

INQUIRY CONCERNING A JUDGE
NO. 5

DECEMBER 12, 1975

PAGE 3522 - 3672

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BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

DECEMBER 12, 1975

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

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THE MASTER: Are we about ready to proceed? Are you ready, Mr. Mitchell?

MR. MITCHELL: Yes, Your Honor.

THE MASTER: Mr. Kirkland, come back up please, sir, and you are reminded that you are still under oath.

You may proceed, Mr. Odam.

- - - - -

O. D. KIRKLAND,
recalled as a witness, having been previously sworn,
testified as follows, to-wit:

E X A M I N A T I O N

BY MR. ODA 1:

Q Good morning, Mr. Kirkland.

A Morning.

Q Yesterday afternoon, after we recessed for the day, did you have occasion to review the tax returns and work papers you brought over from Alice with you?

A Yes.

1 Q I will show you what has been previously marked
2 as Examiner's E-183 and ask you if you can identify
3 that, please?

4 A Yes, that is O. P. Carrillo's income tax return
5 for 1971.

6 MR. ODAM: Mark this.

7
8 (Whereupon, the above-mentioned
9 document was marked Examiner's Exhibit 183-A
10 for identification.)

11
12 Q And I show you, sir, what the court reporter has
13 just marked as E-183-A and ask you if you can
14 examine that and identify it.

15 A These are some work papers for the 1971 income tax
16 return of O. P. Carrillo.

17 Q Would these be the papers that you used to compute
18 the income tax return for Judge Carrillo, identified
19 as E-183?

20 A Yes.

21 MR. ODAM: Your Honor, we would offer
22 in evidence the papers Mr. Kirkland brought
23 over with him, E-183-A.

24 MR. MITCHELL: Your Honor, we would
25 object on the grounds that 183-A goes beyond

1 the formal notice of hearing, the First
2 Amended Notice of Hearing, beyond the current
3 term of the judge and therefore are irrelevant
4 and immaterial and relates to nonjudicial
5 conduct which cannot be made the basis for an
6 inquiry under the State Judicial Qualification
7 action.

8 THE MASTER: Overruled and the exhibit
9 is admitted.

10 Q (By Mr. Odam) Mr. Kirkland, did you personally
11 prepare these papers, E-183-A, that you prepared
12 the tax return off of?

13 A No.

14 Q Do you know who, to your knowledge, who did?

15 A No.

16 MR. MITCHELL: A further objection is
17 that there is no proper predicate.

18 THE MASTER: Your testimony was, and
19 correct me if I am wrong, but you used these
20 papers to prepare the return?

21 THE WITNESS: Yes, sir.

22 THE MASTER: But you can't verify the
23 accuracy of those personally?

24 THE WITNESS: No, sir.

25 THE MASTER: They are admitted as the

1 papers on which he prepared the return, but
2 not for any other purpose.

3 Q (By Mr. Odam) Turn to the fourth page of your
4 copy, Mr. Kirkland, and I would ask you -- these
5 are copies of the originals which are in your
6 briefcase?

7 A Yes.

8 Q Now, Mr. Kirkland -- strike that.

9 In question in this case is a check in the
10 amount of one thousand eight dollars from
11 Benavides Implement and Hardware to Judge O. P.
12 Carrillo. Judge Carrillo testified this was a
13 check he received in rent for some equipment
14 rented to either Mr. Couling or Benavides Implement
15 and Hardware.

16 I will ask you if you can identify, on the
17 piece of paper you have, the one thousand and eight
18 dollar entry there before you?

19 A Yes, it is here.

20 Q For the purpose of the record, would you read and
21 describe what is on this set of work papers
22 regarding that entry?

23 A A deposit of 4-16-71, notation IMP, one thousand
24 eight dollars.

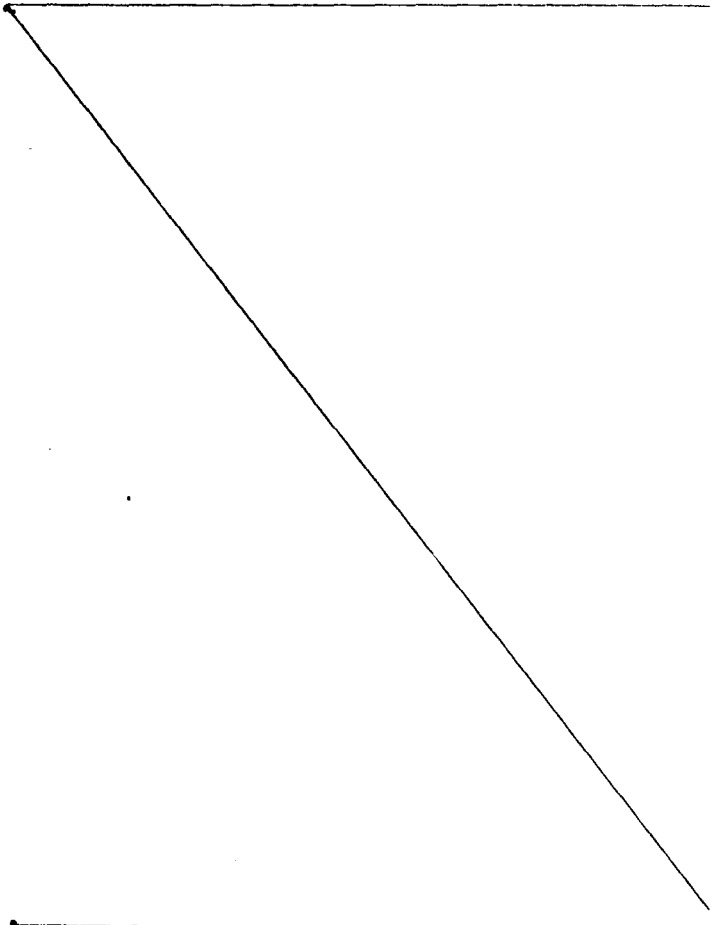
25 I have coded that as rental income.

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MR. MITCHELL: I can't locate that.

MR. ODAM: On Page 4.

MR. MITCHELL: I can't find it, if you
don't mind -- thank you, Judge.



1 Q Now I believe you said with respect to the code
2 on it, was what?

3 A I have marked it rent income.

4 Q So where it says rent on the paper, that is your
5 own handwriting?

6 A Yes.

7 C And what prompted you to put the word rent on
8 there?

9 A I can't remember. I conferred with possibly
10 O. P. or someone in his office and was told that
11 that was rent.

12 C Has Judge Carrillo ever told you that he was
13 renting trucks or equipment out on his property,
14 personal property?

15 A I can't recall.

16 Q Now, if I might, I'm going to separately tabulate
17 these as we go.

18 Now, I take it that your testimony would
19 be that this would be reported, or not reported
20 income?

21 A It was reported.

22 Q And you reported it as how?

23 A As rent income.

24 C Okay, and that would be for a thousand and eight
25 dollars?

1 A Yes.

2 Q My next question was a check with regard to
3 paragraph 8 in our pleadings. Mr. Kirkland, a
4 check in the amount of a thousand and eighteen
5 dollars.

6 MR. ODAM: For the benefit of the
7 record, that is in evidence as E-151 and
8 also as E-69.

9 Q Now, could you examine the work papers to see if
10 that purported check for rent on the equipment
11 which Judge Carrillo so testified to is identified
12 on the papers.

13 THE MASTER: You might also make the
14 record identification of the thousand and
15 eight dollar check.

16 MR. MITCHELL: That is E-151 and E-69,
17 sir.

18 THE MASTER: I thought you said that
19 was a thousand and eighteen dollar check.

20 MR. ODAM: The first check was for a
21 thousand and eight dollars and it was iden-
22 tified as E -- no, strike that.

23 THE MASTER: We can all find it, I
24 suppose.

25 MR. MITCHELL: Let me find it.

1 THE MASTER: It doesn't matter, we
2 refer to it frequently and we can find it.

3 MR. ODAM: The check that Judge Carrillo
4 that was Exhibit E-65, that was the check for
5 a thousand and eight dollars.

6 THE MASTER: That's correct, and there
7 was not an original of it here.

8 MR. ODAM: That is correct, sir. The
9 Exhibit number I just referred to is a
10 xerox copy in a series of Exhibits E-153 on
11 down, and those were the original checks.
12 Now, Mr. Kirkland, the check for a thousand and
13 eighteen dollars, that is in our evidence as
14 E-151 or E-69.

15 Have you examined the work papers to see if
16 that check was supposed to be for rent on equip-
17 ment? Was that reported to you by Judge Carrillo
18 for income purposes.

19 A I don't have a thousand and eighteen dollars for
20 rent.

21 Q Do you have a thousand and eighteen dollar check
22 for anything?

23 A Yes, I have one on July the 28th, a thousand
24 and eighteen dollars.

25 Q Could you describe completely for the record the

1 line, for Judge Meyers, what is stated on that
2 line?

3 A Line 29 it is marked transfer.

4 Q And do you pick that up as income?

5 A No, I did not.

6 Q So that thousand and eighteen dollars was not
7 reported as income?

8 A No.

9 Q Now, referring to our paragraph 9 in the pleadings,
10 this has to do, Mr. Kirkland, with two checks
11 Judge Carrillo received.

12 One check was for seven hundred dollars and
13 the other check was for three hundred and six
14 dollars. Now, the first check I referred to for
15 seven hundred dollars, that is in our evidence as
16 E-152, and also a xerox copy of it was E-75.

17 Now, Judge Carrillo previously testified
18 that he received this check for seven hundred
19 dollars on personal equipment that was rented
20 either to Benavides Implement and Hardware or
21 he rented it to Mr. Couling.

22 The second check was for three hundred and
23 six that I referred to and that is in our evidence
24 as check 153, E-152, that is the original check
25 or E-76, that is the xerox copy.

1 That was a check from Benavides Implement
2 and Hardware to Mr. Couling and I will ask you if
3 you can look in your work papers and see if those
4 two checks were turned in to you.

5 A Yes.

6 Q What was the date and description, et cetera, on
7 those checks?

8 A It was October the 5th there was no description.

9 Q And if you could go ahead and -- what did you do
10 with those two checks, those two items seven
11 hundred dollars and for three hundred and six
12 dollars?

13 A Since there was no way of identifying them, I
14 marked them as income from fees and put them on
15 the income tax return as income.

16 Q I take it from your previous testimony with respect
17 to rent, you did talk with Judge Carrillo or some-
18 one in his office to determine that it was rent,
19 but how did you determine that it was to be for
20 fees?

21 A We couldn't -- no one seemed to know what it was
22 for, and I wanted it on there as income.

23 Q All right, so the --

24 A And there was no way of pinning it down exactly
25 where I should put it. I just wanted to be sure

1 it was reported.

2 Q So, the two checks for a thousand and six, Judge
3 Carrillo had stated had been for rent on equipment.
4 You did report them, but you reported them as
5 fees because you didn't know what they were for.

6 A That's right.

7 Q All right, moving to paragraph 10 on our pleadings,
8 Mr. Kirkland, we have in evidence here a check for
9 nine hundred and ninety-five dollars. It was in
10 evidence as E-154, the original check.

11 Now, Judge Carrillo had testified that this
12 was rent on personal equipment to the Benavides
13 Implement and Hardware or to Mr. Couling or it
14 could have been a part payment on a pickup truck
15 that he sold either to Benavides Implement and
16 Hardware or to Mr. Couling.

17 Now, I will ask you if you can identify
18 on your work papers where that nine hundred and
19 ninety-five dollar entry is?

20 A Yes, it is line 45, November the 15th, marked IMP
21 nine hundred and ninety-five dollars and I have
22 the notation rent, and it is on the tax return
23 as rent income.

