him?

15 A I don't remember the time, Mr. Odam. He kept one
16 of them most of the time.

17 MR. ODAM: Arthur, do you happen to
18 have -- wait just a second.

19 MR. MITCHELL: What number?

20 MR. ODAM: The R-58 series.

21 MR. MITCHELL: I have 91 and 92 and 93
22 here.

23 MR. ODAM: Here they are.

24 MR. MITCHELL: All right.

25 Q (By Mr. Odam) I believe on the R-58 series, I

1 will ask you to look at them, and I will ask you
2 a question about them.

3 A Yes, sir.

4 Q Just to clarify the record, Mr. Mitchell asked
5 you at 2875, and the question is, "Let me hand
6 you now, for the purpose of looking at the 58 series,
7 those are the checks dated in 1973 and payable to
8 Benavides Implement and Hardware?" And your answer
9 was, "Yes, sir."

10 And the question was asked what do these
11 checks represent and you answered rental, except
12 one, but I don't remember buying pear burners
13 from Mr. Couling.

14 I will ask you to look through these checks
15 again and identify which one of those you were
16 paying for the root plow on.

17 A These are for Benavides Implement and Hardware
18 and would go both for the bulldozers and the plows.

19 Q How much of this money -- like you paid on R-58-1,
20 two thousand five hundred dollars, how much of that
21 was for the Caterpillars and how much for the two
22 root plows?

23 A Mr. Couling was making those payments, I don't
24 know.

25 Q What would be the basis for one month, say

1 February, to pay twenty-five hundred dollars and
2 the next month, March, twenty-six hundred dollars,
3 and the next month to pay one thousand dollars?

4 A Those were just the payments made.

5 Q You filled in the amount, didn't you? I know it
6 was for the Caterpillars and root plows, but why
7 the varying amounts each month?

8 A I don't know.

9 Q Now, the one that is R-58-5, that states on it to
10 be for root plows, seventeen hundred dollars, is
11 that correct?

12 A That is what it states on there. That is
13 Mr. Couling's handwriting.

14 Q I am sorry. To clarify, it says rent on plows.

15 A Yes, sir.

16 Q Now, Page 2875 -- change that to 2879,
17 Mr. Mitchell asked you "And these are endorsed and
18 deposited in that account and they were from
19 Benavides Implement and Hardware checks, do you
20 recall?" And you answered, "Yes, sir, and I might
21 state if I had gone directly and dealt on my own
22 with Plains Machinery without also Mr. Couling,
23 I could have come out better with the payments
24 I have made."

25 My question is, how did all of this, going

1 through Benavides Implement and Hardware,
2 accommodate Mr. Couling, because he never used one
3 of the bulldozers?

4 A He wanted one and I was going to buy only one.

5 Q So all of this was set up as an accommodation for
6 Mr. Couling?

7 A He wanted one and if he had not come up with the
8 idea of wanting one, I would have bought only one.

9 Q Well, if he only wanted one of the bulldozers and
10 one of them was for Mr. Couling -- I believe you
11 testified that you told Mr. Parr you would be
12 totally paralyzed if he took both of the bulldozers.
13 Why is it that you wanted one only in the first
14 place?

15 A The operation was going to start with one
16 bulldozer and then I got geared up to get started
17 with two of everything, the operators, two
18 bulldozers and two root plows. I had a working
19 schedule, so I could get through, and then the
20 moment I got through, it goes back to Mr. Couling.
21 In the meantime, he comes in and picks up the
22 bulldozers and my work schedule doesn't go the
23 way it is supposed to.

24 Q One of the exhibits is E-173-15. Let me get that
25 one and show it to you.

Page 3341 Missing in Original

1 I show you E-173-15 and refer to the fifteen
2 dollar deposit slip. How would you describe that
3 that has the fifteen dollars on it, is that a
4 deposit slip?