24 Q And you again put the word rent on there?

25 A Yes.

1 Q And that would be the same as your earlier testi-
2 mony that you had talked with someone and they
3 told you if was for rent?

4 A Yes.

5 Q Now, with respect to paragraph 11 in our plead-
6 ings, there was a check to the Rio Grande City Bank,
7 Mr. Kirkland, for five thousand seven hundred
8 dollars. It was just deposited into that Rio
9 Grande City Bank to pay for a car note.

10 Now, you told Mr. Mitchell, I believe,
11 that you did report five thousand six hundred
12 and fifty dollars when he asked you after a break,
13 I believe, about fifty-six hundred and fifty
14 dollars.

15 Now, this was 1972. This was reported so
16 at this time I will show you what has been marked
17 or placed in evidence as Exhibit E-182 and ask
18 if you can identify for the record, please, sir,
19 what that is?

20 A It is O. P. Carrillo's income tax return for
21 1972.

22 MR. ODAM: Mark that, please.

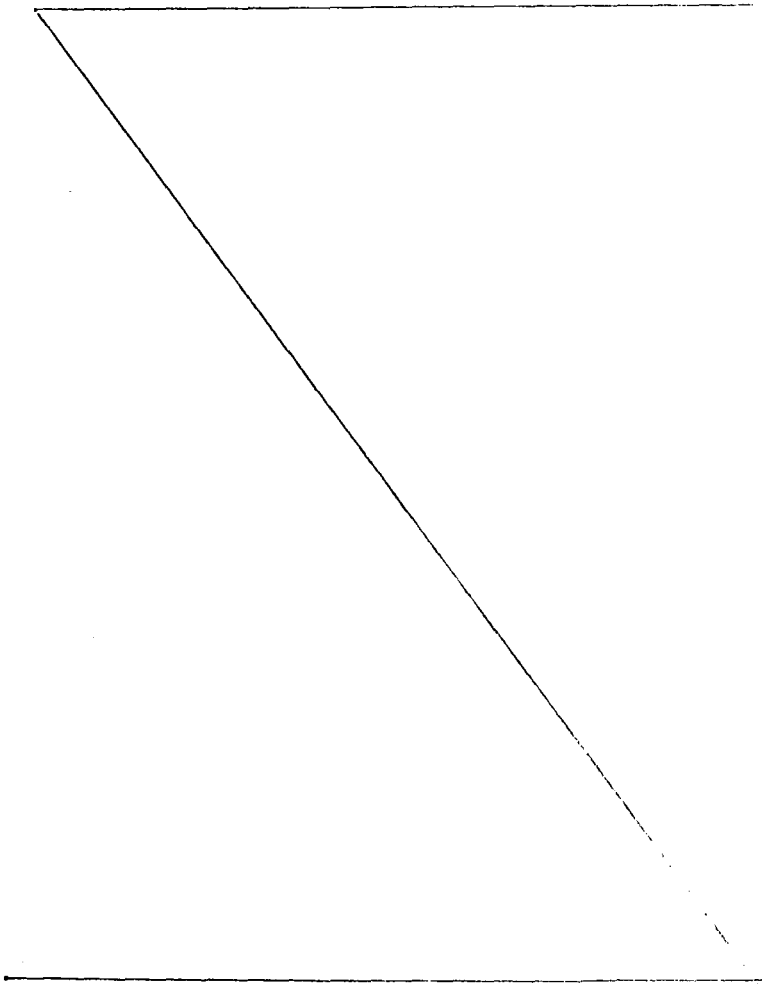
23 A Which I prepared.

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

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MR. ODAM: This is off the record.

(Whereupon discussion was had off the record.)



1 Q And I ask you to identify, if you could,
2 Mr. Kirkland, what has been marked as E-182-A.
3 A These are the work papers I used to prepare O. P.
4 Carrillo's 1972 income tax return.

5 MR. ODAM: We would offer in evidence,
6 E-182-A.

7 MR. MITCHELL: Same objection, Your
8 Honor, as previously made, and I would be
9 glad to recount them for the Court.

10 THE MASTER: No, I was going to do it
11 for you. You have the same objections as you
12 have to E-183-A, except you do not at this
13 time urge the authentication objection.

14 MR. MITCHELL: That is correct.

15 THE MASTER: Those first objections made
16 to E-183-A are also deemed urged on E-182-A
17 and they are overruled and E-182-A is
18 admitted as the work papers he used to prepare
19 the 1972 tax return.

20 MR. MITCHELL: Thank you, Judge.

21 Q (By Mr. Odam) Can you locate on the work papers
22 there --

23 THE MASTER: Excuse me, are those work
24 papers you yourself made or are they like
25 the other ones?

1 THE WITNESS: They are like the other
2 ones.

3 THE MASTER: Thank you.

4 Q (By Mr.Odam) Go ahead.

5 A Yes, it is Line 3 on Page 7. It is interlined
6 between Lines 2 and 3.

7 Q Next to the last page?

8 A Yes.

9 Q And for the benefit of the record, if you could
10 describe this page, what bank account is that on?

11 A State Bank and Trust, Rio Grande City, Texas.

12 Q And the arrows out to the right referring to this
13 5650, did you place that on there?

14 A I don't think so. The figures are not mine.

15 Q Did you put the circle on it?

16 A I think so.

17 Q Where it says fees and then a question mark, did
18 you put that?

19 A Yes.

20 Q Could you explain why that was done?

21 A I don't know what it was for, but again, I made
22 the notation fees and then a question mark, because
23 I reported it as income from fees.

24 Q That is my next question. Judge Carrillo testified
25 this 5650 was indirectly money which had been

1 received and as an advance for a water rig that
2 had been rented to Benavides Implement and Hardware,
3 a water rig that is carried on the depreciation
4 schedule of the partnership.

5 A Yes.

6 Q Could you explain why, if it was money received
7 for rent on the water rig, why you would turn it
8 in as fees?

9 A I don't know it was money received from the water
10 rig.

11 Q So this would be reported as fees in 1972, is that
12 correct?

13 A If that is what it was. The five thousand six
14 hundred fifty dollars was reported as fees, yes.

15 Q All right, sir. I don't intend to be repetitious
16 about this question, but if it was for the water
17 rig, which was carried under the partnership,
18 why would it be on the individual return as
19 opposed to the partnership return?

20 A It appeared on O. P. Carrillo's summary, and that
21 is the only way I have of picking it up.

22 Q If it were income for the water rig, how would that
23 money be received on that and how would it be
24 handled on the partnership?

25 A That would be as between the partners.

1 Q However they decide to do it?

2 A Yes, whichever.

3 Q Now, Mr. Kirkland, there is also in evidence three
4 other checks, one of which is E-155, which is a
5 check for one thousand two hundred dollars. I
6 refer you to the work papers for 1971 on this one.

7 A Yes, sir.

8 Q Can you identify, please, sir, on the work papers
9 where you picked up a twelve hundred dollar income?

10 For your benefit, Judge Carrillo testified
11 he sold some tubing.

12 MR. MITCHELL: I thought counsel said
13 one thousand two.

14 THE MASTER: I thought he said one
15 thousand two hundred.

16 Q (By Mr. Odam) Mr. Kirkland, strike that about what
17 I said about the tubing. Judge Carrillo testified
18 this was for a loan, an advance on this water rig.
19 Can you find the twelve hundred dollar entry on the
20 work papers?

21 A I have not yet.

22 Q Would it be correct that the one thousand two
23 hundred dollars alleged on this water rig was not
24 reported as income since it was not given to you?

25 MR. MITCHELL: The exhibit speaks for

1 itself, which says loan. There is a
2 considerable difference with that question
3 which would be ordinary income or which is
4 not ordinary income.

5 THE MASTER: Judge Carrillo has testified
6 that it was an advance, or not an advance, it
7 was a reimbursement of rental on the water
8 rig.

9 MR. MITCHELL: I understand that, but
10 there is no testimony that the accountant was
11 privy to that conversation on the document on
12 that occasion.

13 THE MASTER: I understand that. He is
14 asking if it was reported as income, I thought.

15 MR. MITCHELL: No, he said --

16 MR. ODAM: Let me rephrase the question.

17 THE MASTER: All right.

18 Q (By Mr. Odam) My question was: Was the twelve
19 hundred dollars reported as ordinary income or any
20 income on those work work papers?

21 A I can't find where it was.

22 Q Now, there is a check in evidence, Mr. Kirkland,
23 E-167, a check for nine hundred eighty-two dollars,
24 and I would ask you to turn back to the front page
25 of the work papers and see if you can identify this

1 check.

2 Judge Carrillo stated this was a check for
3 some tubing, either water tubing or oil tubing
4 that was sold to Benavides Implement and Hardware.

5 I would ask you to see if you can find this,
6 please.

7 A Yes, on Line 19, in 1972, and marked IMP, nine
8 hundred eighty-two dollars.

9 I credited it as rent income on the tax
10 return.

11 Q And did you put the word rent in there?

12 A Yes.

13 Q Why did you put the word rent?

14 A I can't say for sure. Someone probably told me it
15 was rent.

16 Q So the income from the sale of the tubing that was
17 supposed to have been taking place was reported,
18 but was reported as rent income?

19 A That is right.

20 Q Next, I refer you to a check which is in evidence,
21 Mr. Kirkland, for one thousand dollars in 1971.
22 Judge Carrillo testified he sold an O. P. drug
23 display counter. I believe Mr. Mitchell asked
24 you questions about the personal property.

25 Now, this check for one thousand dollars, I

1 would ask you if you can find an entry for a
2 thousand dollars?

3 A Do you know where it was deposited?

4 Q In the San Diego bank -- no, I am sorry, the
5 First State Bank of Alice.

6 A All right. On May 20th, Line 22, First State Bank
7 of Alice, I have a deposit marked IMP, for a
8 thousand dollars, which I have credited to rent.

9 Q Which page is that on?

10 A It is the fourth page, the First State Bank of
11 Alice account.

12 Q Which line?

13 A Line 22.

14 Q And your handwriting is the place there for the
15 words rent?

16 A I believe it is; it looks like mine, yes.

17 Q So the alleged sale of the store counter was
18 reported as rent income?

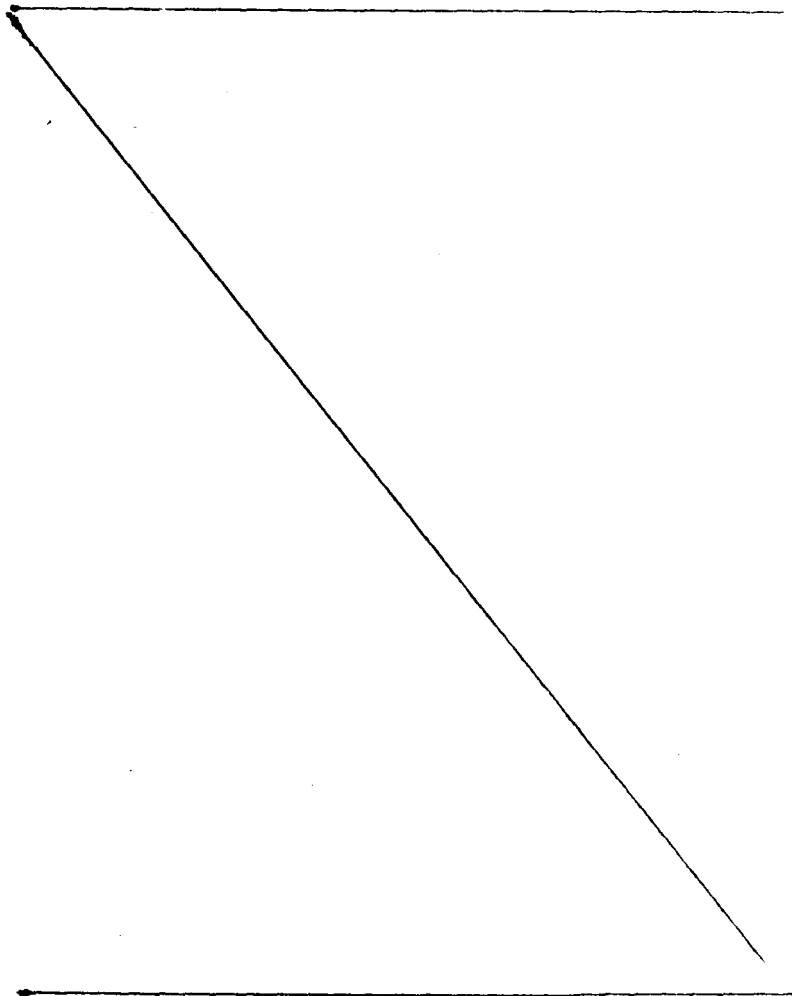
19 A Yes.

20 Q Mr. Kirkland, the rent on personal property that
21 Judge Carrillo testified to, I take it in some
22 instances that was reported and that was reported
23 as rent income from your testimony today.

24 How would you pick that up on an income tax
25 return for that year? Did you put down rent from

1 personal property?

2 A I have it on Schedule E, income from rents and
3 royalties, and there is quite a bit of it lumped
4 together as building rent, and that was my
5 impression.
6



1 Q I see, for example, if I refer you back to Exhibit
2 E-159, which is the income tax return.

3 A It is on Schedule E, Part 1, rent and royalty
4 income, no, Part 2, this is kind of blurred.

5 Q Now I take, for example, in 1971, there was a
6 check for a thousand and eight dollars for equip-
7 ment. That goes in that building-Benavides?

8 A Yes.

9 Q And the nine hundred and ninety-five dollars
10 which Judge Carrillo said was for equipment
11 rental, that goes in there?

12 A Yes.

13 Q And also the nine hundred and eighty-two dollar
14 check which was unmarked, which, as I said he
15 testified to, was for the sale of tubing, he placed
16 rent on there so that nine hundred and eighty-two
17 went in there also. I believe this is going back
18 to the first page of the work papers, line 19?

19 A Yes.

20 Q And the sale of the store counter, which was on
21 the fourth page, the store counter sale for a
22 thousand dollars, you picked it up as rent, since
23 that was what was told to you?

24 A Right.

25 Q And that comes to a total of three thousand nine

1 hundred and eighty-five dollars and that was all
2 reported on income tax return, under rent -- build-
3 ing, or building-Benavides?

4 A Yes, that's right.

5 Q All right.

6 A There is another item in there that will make up
7 the forty-eight hundred and thirty-five dollars.

8 Q What is that?

9 A There is an item of eight hundred and fifty
10 dollars from Zertuche General Store for rent.

11 Q From the Zertuche General Store for rent?

12 A Yes.

13 Q All right.

14 A Add that to that and see if you come to forty-
15 eight thirty-five.

16 Q And then you report it as fees, the two that were
17 not marked there on the same fourth page, they
18 were not marked. These were two that Judge
19 Carrillo said were for equipment rental so you
20 reported those for fees?

21 A That's right, they weren't marked.

22 Q And that was picked up as fees for a thousand and
23 six dollars?

24 A That's right.

25 Q For reported income that year?

1 A That's right.

2 Q And in 1972, when you reported that money, the
3 fifty-six fifty also was fees?

4 A Right.

5 Q Which, as I said earlier, Judge Carrillo came
6 from the water rig?

7 A Right.

8 Q And then from your earlier testimony, there is a
9 thousand and eighteen dollars which is there on
10 the fourth page, line 29, that you didn't pick up
11 because it just said transfer, that is the fourth
12 page of the work papers?

13 A Line 29 -- that's right.

14 Q And then was the one thousand and two hundred
15 dollars that we just couldn't find anywhere on
16 the work papers?

17 A That's right.

18 Q Which would be a total of -- of these two checks,
19 two thousand two hundred and eighteen dollars
20 that was not reported?

21 A That's correct.

22 Q Now, would it be a fair summary then that we can
23 see that some income was reported, the majority
24 of it was reported. There was two instances where
25 the transfer was not on work papers, that was not

1 reported and the rest of it was reported either
2 as building rental or fees?

3 A That's right.

4 MR. MITCHELL: We are going to object,
5 it doesn't say building rental, it says
6 rent and that is assuming a fact that is
7 not in evidence.

8 MR. ODAM: It was reported as
9 building rent.

10 A On the tax return.

11 MR. MITCHELL: On the work papers, it
12 says rent.

13 MR. ODAM: I'm talking about how it
14 was turned in to the I.R.S.

15 MR. MITCHELL: Oh, I'm sorry.

16 MR. ODAM: Well, let me clarify that.

17 THE MASTER: Yes.

18 Q The checks in the testimony, the one for the
19 counter sale and the sale of tubing and the two
20 equipment rental rentals, which were a thousand
21 and eight and nine hundred and ninety-five, those
22 were all reported as income, those two sales,
23 those two equipment rentals, but they were
24 reported on the final 1040 returns as rent on
25 buildings?

1 A Yes.

2 Q And again the two for equipment rental, according
3 to the testimony, were turned in as fees. And
4 then, one in 1972 for the water rig rental was
5 turned in as fees.

6 A The fifty-six fifty, I don't know what it was for,
7 but it was turned in as fees.

8 Q As fees?

9 A Yes.

10 MR. ODAM: Pass the witness.

11 MR. MITCHELL: I want to mark the work
12 papers for 73 and 74, Counsel, will you make
13 a statement to the Court that these were fur-
14 nished to me as being reproduced from Mr.
15 Kirkland's files?

16 MR. ODAM: Yes.

17 MR. MITCHELL: I would like to mark them
18 and have them in evidence also, Judge.

19 (Marked for identification by the reporter
20 as Exhibit R-97 and R-98.)

21 MR. MITCHELL: Your Honor, we would
22 offer into evidence R-97 and R-98 as being
23 the work papers furnished by the accountant
24 for 73 and 74, O. P. Carrillo.
25

1 MR. ODAM: Which is which?

2 THE MASTER: R-97 is the 1974 work
3 papers and R-98 is the 1973 work papers.

4 MR. MITCHELL: That is correct, Judge
5 Meyers.
6

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8

9 RE-EXAMINATION
10

11 BY MR. MITCHELL:

12 Q The taxpayer, Mr. Carrillo, Mr. Kirkland, would
13 furnish the data appearing as R-97 and R-98 for
14 each and every year that you were the preparer
15 for his tax returns, am I correct?

16 A That is correct.

17 Q Now, let me ask you some general questions before
18 I go into the checks specifically.

19 First of all, the check if we recall, I
20 believe after we adjourned yesterday you went
21 over the work papers and the checks that have
22 been introduced into evidence with Counsel for
23 the Examiner and those you have given -- or the
24 testimony you have given this morning, gives us
25 the benefit of that inquiry, am I correct?

1 A That is right.

2 Q Now, let's look -- let me go at a certain of them
3 to begin with and eliminating first of all the
4 twelve hundred dollar check, do you recall the
5 testimony about the twelve hundred dollars, that
6 check is E-55.

7 Now, let me get it out.

8 MR. ODAM: It is E-155.

9 MR. MITCHELL: E-155, I'm sorry, John.

10 Q Now, I hand it to you and it appears to be --
11 well, let's just look at it, Mr. Kirkland. It
12 is a check to O. P. Carrillo and has been identified
13 by Mr. Couling as having been given to O. P.
14 Carrillo, and Mr. Couling testified as I recall
15 that he filled in the payee's name, the date, the
16 amount, the designation loan.

17 Now, assuming those facts are correct, you
18 have, of course, not seen the check, am I correct?

19 A No.

20 Q Now, let's go back to the definition on a 1040
21 form, and the 1040 form on which that item would
22 have been included as ordinary income or as gross
23 income, does the definition of gross income as
24 you understand it exclude loans?

25 A Yes.

1. Q Proceeds from loans, gifts, et cetera?

2 A Right.

3 Q I believe your testimony is that that twelve
4 hundred dollar item was not reported or not shown
5 on the work papers and, therefore, not reported
6 for the corresponding year of 1971?

7 A That's right.

8 Q And, of course, if it were, in fact, a loan,
9 would it be subject to being reported?

10 A No.

11 Q Now, if you had called for that item, Mr. Kirkland,
12 and saw the notation loan, would your tax return
13 have been changed at all from what it was as a
14 matter of fact?

15 A No.

16 Q And the reason being what, please, sir?

17 A That loans are not income.

18 Q That's right, all right. Now, let's move --
19 I believe the thousand and eighteen dollars that
20 was the next item --

21 MR. MITCHELL: Strike that.

22 Q Let me ask you some basic questions. In deter-
23 mining -- in reporting income, the work papers
24 appear, Mr. Kirkland, to give you -- not only
25 the work papers appear to give you this information.

1 but it is carried forward on the return, first the
2 amount of an item"

3 A Yes.

4 Q Whether it is income or comes within the definition
5 of income or not?

6 A Yes.

7 Q For example, capital gains, short and long term,
8 wages, salaries, all -- income from whatever
9 source, which would exclude, for example, a loan,
10 am I correct?

11 A That's right.

12 Q And also, wouldn't the work papers indicate
13 aside from the amount and the source generally
14 when the item hits the taxpayer's book, so that
15 if he is an accrual tax payer it is one treatment,
16 and if it is cash, it is another treatment?

17 A That's right.

18 Q That last matter was taken care of, I believe
19 you said, in answer to the question put to you
20 by the court yesterday, that O. P. Carrillo was
21 a calendar year taxpayer and as such he was on
22 a cash basis?

23 A That's right.

24 Q All right. now let's take for example, Mr.
25 Kirkland, E-156, this -- this check was identified

1 as one given by Mr. Couling to Judge Carrillo for
2 a thousand dollars and he noted in here, and this
3 is in his handwriting it says store counter from
4 O. P. Carrillo drug store.

5 Let me hand that to you now, that E-156,
6 as I note in your testimony to Mr. Odam this
7 morning, that was reported as ordinary income,
8 am I correct?

9 A That's correct.

10 O All right, now the check itself --

11 MR. MITCHELL: Strike that.

12 Q Let's make our check list. The amount, the one
13 thousand dollars is reported in the work papers
14 and in the tax return?

15 A Yes.

16 Q It is reported as ordinary income, am I correct?

17 A That is correct.

18 Q So, to the extent of -- well, first of all the
19 amount, it wouldn't make any difference whether
20 it was from that source, if it was ordinary
21 income, it was classified as ordinary income by
22 you?

23 A If it was ordinary income.

24 Q Yes, the only designation I believe you testified
25 to is you had it as rent, did you not?

1 A That's right.

2 Q And still it would be carried as ordinary income?

3 A That's right.

4 Q Now, had you had the check in front of you and
5 you had noticed it was the proceeds from the sale
6 of personal property actually you would have treated
7 it a little differently in terms of reporting it
8 as ordinary income, would you not. Mr. Kirkland?
9 Yes.

10 Q That would perhaps have been reported as a capital
11 asset, either long term or short term gain?

12 A Right.

13 Q And if it was short term, it would be ordinary
14 income, is that right?

15 A Yes.

16 Q And if it was long term capital gains, there
17 would be a fifty per cent advantage to reporting
18 it as capital gains because you would only pay
19 tax on fifty per cent of it, am I correct?