5 A Yes, sir, when I came over to Plains Machinery,
6 my agreement with them was that I would buy the
7 contract for whatever was due and owing on it on
8 the two bulldozers. There was a check for three
9 thousand dollars from Benavides Implement and
10 Hardware which had bounced. They had run it
11 through again and it was our understanding, if
12 that check was made good, that I would be given
13 credit for it.

14 Q On what authority did the bank have to transfer
15 that check to your account, what does it state on
16 the deposit slip?

17 A Transfer to the account of O. P. Carrillo, per
18 O. P. Carrillo's instructions.

19 I talked to Mr. Couling and he didn't have
20 money enough to cover the check and I said I will
21 put in whatever you need. I was not about to
22 lose three thousand dollars for fifteen dollars.

23 Q What instructions did you give for putting money
24 in the account?

25 A I don't know. It was done together, Mr. Couling

1 and myself. It was done over the telephone.

2 Q Now, you heard Mr. Couling testify about part
3 of that money in the Rio Grande City account,
4 which went to pay on the Massey-Ferguson?

5 A Yes.

6 Q Do you recall that?

7 A Yes, sir.

8 Q Was the check payment on that, what did that go
9 to?

10 A I don't remember or have the slightest idea what
11 that check was for.

12 Q Well, was that check to Massey-Ferguson for your
13 benefit or was that something Mr. Couling was
14 buying for himself?

15 A I can't testify, because I have no recollection
16 whatsoever of that transaction.

17 Q I show you what is a copy of what was marked as
18 E-170 and ask you if you can identify E-170?

19 A No, sir.

20 Q You can't identify that?

21 A No, sir, I don't ever remember receiving this
22 either.

23 Q Well, for --

24 A I might have, but I have no recollection of it
25 whatsoever.

1 Q From whom is the letter addressed?

2 A From C. G. James, Regional Finance Supervisor.

3 Q To whom is it addressed?

4 A To me.

5 Q What does it state?

6 A The Benavides Implement and Hardware check in the
7 amount of two thousand seven hundred twenty-five
8 dollars has been marked unable to locate account,
9 or something like that.

10 Q Benavides Implement and Hardware check has been
11 returned to us marked unable to locate account.

12 Why would Mr. C. G. James, Regional Finance
13 Supervisor, write a letter to you on a check on
14 the Benavides Implement and Hardware account?

15 A That is what I told you, I have no recollection
16 about that particular transaction.

17 MR. MITCHELL: Excuse me, Mr. Odam, that
18 was the item that was not in evidence?

19 THE MASTER: That is correct. It is not
20 in evidence.

21 MR. MITCHELL: Thank you, Your Honor.

22 Q Well, do you deny having a contract with Massey-
23 Ferguson to buy a piece of equipment from them?

24 A I have done a lot of business with Massey-Ferguson
25 Company.

1 Q Well, did you ask Mr. Couling to write a check in
2 the amount of two thousand nine hundred seventy-
3 five dollars twenty-five cents to Massey-Ferguson?

4 A I have no recollection whatsoever about this
5 transaction. If I did, I would be happy to tell
6 you, but I don't.

7 Q Well, is the letter that is marked E-170, which
8 is not in evidence, but I asked you about and
9 you have no recollection of, can you state whether
10 or not it pertains to the Massey-Ferguson contract
11 which was admitted into evidence as regards a
12 payment on that contract?

13 A Again, I have bought four Massey-Ferguson tractors
14 and I have no recollection of that whatsoever.

15 Q Well, Mr. Couling testified that he made some
16 payments out of the Benavides Implement and
17 Hardware account into which all of these county
18 checks went and from that he made a payment to
19 Massey-Ferguson.

20 Now, my question is, the payment he made to
21 Massey-Ferguson, was that a payment on a tractor
22 that you owned?

23 A I don't know.

24 Q Well, when you say you don't know, do you mean you
25 don't know if that payment was for that tractor or

1 do you know whether you owned a tractor?