20 A Yes.

21 Q And as a consequence, it would be an error in
22 the favor of the U. S. Government, instead of
23 the taxpayer, am I right?

24 A Yes.

25 Q Had it been a capital gains transaction, the fact

1 that it was reported as ordinary income precluded
2 the fifty per cent benefit?

3 A Right.

4 Q So the error made there is from the designation
5 that you have on the check there where it says
6 sale of counter, there is a designation error, is
7 that correct?

8 A Yes.

9 Q Of course, you didn't make it since you didn't
10 have it, didn't have the item as I understand in
11 front of you?

12 A That's right.

13 Q You had no reason to quarrel with the income desig-
14 nation and you reported it as such and that closed
15 the matter as far as you were concerned?

16 A Right.

17 Q Uncle Sam got more than his share of that and the
18 item was reported, is that correct?

19 A Possibly, yes.

20 Q All right.

21 THE MASTER: If I did not, I marked my
22 notes to reflect that R-97 and R-98 are
23 admitted as the 1974 and 1973 work papers.
24
25

1 (Whereupon R-97 and R-98 were admitted
2 into evidence.)
3

4 MR. MITCHELL: Thank you, Judge.

5 Q Now, Mr. Kirkland, I noticed that designation --
6 well, first of all, E-56, let me give you these
7 other returns, these other checks -- no, that is
8 the one he just finished -- yes. The one I
9 want to mention is a thousand and eighteen dollar
10 item.

11 Now, we don't have the original of it but
12 that is --

13 MR. ODAM: A thousand and eighteen?

14 MR. MITCHELL: Yes.

15 MR. ODAM: Or a thousand and eight?

16 MR. MITCHELL: Well, the one that was
17 carried in the transfer, I can find it.

18 MR. FLUSCHE: That is E-151.

19 MR. ODAM: Yes, E-151.

20 MR. MITCHELL: Yes.
21
22
23
24
25

1 Q Let me note also that in 183-A, the source of
2 these items are identified, are they not?
3 Looking at the one on Page 4, say Line 20, what
4 is that Benavides Implement and Hardware?

5 A It says IMP.

6 Q What is that designation?

7 A It seems that year, those were all designated as
8 rent income.

9 Q I mean the IMP, did that mean anything?

10 A Possibly Implement Company.

11 Q I note on the last line as well that same
12 designation is carried.

13 A Yes.

14 Q To the extent that would be Implement, at least
15 the work papers identify the source?

16 A That is right.

17 Q And identify the amount?

18 A Yes.

19 Q And because there was a question in someone's
20 mind, at any rate, the type of income, that is the
21 rent, is correctly identified, is that correct?

22 A Yes.

23 Q Except to the extent of that last item we looked
24 at, if you had 156 in front of you, you would have
25 known it would be a transfer instead of rent?

1 A Yes.

2 Q And the same, if the written designation loan is
3 correct?

4 A Correct.

5 Q Now, looking at E-151, I believe that is picked
6 up on 7-28, this would be on 183-A, Page 4, am I
7 right?

8 A That is right.

9 Q You are going to have to explain to me what this
10 business of transfer means.

11 As I understand your testimony, the one
12 thousand eighteen dollars did not find its way
13 into the return?

14 A That is correct.

15 Q And it was not included in gross income?

16 A Correct.

17 Q When did you first learn this?

18 A I eliminated it when I made the return.

19 Q Why would you eliminate one thousand and eighteen
20 dollars from an inclusion in gross income?

21 A In a set of books, more than one bank account is
22 involved. Well, what we call a fund transfer
23 account, which provides that you shift funds from
24 one to another without having any income or expense
25 constant. When you write the check on one account,

1 you charge it to the fund transfer. It is then
2 deposited in the other account and picked up as a
3 credit. It is merely a clearing account to move
4 money from one bank account to another.

5 Q And the taxable consequences come when the item
6 comes to the bank the first time?

7 A That is right.

8 Q And thereafter, if it can be transferred to another
9 bank, that would be nontaxable?

10 . Yes.

11 } So that would be a nontaxable item?

12 i Yes.

13 Q Do you have any independent recollection whether
14 that item was ever picked up on Judge Carrillo's
15 tax return?

16 A From all indications, it was not.

17 Q Have you had an opportunity to determine when it
18 was initially deposited into his banking picture?

19 A From studying, I can't find it.

20 Q You can, of course, amend that return, pick it up
21 and add it back in?

22 A Correct.

23 Q And that would be on E-151, which I believe was
24 the testimony that was rental income and that would
25 be classified as ordinary income?

1 A Yes.

2 Q All right. Actually, all of the items we have
3 talked about, all of the items that you have been
4 shown, have been reported, except the twelve
5 hundred dollar item, which is the one designated
6 loan?

7 A Correct.

8 Q And the one thousand eighteen dollar item?

9 A Correct.

10 Q Assuming, when Mr. Couling wrote loan on E-155,
11 he was correctly designating the transaction,
12 there would be no need to amend the return to
13 include that, is that correct?

14 A Correct.

15 Q Now, let me talk to you about some of these other
16 items.

17 Now, let's look at E-157. That is an item
18 of nine hundred eight-two dollars. That is on
19 Page 1 of the 1971 work papers, E-183-A, correct?

20 A Yes.

21 Q Now, again, you didn't have the item in front of
22 you, did you find that?

23 A Yes.

24 Q Now, I believe the testimony is that E-157 is a
25 check given by Mr. Couling and he put the

1 designation of tubing on that?

2 A Yes.

3 Q And E-157 is akin to E-156, is it not, in that
4 you did pick it up, the nine hundred eighty-two
5 dollars?

6 A Yes.

7 Q And there was some question in your mind as to the
8 source and you labeled it as rent and reported it
9 as ordinary income?

10 A Correct.

11 Q And the net effect of that was that Uncle Sam
12 got more than a bargain, assuming it was a sale
13 of tubing and assuming it was a capital asset,
14 in reporting it as ordinary income, because Judge
15 Carrillo should have a fifty percent deduction
16 on that as a capital asset?

17 A Yes, plus the cost of the tubing initially.

18 Q Correct.

19 Does the work papers show the source?

20 If IMP means Implement -- Benavides Implement
21 and Hardware, the criteria of the source is met?

22 A Right.

23 Q And the amount is met?

24 A Yes.

25 Q And the input into the return is reported as

1 ordinary income?

2 A Yes, that is correct.

3 Q And assuming that the recital of the sale of
4 tubing is correct, that would be an over-reporting?

5 A Yes.

6 Q And you designated it as rent and on the check it
7 is tubing sales, so if it cost him more than that
8 and that was a personal item, it would be no income
9 at all?

10 A Correct.

11 Q So the alternative of that would be that it
12 should not have been reported at all?

13 A That is possible.

14 Q In accounting practice, do you have a conservative
15 over-reporting accountants and accountants that
16 don't take chances, don't you have designations
17 of that type as lawyers do?

18 A We don't have designations, but everybody does what
19 they think they should do.

20 Q Would you characterize that as being overly
21 cautious?

22 A I would say so, yes.

23 Q And the alternative would be one of a fifty percent
24 deduction as a long-term capital sale?

25 A Yes.

1 Q And the other would be no gain at all, is that
2 correct?

3 A It would depend on his cost.

4 Q Now, did you know of any building -- you mentioned
5 that the rents here, that the designation rents
6 in connection with that check, E-157, and the
7 designation rents in connection with E-156 on
8 Page 4 for one thousand and eight dollars and the
9 thousand dollars to Benavides Implement and
10 Hardware, E-156, and his designation rents in
11 connection with E-154, that is the nine hundred
12 ninety-five dollar check, then you note first of
13 all Benavides Implement and Hardware is shown
14 as the source of the money and the purpose of the
15 rent.

16 Did Judge Carrillo have any real property he
17 was renting to Benavides Implement and Hardware?

18 A I don't know who he was renting to. He did have
19 rental property.

20 Q Do you know whether or not he was renting any to
21 Mr. Couling?

22 A I don't.

23 Q Did you know he was renting personal property at
24 that time to Mr. Couling?

25 A No, I did not.

1 Q And the assumption of rents being from real
2 property was an assumption you made, based on
3 information you had before you at that time?

4 A That is right.

5 Q And assuming it was rents from personal property,
6 would there be a change of designation?

7 A Possibly, but you get the same total.

8 Q As to the depreciation on the personal property,
9 Mr. Kirkland, there is no difference in the way
10 that is handled, because you take that through
11 the years?

12 A That is right.

13 Q And it is deducted against the gross income
14 against the business from which that property is
15 used?

16 A That is right.

17 Q And there is no amending that has to be done as
18 to the way you depreciated it?

19 A No, the final answer would be the same.

20 Q And I notice there was no mention of this Check
21 158. It is a check from Couling to Judge Carrillo,
22 and Judge Carrillo testified it was Mr. Couling's
23 share of groceries that the fellows put in and buy
24 each year.

25 Assuming you did find an entry of two hundred

1 sixty-seven dollars in 1971 --

2 A I didn't look for it, but I can.

3 Q I wish you would.

4 A I don't think we will find it; it indicates here
5 it was cashed.

6 Q To the Cash Store, correct?

7 A Yes, on November 8th.

8 Q Look at E-183-A and see if it were picked up at
9 all.

10 A I will start on Page 1, I am looking from November
11 to the end of the year right down the line.

12 I don't find it anywhere.

13 Q All right. If it had been, as you indicated, the
14 reverse side says Cash Store, I believe by Abel
15 Yzaguirre.

16 A Yes.

17 Q If it had been a check given by Mr. Couling for
18 his share of groceries, would it have been
19 relevant as far as Judge Carrillo's return for
20 that year?

21 A No, it would not.

22 Q And if it happened to be his share of the groceries,
23 it would be irrelevant and not material at all,
24 is that correct?

25 A It would not appear at all. There is no need to

1 have it.

2 Q And it does not appear?

3 A No.

4 Q And the reporting of 158 is consistent with the
5 recitals on that?

6 A Yes.

7 Q Had this been a check from Mr. Couling or
8 embezzled funds or stolen funds, do those come
9 within the definition of ordinary income?

10 A Yes.

11 Q And had the check represented a transfer of stolen
12 funds, that not being reported would be a violation?

13 A That is right.

14 Q And I believe the only item outside of that that
15 was not shown was the twelve hundred dollar item
16 that the record indicates was a loan, is that
17 correct, outside of E-158?

18 A The twelve hundred and the one thousand eighteen.

19 Q And the return is consistent with the recitals on
20 155 and 158 as to the way you treated them?

21 A Yes, I had no knowledge of those, so I didn't
22 treat them at all.

23 Q And the noninput into the return is consistent
24 with one being a loan and the other being
25 groceries?

1 A Yes.

2 Q Now, the thousand and eighteen, that is 151, it
3 finds its way into the return, but was found as a
4 transfer?

5 A It found its way into the working papers, yes, but
6 not the return.

7 Q Now, the other item, the 154 and 152, 306 and E-55,
8 these all find their way into the return?

9 A Yes.

10 Q And some are misdesignated, but all find their way
11 into the return as gross income?

12 A That is right.

13 Q And all indicating, except with the variance on
14 that thousand dollar check, the correct amounts?

15 A Yes.

16 Q And most of them correctly indicating the source
17 that is assuming that is -- that IMP is designating
18 Benavides Implement and Hardware?

19 A Yes.

20 Q And the dates?

21 A Yes.

22 Q That is the correct year?

23 A Yes.

24 Q And there is no item held over for another year?

25 A No, sir.

1 Q And that fee income is reported in 1972 and that
2 is the year it was received?

3 A Yes.

4 Q Just to be sure, I am going to hand you E-165.
5 This is the one Mr. Odam asked you about.

6 Now, there again, it appears to be Benavides
7 Implement and Hardware by Couling for one thousand
8 eight dollars.

9 A Yes.

10 Q That is treated on the work papers, E-183-A, at
11 Line 20, correct?

12 A Correct.

13 Q Assume that the designation IMP is Benavides
14 Implement and Hardware, that squares with E-65,
15 does it not?

16 A Yes.

17 Q The amount squares?

18 A Yes.

19 Q And you called it rent?

20 A That is right.

21 Q And if it were rent to that generic designation
22 and the method of reporting, that would be correct?

23 A Correct.

24 Q And Judge Carrillo's testimony that it was rent on
25 personalty and you put it in as realty.

1 A That is right.

2 MR. MITCHELL: Judge, may I have just
3 a minute?

4 THE MASTER: Yes.

5 MR. MITCHELL: Excuse me, Judge, I want
6 to be sure I do a little housekeeping so that
7 we won't have to call this gentleman back.
8 I hope the Court doesn't mind us doing it
9 this way.

10 Q (By Mr. Mitchell) Now, the item of seven hundred
11 dollars and 306, those items are reported on 183-A,
12 Page 4, Lines 37 and 38, am I correct?

13 A That is right.

14 Q Now, the checks, E-75, 76, speak in terms of
15 rent income for 306 and 700 and you picked up
16 those in the correct amount for the work paper
17 in the tax return?

18 A No, not as rent income.

19 Q But you picked them up as fees?

20 A Yes.

21 Q But the checks, however -- let's talk about them.

22 Whereas the work papers, 183-A doesn't have
23 any designation, you reported it as ordinary
24 income?

25 A Yes.

1 Q And if you look at E-76, which is a copy of the
2 306 check, it shows what in the lower left-hand
3 corner?

4 A Rent

5 Q And had you seen the check, it would have been a
6 simple matter to identify it on the 1040 form
7 rather than fees, it would be rent taken from the
8 check?

9 A Yes.

10 Q And there is a reverse designation there; it speaks
11 to fees on the return and the check speaks to
12 rent?

13 A Yes.

14 Q And this is a reverse of the sale of tubing or
15 the store counter where we speak to the sale of a
16 capital asset, but you picked it up as rent?

17 A Yes.

18 Q In either event, the taxpayer gives Uncle Sam more
19 than his share?

20 A That is probably correct.

21 Q Now, that same thing is true with E-75, and I am
22 going to hand that to you. That is that other
23 check that is reported that appears on the work
24 papers, E-183, Line 37?

25 A Yes.

1 Q Now, the check that you hold in your hand
2 indicates what is the source of that income.

3 A Rent on truck.

4 Q Now, the entry on the tax return is correct as to
5 the date?

6 A Yes.

7 Q Amount?

8 A Right.

9 Q And the source?

10 A That is not indicated.

11 Q And you had a doubt in your mind and called for
12 that check, you would have been put on notice it
13 was what?

14 A Rent.

15 Q On what?

16 A On the truck.

17 THE MASTER: How could you have called
18 for that check?

19 THE WITNESS: I could not. I called
20 for the deposit slip.

21 Q (By Mr. Mitchell) That is right, Judge Meyers,
22 that would have gone back to Benavides Implement
23 and Hardware.

24 A That is right.

25 Q And the deposit slip would have had to have

1 transcribed that information to have you pick it
2 up?

3 A Yes.

4 Q And in any instance, where we have check to
5 O. P. Carrillo, by the time you got the data in
6 March of the following year to be filed the next
7 year, the items that created the income were cleared
8 and returned back to the people who made them?

9 A Correct.

10 Q But assuming, Mr. Kirkland, you had that item
11 before you at that time, it would have been a
12 simple matter and the correction could have been
13 correctly designated on the return?

14 A That is right.
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1 Q As to all other ways you treated it, there wouldn't
2 have been any change, am I correct, that is --

3 A Possibly rent on equipment rather than rent on
4 buildings, but no monetary difference.

5 Q All right.

6 MR. MITCHELL: All right, let me put
7 this back in here.

8 Q Well, now we got E-77, which is the deposit slips
9 on those two, E-75 and E-74.

10 Now, if you had had the deposit slip, is that
11 what you're talking about?

12 A Yes.

13 Q That wouldn't have helped you either because it
14 appears --

15 A That's right.

16 Q -- the only designation is 10-5-75 on these,
17 one for seven hundred and one for three hundred
18 and six?

19 A That's right.

20 Q So you would have had to have gone back to Mr. --
21 to Benavides Implement and Hardware checking
22 accounting, Mr. Couling's account?

23 A Right.

24 Q Picked up the cancelled items to substantiate what
25 was rent on -- exactly what it was?

1 A Right.

2 Q But you never did see, as pointed out by your
3 answer to Judge Meyers, 152, E-152, until today?

4 A That's right.

5 Q Okay. All right, the one that is a xerox copy,
6 E-82, I'm going to hand it to you I am going to
7 hand it to you, is November the 15th of 71. As
8 the check Mr. Couling said he gave Judge Carrillo
9 in the amount of nine hundred and ninety-five
10 dollars.

11 A Right.

12 Q Now, that appears on --

13 MR. MITCHELL: Strike that. I believe
14 that is duplicated in E-154 also.

15 MR. ODAM: Right.

16 Q All right, so we have covered it, E-82 and E-154.
17 There again, that item is picked up as rent here?

18 A Yes.

19 Q And, of course, there is no designation in the
20 check now that we looked it up?

21 A That's right.

22 Q Incidentally, the designation is IMP, Benavides
23 Implement and Hardware. The designation on the --
24 the person who drew the check is shown and Judge
25 Carrillo's work papers or whoever furnished 183-A.

1 A Yes, that's right.

2 Q The amount is correct?

3 A Correct.

4 Q The date is correct?

5 A That's right.

6 Q And actually the designation turns out to be
7 correct, again generically, it is rent income or
8 ordinary income?

9 A Correct.

10 Q Is that right?

11 A Yes.

12 Q Now, had you had the deposit slip in front of you
13 on that, that would be E-83, you could have --
14 well, I have to hand it to you.

15 Now, the deposit slip E-83 clearly shows
16 Benavides Implement and Hardware, doesn't it, on
17 that nine hundred and ninety-five dollars?

18 A It looks like it, yes, that is right.

19 Q All right, so that if you tie in the designation
20 on E-83, which is Judge Carrillo's deposit slip
21 in the First State Bank of Alice from the nine
22 hundred and ninety-five on 11-15-71, with his
23 designation IMP, on the 11-15. Now, I'm looking
24 at the 183-A.

25 A That's right.

1 Q That would appear that the IMP refers to the
2 Benavides Implement and Hardware source for that
3 check, am I correct?

4 A That is right.

5 Q So that if there had been any doubt, you could
6 have pulled that deposit slip which would have
7 been available in the input data from Judge
8 Carrillo's bank statement, would it not?

9 A That's right.

10 Q And determine that it was a Benavides Implement
11 and Hardware item for nine hundred and ninety-
12 five dollars on 11-15 and it was reported by
13 Judge Carrillo and deposited in his bank account?

14 A That's right.

15 Q And had you been further curious about the type
16 of income, you could have called Judge Carrillo and
17 said, "What type of rent?", and he could have
18 said, "Personal property rent", and you could
19 have designated it -- you could -- you do have
20 a category personal property rent, I notice,
21 you just use rent.

22 A Yes.

23 Q Is that right?

24 A Yes, it goes on the same schedule, you just put
25 it on a different line as to what you are renting.

1 Q If it had been personal property rent, would it
2 still have just been rent, as far as you are con-
3 cerned? I'm just wondering about your designation.

4 A I would possibly have put on here equipment rent.

5 Q At any rate, you would have been able to have
6 made that determination by picking the deposit
7 slip up in that instance, wouldn't you, that it
8 was Benavides Implement and Hardware?

9 A Yes, but unless someone had told me what was
10 rented, I couldn't have told you.

11 Q I understand that. I'm not trying to put a
12 greater laboring oar on you than would have been
13 reasonable, but the deposit slip, you will agree,
14 it does say -- anybody can read it, the Court can
15 read it or anybody else.

16 A Sure.

17 Q It looks like Benavides Implement and Hardware to
18 me.

19 A That's right.

20 Q And the E-138-A says IMP?

21 A That's right.

22 Q Which appears to be the designation for Benavides
23 Implement and Hardware?

24 A Right.

25 MR. MITCHELL: I'm about through, Judge,

1 I believe.

2 Q Now, I want to ask you about that E-182-A.

3 THE MASTER: Let's take our ten o'clock
4 break.

5 MR. MITCHELL: Thank you, Judge.

6 (Discussion off the record.)
7

8 THE MASTER: I have some questions,
9 too, I want Exhibits E-154 through E-158 and
10 E-174 through E-178 given to this witness
11 and I want him to be prepared to tell me
12 what information he was furnished by Judge
13 Carrillo concerning those instruments.

14 Secondly, I want to know who prepared
15 the work papers that you say you did not pre-
16 pare from which you prepared his return.
17 Do you know who did that?

18 THE WITNESS: No, sir, Judge Carrillo
19 possibly can tell us.

20 THE MASTER: Well, were they -- were
21 they furnished to you by Judge Carrillo?

22 THE WITNESS: I don't remember, Judge
23 Carrillo or someone connected with Judge
24 Carrillo.

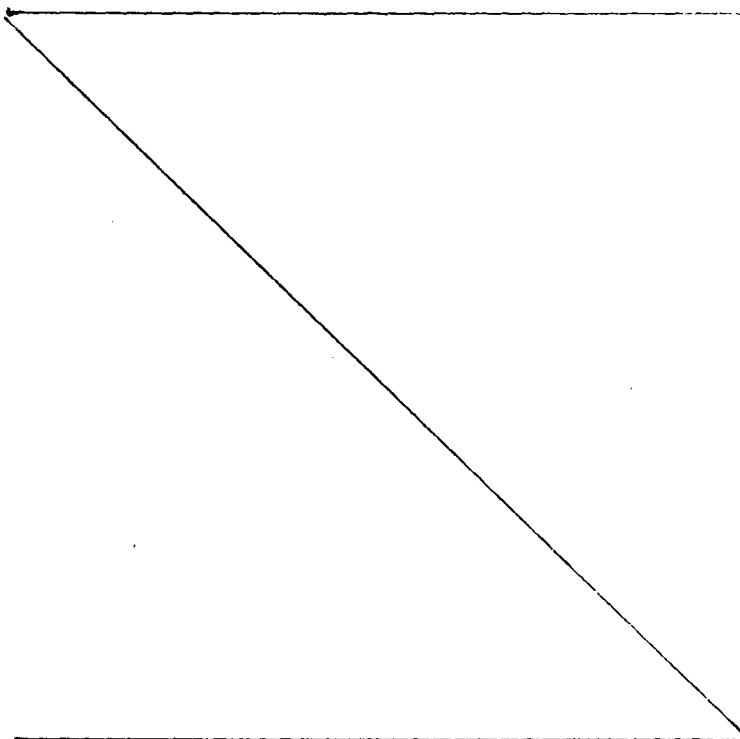
25 THE MASTER: They were not prepared as

1 work papers in your office?

2 THE WITNESS: No, sir, I have notations
3 and additions to them, but I didn't prepare
4 the original work papers.

5 THE MASTER: Well, we will be in recess
6 for twenty minutes.

7 (Whereupon the hearing was in recess
8 from 10:00 a.m. until 10:20 a.m.)
9
10



1 THE MASTER: Now, you may proceed,
2 Mr. Mitchell.

3 MR. MITCHELL: Pursuant to the request
4 of the Court prior to the break, I have E-155,
5 56, 57 and 58 -- Mr. Kirkland has seen them,
6 Judge Meyers, and I might point out on E-174
7 and E-178, those items were not admitted into
8 evidence, but I will be glad to get them.