2 A I have no recollection of that transaction
3 whatsoever, as I have explained to you.

4 Q You don't know whether or not Mr. Couling made out
5 a payment to Massey-Ferguson on a tractor that
6 you owned?

7 A He didn't make a payment on any tractors that I
8 owned.

9 Q Didn't make a payment on tractors that you owned?

10 A I don't know how to explain it to you. I am
11 telling you I have no recollection whatsoever.

12 Q Well, it was R-74. I was looking in the wrong
13 exhibit box.

14 R-74 is what I wanted.

15 MR. MITCHELL: Pardon me, John, did you
16 say R-174?

17 MR. ODAM: R-74.

18 MR. MITCHELL: Thank you.

19 Q (By Mr. Odam) I show you what Mr. Mitchell
20 introduced as R-74, which was a contract on a
21 Massey-Ferguson tractor. Let me show you one on
22 Page 3 which has the payment schedule on it.

23 A Yes, sir.

24 Q And now, look at the third payment on this
25 tractor.

1 A Yes, sir.

2 Q The date due, and there is a line through it from
3 the Xerox, but the first one was in 1970 and the
4 second one in 1972, how much was the payment owed
5 on that tractor in September, 1973?

6 A But it doesn't show 1973.

7 Q Well, what is the first payment, what year is that
8 for?

9 A 1970.

10 Q What is the next payment for?

11 A '71.

12 Q And what is the third payment for?

13 A 9-1-7.

14 Q Do you think the first payment was 1970 and the
15 second 1971, and are you saying because of that
16 line on the Xerox line, you are saying you don't
17 know when the payment was due?

18 A Again, my attorney threatened to quit on me
19 yesterday if I started guessing and I am not
20 going to guess. I don't want to be left here
21 without a lawyer.

22 You asked me to guess to that and I can't
23 guess and probably your thinking and mine might
24 be the same, but I am not going to say so, because
25 I am not going to guess.

1 Q The first payment was due in 1970 and the second
2 1971 and the third payment in September, seventy
3 something?

4 A Yes.

5 Q How much is that payment?

6 A Twenty-nine o two and twenty-two cents.

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1 Q Now, I ask you again, I know that E-170 is not
2 in evidence, but to refresh your recollection,
3 when the finance company for Massey-Ferguson wrote
4 you a letter about this payment in November of 1972,
5 my question is, that letter on the Benavides
6 Implement and Hardware, does that pertain to the
7 third payment on the Massey-Ferguson tractor?

8 A I don't know.

9 Q Okay.

10 MR. ODAM: John, may I see them?

11

12 (Discussion off the record.)

13

14 Q Now, R-74, this is a contract, is it not, that
15 you had with Massey-Ferguson for the payment of --

16 A May I see it again, please.

17 Q All right.

18

19 (Handed to the witness.)

20

21 A R-74.

22 Q Yes, sir.

23 A You said R-75.

24 Q I am sorry, R-74.

25 A Yes, sir.

1 Q That is a rental purchase order for a Massey-
2 Ferguson tractor that you had between you and
3 Massey-Ferguson?

4 A This is not a rental-purchase; I think this is a
5 purchase.

6 Q All right.

7 A Just a purchase, it was financed.

8 Q But this is between you --

9 A Myself, and Nueces Farm Center.

10 Q That's right, in Robstown, Texas?

11 A Yes, sir.

12 Q Mr. -- or Mrs. Driska testified about the check,
13 the earlier check that bounced, to Plains
14 Machinery.

15 A Yes, sir.

16 Q Am I correct that you had told Mr. Kurtz to run
17 it back through again?

18 A No, I didn't tell him, they had already run it
19 through. I said if it is good, that is fine.

20 Q I see.

21 A They would give me credit for it.

22 Q You agree with Mr. Couling that in order to promote
23 the business of the Rio Grande City bank, that you
24 did take that signature over -- that signature
25 card over for him to sign and set up that account

1 to start making these payments?