9 THE MASTER: No, that is what my notes
10 reflect, that they were not admitted.

11 MR. ODAM: Your Honor, may I make a
12 statement about those?

13 THE MASTER: Yes, sir.

14 MR. ODAM: If it appears that for some
15 reason we would be going into next week, and
16 in view of the Court's interest in those
17 particular checks, I would suggest, and I
18 don't know how to handle this, because we
19 don't know, but it would be my purpose to
20 ask Judge Carrillo about those checks, if
21 Mr. Couling is going to be back and get
22 Mr. Carl Williams over here as well. We are
23 not -- I would as soon leave them out and not
24 proceed on them otherwise.

25 MR. MITCHELL: Your Honor, so that the

1 Court is apprised of the privy between
2 counsel, we have subpoenaed Rudolfo Couling
3 for his tax returns to determine if we want
4 to call him back and put him on the stand.
5 The method of his treatment of these items
6 becomes important to our case. If they were
7 not seen by Mr. Kirkland and his verbal
8 testimony is that these recitals did not
9 reflect the true nature of the item, then we
10 would like to see how Mr. Couling treats them
11 on his tax returns and the tax returns and
12 his testimony surrounding them could be very
13 important to our case.

14 I have asked Mr. Odam whether we could
15 get those today and see if we need to make a
16 determination to call him back.

17 MR. ODAM: Your Honor, then I would
18 suggest that, of course, the Court expressed
19 an interest in them and these are not
20 admitted into evidence and if we go into next
21 week, we will have to call Mr. Kirkland to
22 go into them, since they are not properly in
23 evidence yet. Perhaps it would be
24 inappropriate to go into them at this time.

25 I don't know, I will leave that up to the

1 Court.

2 THE MASTER: Refresh my recollection as
3 to the exclusion.

4 MR. ODAM: It was authentication. We
5 decided to call them back at a later date and
6 these microfilm copies -- they did need to be
7 authenticated on that regard.

8 THE MASTER: That is what I assumed.
9 It was not excluded on any other basis?

10 MR. ODAM: Yes, that is why he was back
11 on the stand that day and the discussion on
12 the record as to whether or not to take it on
13 a Bill of Exception and then take him as a
14 rebuttal witness.

15 I think we decided to call him back --
16 that we would call him back after the testimony
17 of Judge Carrillo.

18 THE MASTER: Ms. Levatino, did you get
19 in touch with Mr. Couling?

20 MS. LEVATINO: No, Your Honor, I have
21 not yet located his telephone number.

22 THE MASTER: Very well. Let's proceed.

23 Q (By Mr. Mitchell) Mr. Kirkland, I am now going
24 to move to the work papers for 1972. There is an
25 item that you have testified to in the amount of

1 five thousand six hundred fifty dollars.

2 If you will look at 182-A at about Page 8 --

3 A Yes, sir.

4 Q Are you with me?

5 A Yes.

6 Q Now, that item, I believe you have testified in
7 answer to the questions put to you by Mr. Odam,
8 that the 5650 is not in your handwriting.

9 A No, it is not.

10 Q Do you know whose it is?

11 A I presume it was O.P.'s, but I don't know.

12 Q But fees, the word fees is in your handwriting?

13 A Yes.

14 Q And that was therefore reported on his '72 return
15 as fees, was it not?

16 A Yes.

17 Q And you did not, of course, have before you any
18 other supporting documents, did you?

19 A No.

20 Q There is an item, E-85 in evidence, a check from
21 Mr. Couling stamped in First State Bank and Trust
22 of Rio Grande City, and I note that item has
23 5725, and that is a considerable difference.
24 There is no relation between the two, as far as
25 you were concerned?

1 A No, not that I noticed.

2 Q This is a check for fifty-six twenty-five; was
3 there any relation between that item, E-84 and the
4 item appearing on the work papers as fifty-six
5 fifty?

6 A I don't know.

7 Q Now, I noticed in E-86, which is Judge Carrillo's
8 bank statement, there does appear to be a deposit
9 of fifty-six fifty, which corresponds, is that
10 correct?

11 A Correct.

12 Q And shows as a deposit?

13 A Yes.

14 Q And the fifty-six fifty inserted on the work
15 papers, E-182-A, appears to be about that time?

16 A It is inserted between the 5th and 18th, yes.

17 Q Do you know -- does your '71 work papers reflect
18 that a loan proceed to the First State Bank and
19 Trust Company back on 1971 -- are there any
20 indication on the proceeds of a loan or would the
21 proceeds of a loan be on those papers and indicated
22 as such?

23 A Yes, they could be in here.

24 Q Does 11-15 show a fifty-six fifty loan proceed
25 of a note?

1 A Yes, it does.

2 Q That would be on Page 2 of 183-A, am I correct?

3 A Yes.

4 Q Now, I hand you --

5 A Was this 183-A?

6 Q Yes, 183-A, correct?

7 A Yes.

8 Q No significance of that -- the significance, I
9 believe, that was used to acquire a vehicle, a
10 station wagon, do you recall picking that up on
11 the depreciation schedule?

12 A I believe I did, yes.

13 Q And the significance of that entry and the work
14 papers would be to show on the depreciation of
15 that for 1971?

16 A Yes.

17 Q And I believe I asked you yesterday if you had
18 not caused it to be depreciated from the period
19 of time it was purchased?

20 A Yes, two-twelfths.

21 Q I hand you the processed deposits into Judge
22 Carrillo's bank account and that appears to be the
23 proceeds of that?

24 A Yes.

25 Q And as well as the checks marked E-87, also

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November 14th?

A Yes, M & R Motor Company.

[A large diagonal line is drawn across the page, likely indicating a correction or deletion.]

1 Q So it would appear that E-87-A, that is the two
2 documents E-87-A and the entry in E-183-A are
3 consistent, am I correct?

4 A It appears that way.

5 Q All right.

6 A However, the small one there indicates that to
7 be a note and I have picked it up as income.

8 Q That is the -- well, the following year you have
9 a different entry on a different item, am I
10 right, Mr. Kirkland?

11 A Yes.

12 Q In other words, the entry that you picked up in
13 71, was the proceeds of a note for the acquisi-
14 tion?

15 A That's right.

16 Q And the entry that you have for the following
17 year is just an ordinary income item which you
18 labeled as fee income?

19 A That's right.

20 Q And it was reported in Judge Carrillo's return
21 as fee, is that right?

22 A That's correct.

23 Q The amounts are different, the years are differ-
24 ent and the source designations are different, am
25 I correct?

1 A The amount, I believe, they are substantially
2 the same.

3 Q Well, if you will recall, look at those amounts,
4 one is fifty-six fifty on the work papers and
5 in E-182-A.

6 A Yes.

7 Q For the 72 return, the deposit is fifty-six fifty?

8 A Right.

9 Q On E-87-A?

10 A Yes.

11 Q And the -- and in E-182-A, the amount is fifty-six
12 fifty?

13 A That's right.

14 Q All right.

15 A That is the next to the last sheet here.

16 Q It is on this one -- I want you to show me in the
17 work papers where the --

18 A Right here.

19 Q Now, that is the item of income of fifty-six
20 dollars and fifty cents for the 1972 return?

21 A That's right.

22 Q Is that right?

23 A Yes.

24 Q I was more interested in the proceeds of the loan
25 in the 1971 work papers, that would be in November

1 of 71?

2 A Right here. (Indicating.) Here it is, the
3 fifty-six fifty.

4 Q So that the record is abundantly clear -- well,
5 the items -- one is fifty-six fifty -- well, they
6 are both for fifty-six fifty, is that correct?

7 A Correct.

8 Q E-85, which is a check on January the 13th, 1972,
9 from Mr. Couling, at the First State Bank is
10 for fifty-seven hundred and twenty-five dollars,
11 am I correct, that one, of course, appears on
12 Judge Carrillo's return, would it?

13 A Right.

14 MR. MITCHELL: Now, Judge Meyers, has
15 the Court asked the questions of the witness
16 in connection with E-154 to 158?

17 THE MASTER: Yes, I have some general
18 questions of the witness that I think are
19 simply background questions that I want to
20 ask.

21 MR. MITCHELL: All right.

22 THE MASTER: But I want to wait until
23 both you and the Examiner are finished.

24 MR. ODAM: All right.

25 Q (By Mr. Mitchell:) Mr. Kirkland, I note in

1 answer to the questions that have been put to
2 you by me and the Counsel for the Examiner, that
3 you had quite a latitude in connection with
4 applying of the various information that Judge
5 Carrillo would furnish as ordinary income and
6 you followed the rule, generally speaking, where
7 there is a doubt, as you told me yesterday, that
8 you always put it in ordinary income.

9 A That's right.

10 Q As an accountant, in terms of importance, tell us
11 whether or not the primary importance is the
12 type of income, that is whether it is ordinary
13 income or capital gains or no income for that
14 matter, is that what you looked to?

15 A The primary consideration first is whether it is
16 income and to be sure that all income is reported.

17 Q Would the source of it be related and relevant
18 to the extent in determining whether it is income
19 and should be reported?

20 A That's right.

21 Q All right. Would you characterize as an accountant,
22 would you have an opinion as to whether or not
23 Judge Carrillo's tax returns or tax picture is a
24 complex or a simple matter?

25 A It is fairly complex.

1 Q All right.

2 MR. MITCHELL: Judge Meyers, I believe
3 I have no further questions of this witness.

4 MR. FLUSCHE: We have no more.

5 THE MASTER: Well, these are questions
6 I am picking up. It appears to me it is
7 fairly complex. If there is any problem,
8 your problem and Judge Carrillo's problem --
9 well, do you know of any books or records
10 other than deposit slips and checks that
11 are maintained on these various businesses?

12 A None other than these separate lists that are
13 prepared.

14 THE MASTER: That appears to me, and I
15 don't know but as an accountant, tell me
16 what it appears to you: it appears to me
17 that Judge Carrillo, like so many of us,
18 takes his cancelled checks at income tax
19 time and his deposit slips and reconstructs
20 the business he did for the year before.

21 A Yes.

22 THE MASTER: That is the way it appears
23 to you as an accountant?

24 A Yes, sir.

25 THE MASTER: And what you do is take his

1 summary sheets or whether he prepares them
2 or they are prepared under his direction,
3 they are furnished to you by him or his
4 office and make the income tax returns?

5 A Yes.

6 THE MASTER: Do you ever go request
7 and are furnished the original deposit slips?

8 A Occasionally, yes, sir.

9 THE MASTER: And, of course, you discuss
10 with Judge Carrillo occasionally what vari-
11 ous items are?

12 A Yes.

13 THE MASTER: That's all I have.

14
15 - - - - -

16
17 RE-EXAMINATION

18 BY MR. MITCHELL:

19
20 Q Now, in line with Judge Meyers --

21 THE MASTER: Incidentally, I am not
22 offended if you have any objections to
23 anything that I have asked.

24 MR. MITCHELL: I think they are very
25 appropriate, and with the Court's permission

1 I would like to ask him some followup ques-
2 tions.

3 Q (By Mr. Mitchell:) What would be the occasion,
4 you recall Judge Meyers asked you if you had
5 occasion to see Judge Carrillo's deposit slips?
6 You said occasionally, and what would be those
7 occasions?

8 A For instance this one that had the seven hundred
9 dollars and the three hundred and six dollars and
10 it said nothing, I called for the deposit slip
11 on there to see if possibly there was a notation
12 on there that would help me, but it was blank, too.

13 Q What would you do as a general rule, would you
14 call Judge Carrillo on occasion when the deposit
15 slips wouldn't give you any indication as to the
16 source?

17 A Yes, and if he couldn't recall what it was, there
18 was no way we could trace it. Then I would --
19 I would just tell him that he would have to pay
20 tax on it, if he couldn't prove what it was:
21 that it was not taxable.

22 Q As a matter of fact, on that particular occasion,
23 that is what happened and the tax was paid on it?

24 A That's right.

25 Q And then also Judge Meyers asked you if you had

1 occasion to see the checks and you said yes, and
2 would that be the same type of a situation, Mr.
3 Kirkland?

4 A Yes, that is right.

5 Q All right.

6 MR. MITCHELL: I believe that's all I
7 have, Judge Meyers.

8 MR. FLUSCHE: Nothing further.

9 THE MASTER: Thank you. You may step
10 down.

11 MR. MITCHELL: May he be excused, Judge
12 Meyers. He and his wife would like to do
13 some Christmas shopping today.

14 THE MASTER: He is certainly excused
15 to do that. There may be occasion to call
16 you back, that is true of any witness, how-
17 ever.

18 THE WITNESS: Sure.

19 THE MASTER: Mr. Flusche, where is Mr.
20 Odam, because he has got to start the cross-
21 examination of Judge Carrillo at this time.

22 MR. MITCHELL: Your Honor, they are
23 looking -- to report to the Court, they are
24 contacting Mr. Couling to try and honor the
25 request.

1 THE MASTER: I do not like for the
2 person who has to cross-examine the witness
3 to be gone this long.

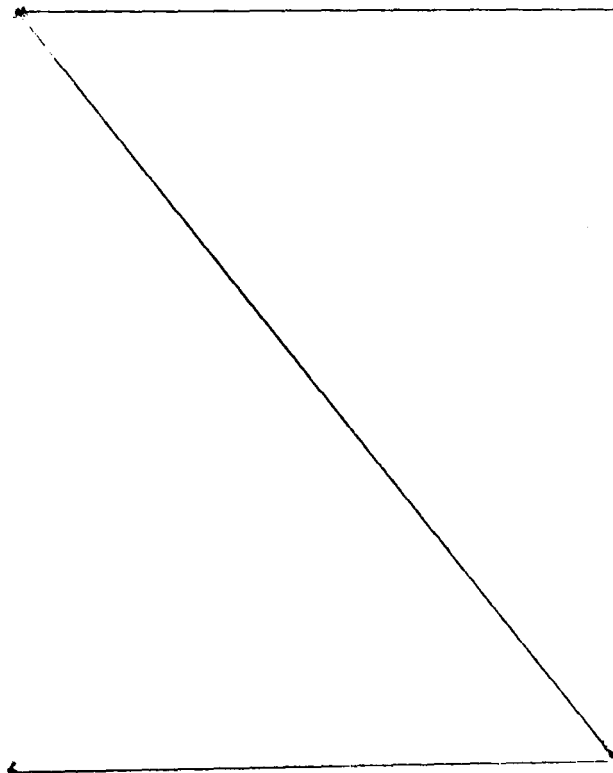
4 You may step down and thank you, sir.

5 (The witness excused.)
6

7 MR. ODAI: This is off the record.

8 (Discussion off the record.)
9

10 (Whereupon a short recess was taken.)
11



Page 3595 Missing in Original

1 MR. MITCHELL: May I proceed, Your
2 Honor?

3 THE MASTER: Yes, sir.
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6
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8

9 O. P. CARRILLO,
10 recalled as a witness, having been previously sworn,
11 testified as follows, to-wit:
12

13 E X A M I N A T I O N
14

15 BY MR. MITCHELL:
16

17 Q Judge Carrillo, I have some questions to ask you
18 to redirect and I think I will, for the purpose
19 of the record, probably adopt the same format as
20 adopted on the direct and by Mr. Odam on cross.

21 A All right.

22 MR. MITCHELL: Your Honor, I will now
23 ask him questions on Article 1.

24 Q (By Mr. Mitchell) Judge Carrillo, I am going to
25 hand you, first of all, a transcript --

1 THE MASTER: Are you prepared to recross
2 to Article 1, Mr. Odam?

3 MR. ODAM: No, Ms. Levatino is not here
4 at this point.

5 THE MASTER: She is not here?

6 MR. ODAM: I would prefer that it be her,
7 if he is going to start on that article.

8 If you are going to start on that one,
9 I will go and get her.

10 MR. MITCHELL: If I can be given a
11 minute to pull exhibits together, I will
12 start on another.

13 THE MASTER: We have Mr. Flusche on
14 Article 2 or Paragraph 2?

15 MR. ODAM: Yes, sir.

16 THE MASTER: What others?

17 MR. ODAM: Also the examinations on
18 3, 4, 5 and 6.

19 THE MASTER: Where is he?

20 MR. ODAM: He is trying to get
21 Mr. Couling on the telephone.

22 THE MASTER: It seems important to me
23 to have that attorney here that did the
24 examination.

25 MR. ODAM: Yes, it is, Your Honor, and

1 I will take just a minute and get her.

2 THE MASTER: That is fine.

3
4 (Short recess was taken.)

5
6 THE MASTER: You are going to start
7 on Article 1 or Paragraph 1?

8 MR. MITCHELL: Yes.

9 THE MASTER: So you won't be doing
10 anything on his?

11 MR. MITCHELL: That is right.

12 THE MASTER: All right. Off the record.

13
14 (Whereupon, an off-the-record
15 discussion was had.)

16
17 Q (By Mr. Mitchell) Judge Carrillo, I am going to
18 ask you some questions that are going to relate
19 to the various articles or specifications
20 contained in the First Amended Notice of Formal
21 Proceeding and if at any time you need a copy of
22 it, we will give you a copy.

23 A All right.

24 Q The first article deals with, first of all, deals
25 at a time not stated. It states beginning at a

1 time you assume duties as Judge of the 229th
2 Judicial Court that you entered into a conspiracy
3 to obtain from public funds, three hundred dollars
4 a month.

5 A Yes.

6 Q And that conspiracy continued up through 1975.

7 I believe by later developments, it was
8 stipulated that there would be no relevancy on
9 anything past January, 1975.

10 A Yes, sir.

11 Q My questions I am going to put to you will relate
12 to a time you assumed your duties. You have been
13 judge twice, you have had one full term?

14 A Yes.

15 Q And the second term commenced in January of this
16 year?

17 A That is right.

18 Q And I will go back to your first term, January,
19 1971, to December 31st, 1974.

20 A Yes, sir.

21 Q Is that correct?

22 A Yes.

23 Q And Article 1 has somehow gotten tied up into the
24 welfare program.

25 A Yes.

1 Q And I am going to hand you Claim Jacket 1541,
2 C-2139, A-3040 and A-2015. You have those in
3 front of you, do you not?

4 A Yes.

5 Q And the transcription of the testimony of Cleofus
6 Gonzalez?

7 A Yes.

8 Q Do you have that in front of you?

9 A Yes.

10 Q I am not at all clear -- I will have to ask you
11 questions. Your testimony was that your
12 connection with the welfare program commenced
13 prior to the time you were first elected district
14 judge?

15 A Yes.

16 Q You were involved in what capacity?

17 A With permission of the Commissioners Court.

18 Q That is the correct source of the authority?

19 A Yes, the County Commissioners Court runs the
20 county, the finances and the programs instituted
21 are supported by the county.

22 Q Now, Judge Carrillo, you have delivered to me a
23 box, and I am going to set it here, that is filled
24 with yellow or -- pink, rather, tickets, am I
25 correct?

1 A Yes.

2 Q Now, let me ask you this: I asked you to deliver
3 this to me for the purpose of redirect.

4 Tell the Court, first of all, what these
5 relate to, that is, this box of material --

6 MR. MITCHELL: For the record, contains,
7 Your Honor, about forty-four, what appear to
8 be booklets.

9 THE MASTER: Yes.

10 THE WITNESS: Yes, sir.

11 MR. MITCHELL: Your Honor, might I, with
12 counsel's permission, and I don't want to
13 burden the record with these, but I would like
14 to have the record reflect precisely the books
15 we are talking about.

16 I will deliver one to counsel, both for
17 upstairs and for the commissioners. I know
18 the Court can see them here and I don't know
19 how to handle it.

20 THE MASTER: Do you want this as an
21 example rather than the entire thing?

22 MR. MITCHELL: Yes.

23 THE MASTER: That is satisfactory with
24 me. Maybe Ms. Levatino will be the one that
25 wants to select the example.

1 MS. LEVATINO: Are you going to pick one
2 or put in a particular one?

3 MR. MITCHELL: I thought I would pick
4 that one that has the most blanks in it.

5 MS. LEVATINO: Okay.

6 MR. MITCHELL: And I will authenticate
7 it through him.

8 MS. LEVATINO: All right.

9 Q (By Mr. Mitchell) Judge Carrillo, I have picked
10 at random this book, which -- and ask you, first
11 of all -- strike that.

12 Let me have it marked.

13 THE WITNESS: That is empty, almost.

14 MR. MITCHELL: I wanted to get some
15 that were not used.

16 THE WITNESS: Okay.

17 MR. MITCHELL: Would you mark this.

18
19 (Whereupon, the above-mentioned
20 document was marked Respondents' Exhibit 99
21 for identification.)

22
23 Q (By Mr. Mitchell) Now, it has been marked R-99.
24 May I have it to show to counsel?

25 A Yes, sir.

1 (R-99 handed to counsel for
2 examination.)
3

4 Q (By Mr. Mitchell) Now, R-99 is one of the booklets
5 that you have delivered to me pursuant to my
6 request after this matter of Article 1 appeared
7 in the notice of hearing?

8 A Yes.

9 Q Now, in addition, the units that we have mentioned
10 previously, forty-four, are they the same as
11 R-99?

12 A Yes.

13 Q Now, tell us what they are. That is, using R-99
14 as a basic prototype, what are the forty-four
15 books you have delivered to me?

16 A This is the Duval County Welfare Department order
17 authorizing assistance to needy people of
18 different kinds.

19 Q Let me ask you questions about that. Let's take
20 R-99. It appears to be partially used and
21 partially unused?

22 A Yes.

23 Q And as to the unused portion, there appears to be
24 a white copy headed up Duval County Welfare
25 Department?

1 A Yes.

2 Q And a yellow copy?

3 A Yes.

4 Q And a pink copy?

5 A Yes.

6 Q And I note at the front, there is only the pink
7 copy remaining?

8 A Yes.

9 Q Tell us how these are made out.

10 First of all, give me the time when they were
11 used.

12 A I used them in 1960 or '61 when I became county
13 attorney and started with those and when I was
14 authorized to issue welfare orders.

15 Q Have you preserved those welfare books from that
16 period of time?

17 A I happened to, in the course of this hearing, to
18 have looked in every cubbyhole of the country to
19 get the information I could gather up. I found
20 this one box standing over in the corner of the
21 office.