2 A No, I don't remember that. What I said was that
3 I recommended to Mr. Couling, and I recommended to
4 everybody else, that the Rio Grande City bank is
5 the best bank in the State of Texas.

6 Q Well, my question is, did you actually, physically
7 take that card over to him for him to fill out?

8 A I don't remember that I did.

9 Q Do you recall he testified that you did?

10 A Yes, I know.

11 Q And that you went over there?

12 A No, I know he testified I did.

13 Q The same thing about the financial papers that
14 you filled out, Mr. Mitchell asked him thoroughly
15 about those. Do you recall that -- taking those
16 over there?

17 A No, sir.

18 Q Like Mr. Couling said?

19 A No, sir.

20 Q All right, Mr. Mitchell -- well --

21

22

(Discussion off the record.)

23

24 Q Did you take the papers over to Mr. Couling to get
25 the loan set up in the first place?

1 A No, sir, I don't remember that.

2 MR. MITCHELL: Pardon me, Mr. Odam, you
3 mean now the signature card, the loan
4 application?

5 MR. ODAM: Right.

6 MR. MITCHELL: And the -- it would be
7 the note, I suppose?

8 MR. ODAM: Right.

9 MR. MITCHELL: So that the witness
10 understands, and the record reflects it
11 properly.

12 A I might state this, that the policy of the bank,
13 and I don't think it would be changed for anyone,
14 when you're going to go make a loan, you have to
15 go to the bank personally and sign that note. It
16 is not permissible to allow those papers to leave
17 in blank.

18 THE MASTER: What is it that you're
19 going into now?

20 MR. ODAM: I'm going to ask the witness
21 to identify the checks addressed to him. I
22 would anticipate, Your Honor, finishing up
23 with this and one other brief set of questions,
24 and that would be it.

25 This is predicate for the last question.

1 I should be through in the next five minutes.

2 THE MASTER: Yes, you can go on.

3 MR. MITCHELL: I have no objections. I
4 doubt that five minutes will cover it.

5 THE MASTER: I'm not going to go on much
6 further, though.

7 MR. ODAM: Yes, sir.

8 Q (By Mr. Odam) Now, I show you --

9 MR. ODAM: These have not been --

10 THE MASTER: Mr. Odam, let's do that
11 during the recess, even though you might
12 have just a few minutes left.

13 MR. MITCHELL: Is there a possibility
14 I might be told what that is in connection
15 with?

16 THE MASTER: Yes, I might ask Mr. Odam
17 to do that.

18 MR. ODAM: Yes, sir, the checks that I
19 have here are the photostatic copies of checks
20 that we had a dispute about and I asked
21 Mr. Couling, or you asked him if he wrote any
22 more checks, Mr. Couling, and he said I don't
23 know if I did or not and I was going to ask
24 Mr. -- or Judge Carrillo if he could identify
25 checks made out to him.

1 MR. MITCHELL: Are those 174, 175, 176,
2 177, and 178, Mr. Odam?

3 MR. ODAM: Yes.

4 MR. MITCHELL: And as I understand,
5 since that time that you all have found some
6 more that are not marked, that I haven't seen.

7 MR. ODAM: Two of them.

8 MR. MITCHELL: In March of '72?

9 MR. ODAM: Right.

10 MR. MITCHELL: And the other one, please?

11 MR. ODAM: It is February --

12 MS. LEVATINO: No, no, it is December of
13 '71.

14 MR. ODAM: December of '71.

15 MR. MITCHELL: Thank you.

16 THE MASTER: I want you to show them to
17 him this afternoon.

18 MR. ODAM: Yes, sir.

19 THE MASTER: We will be in recess until
20 8:30 in the morning.

21
22 (Whereupon, the hearing was in recess
23 at 1:00 p.m. on December the 10th, 1975 until
24 8:30 a.m. on December the 11th, 1975.)
25