22 Q I notice that your signature appears in the lower
23 left-hand corner?

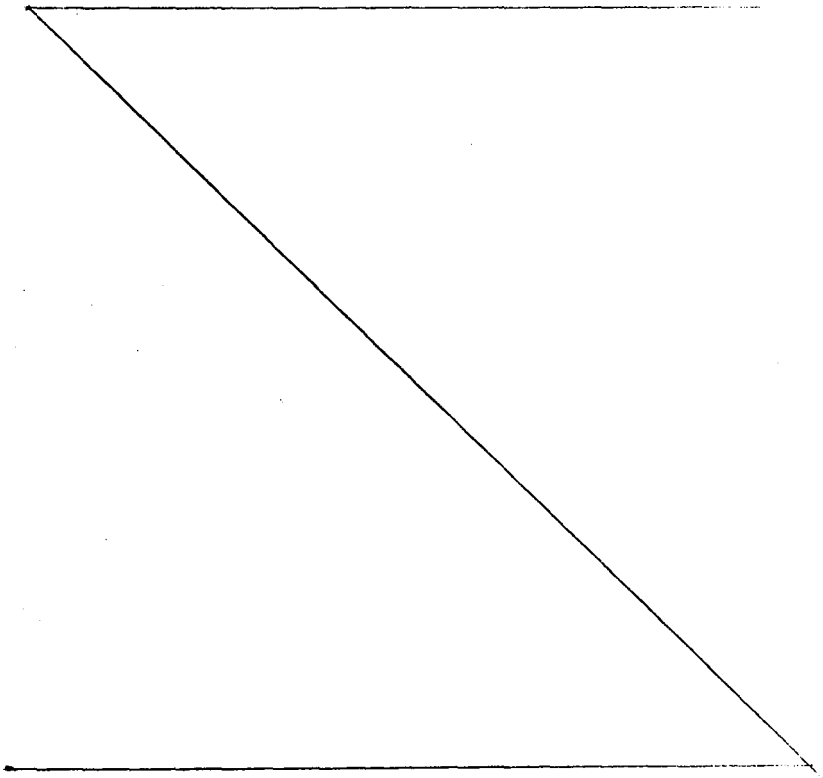
24 A Yes.

25 Q And you recognize your signature?

1 A Yes.

2 Q Tell me now what period of time these units cover.

3 A Now, this signature of the authorization is mine.
4 The rest of the writing is not mine, so this has
5 to do with those times I have stated I would be
6 out of the office or out of town or not available
7 and someone would come in and authorize -- or the
8 personnel delivering the services would call and
9 state there is a Mr. So-and-So or a Mrs. So-and-So
10 here requesting some kind of assistance.



1 Q All right, let me interrupt you, Judge Carrillo.

2 The signature in the lower lefthand corner is
3 normally yours?

4 A Yes, sir.

5 Q And it has been testified to that it would also be
6 out there by Mr. Couling, is that correct?

7 A That's right. Now, this handwriting here is Mr.
8 Couling's. This is his initials down here.

9 Q Sometimes Mr. Couling would fill them in and his
10 signature or initials would appear in the lower
11 righthand corner above the signature of the person
12 receiving, is that correct?

13 A This indicates as Dr. J. C. Gonzalez on the 30th
14 day of December, 1963, called Mr. Couling, advised
15 him that Fidel Valerio was there and needed assis-
16 tance. He authorized it, initialed it underneath,
17 signed her name, initialed it underneath and then
18 when I came back in he told he that he had author-
19 ized this and I signed my name as a declaration
20 or authorization.

21 MR. MITCHELL: Excuse me, let me show
22 that to the Court.

23 Q Now, the one in 99 that you are talking about is
24 the one that Mr. Couling filled in and he presented
25 it to you and you signed it, is that correct?

1 A I signed it and it is evidenced by the fact that
2 when the person is there, they sign it in their
3 own handwriting. When the person is not there,
4 if they call you from the telephone, from either
5 the grocery store or the drug store or the doctor.

6 Q All right, now, Judge Carrillo, in these Exhibits,
7 that is the type of units 44, and R-99- --

8 MR. MITCHELL: I don't believe I offered
9 R-99, Your Honor, I believe I should, I'm
10 offering it full well understanding it is
11 a prototype of the other 44 units, and cer-
12 tainly Counsel may have the right to cross-
13 examine him about any of them.

14 MS. LEVATINO: No objection.

15 THE MASTER: It is admitted.

16 (Whereupon R Exhibit 99 was admitted
17 in evidence.)

18
19 Q First, Judge Carrillo, have you reviewed those
20 units to tell us whose signatures or initials
21 you recognize?

22 First of all, as being the person who filled
23 them in, other than Mr. Couling, you have told us
24 you recognized his?

25 A Well, I would have to go -- I would have to go and

1 look through all of them. I'm looking at one
2 right here now, for example, that has O. P.
3 Carrillo that is not my signature.

4 Q Well, look through them, without being exact, do
5 you recognize Rudolfo Couling, for example, his
6 signature?

7 A Well, there is one very plainly right here.

8 Q All right. How about -- who else -- I notice a
9 G.Z., who would that be?

10 A G.Z. would be George Zertuche, Junior.

11 Q All right.

12 A That is Junior.

13 Q All right, here is an R.M.C., July the 23rd, who
14 would that be?

15 A Rudolfo M. Couling.

16 Q Who else besides G.Z. or George Zertuche, Junior,
17 and Rudolfo Couling -- take a look at those to
18 refresh your recollection to answer the question
19 correctly.

20 A Well, here is one by Minerva Casas.

21 Q All right, who is she?

22 A That was a young lady who worked for Mr. Couling
23 at the tax office.

24 Q All right. I am looking at one December the 1st,
25 64, by G.Z.

1 A That is George Zertuche, Junior.

2 Q All right.

3 MR. MITCHELL: Judge, that is another
4 example of C.Z.
5

6 (Handed to the Master.)

7 Q All right, now the system, Judge Carrillo, as
8 represented by the forty-four units here, let me
9 see if I understand it. There are, first of all,
10 bound books and the originals would be filled out
11 and you would have two copies, the pink copy,
12 would you not, and the yellow copy, is that cor-
13 rect?

14 A Yes.

15 Q Can you tell us what went with the yellow copy --
16 first of all, let's take the white, the original,
17 where would it come from?

18 A One copy would go to the county commissioners
19 court.

20 Q All right, let's look at claim 2139, I'm going
21 to pour that out in front of you. Now, in that,
22 that is H-1-(23).

23 A Yes.

24 Q Is that correct?

25 A Yes.

1 Q That is claim number 2139 and the evidence designates that that is -- now in that claim jacket, which is the original, it has been identified as the original of the claim jacket, is that the white form that is in that claim jacket?

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4
5
6 A Yes, this would be the white form.

7 Q All right, so the white form goes before the commissioner's court?

8
9 A Yes.

10 Q And ends up in the claim jacket if honored, am I correct?

11
12 A Yes.

13 Q How about the yellow copy, do you know where that goes?

14
15 A I believe the yellow one went to the person who was delivering the service. That would be the doctor, the pharmacist or the funeral home or the --

16
17 Q For his records?

18
19 A Or the grocery store for his records.

20 Q All right. Now, there are various copies of services that you just enumerated. They not only include groceries, they would include what other services, Judge Carrillo?

21
22
23
24 A Funeral services, hospitalization, medicines,
25 doctors, groceries, clothing.

1 Q All right. Now, assuming that Mrs. Yzaguirre,
2 do you remember the testimony now we are talking
3 about the Exhibits that were introduced?

4 A Yes.

5 Q As being the Cash Store ones?

6 A Yes, sir.

7 Q The yellow copy would have been retained by Mrs.
8 Yzaguirre at the Cash Store, is that your testi-
9 mony?

10 A Yes.

11 Q And, of course, you note there was none of those
12 yellow copies ever produced before this Court?

13 A I haven't seen any.

14 Q All right. Now, the pink copy, is that the copy
15 that you sent personally?

16 A That was retained.

17 Q All right. I note also setting aside now the --
18 let's don't get all of these mixed up, Judge,
19 please, sir.

20 I noticed, Judge Carrillo, tapes supporting
21 documentation that you have here in your file
22 in this box, what are they, what is that?

23 A Well here is one that says David's Drug Store,
24 Duval County, RX, that is medicine, \$1.50 and
25 \$1.55 is added to it, it says Cande Gallardo and

1 it is signed by Atlee Parr, who was then county
2 commissioner.

3 Then it says, phone call to Dr. Ahern for
4 an appointment for Pedro Trevino child, \$1.55,
5 which is added under this and also signed by
6 Atlee Parr.

7 Q I notice, Judge Carrillo, in other words, that
8 some of the invoices or supporting documentations
9 are in these units, these forty-four units that
10 we have.

11 A Then this total is eleven o five and here is an
12 order for eleven o five to this lady, to David's
13 Drug Store and is signed by Mrs. Minerva G. Casas,
14 and then approved by me.

15 Now, you can see the long trip that this --
16 in order for this order, I would like to explain
17 this because this is very critical.

18 Q All right.

19 A To explain the long order that this -- the route
20 that this thing took.

21 Q All right.

22 A First of all, the individual went to David's
23 Drug Store and then from David's Drug Store, it
24 was authorized by Mr. Atlee Parr, the county com-
25 missioner, and then from the route, from the

1 wording of this thing, then it is very clear
2 that Mr. Atlee Parr, and from the drug store, it
3 was called to the office and advised that this
4 person was there and that there was a charge
5 of eleven dollars and fifty cents and it was
6 signed Josefa Cantu here and the bills are attached.

7 Josefa Cantu, David's Drug Store, eleven
8 dollars and fifty cents, Atlee Parr, and it is
9 signed Josefa Cantu by Mrs. Minerva G. Casas
10 which means that she was the one that received
11 the call that it had been authorized.

12 She fills this thing in and then whenever
13 I come in, either that day or the next day or
14 three days later or five days later, they might
15 have several orders out there that they had author-
16 ized, then I would sign them and then they would
17 be sent to the merchants or what have you.

18 Q All right, now, Judge Carrillo, when is the latest
19 date on these forty-four units, do you know when
20 you stopped using these or if you stopped? I
21 don't know whether you stopped or not, do you
22 know when was the last date on them?

23 A Like I say, we used to send one of these out
24 to the -- one to the county, one to the person
25 delivering the services and one would be kept in

1 the office, and then there was a time --

2 Q The latest date, Judge.

3 A The latest date, when I did this?

4 Q Yes, sir.

5 A That was before I became district judge.

6 Q All right, now that is the reason for my question.
7 Was there a changeover first of all in your connec-
8 tion with the system or was there a changeover
9 in the documentation, and if so, what was the
10 changeover and when did it occur?

11 A To the best of my recollection, after Mr. Atlee
12 Parr died and my brother became the county com-
13 missioner, and he set up an office there in town.

14 Mr. Atlee Parr did not live in town by the
15 way, this also made it a hardship on some folks.
16 He lived out on the ranch.

17 My brother set up his office, there at the
18 Farm and Ranch Supply and Cleofus Gonzalez was
19 working out there for him handling these things.
20 And then instead of running it out, through Mr.
21 Couling's office, which was assisting us in this
22 matter, it was sort of transferred over to
23 Cleofus Gonzalez.

24 Q All right. Now, Cleofus Gonzalez's signature,
25 or initials rather, appear in some of those early

1 ones, do they not, Judge Carrillo, along with
2 Rudolfo Couling and Minerva Casas?

3 A They would appear in here somewhere, in some of
4 the -- and in the later ones, he was the only
5 one that was really giving them out.

6 Q That was my next question, as a matter of fact,
7 Mr. Cleofus Gonzalez's handwriting and signature
8 appears in those right on up through December of
9 1974?

10 A Yes, because I just discontinued this back, like
11 I say.

12 Q All right.

13 A Approximately in 1970.

14 Q All right.

15 A I notice for example this here, even my signature,
16 you see there were some times, for example, in
17 1964 I took a vacation through Colorado, on through
18 Wyoming, Yellowstone, the State of Washington,
19 the World Fair at Seattle, up through the Vancouver
20 Islands and in through Canada and then back through
21 Oregon and California. It was approximately forty-
22 five days that I was gone.

23 During that time, these orders, I mean the
24 welfare program did not stop. They were just
25 giving out orders and when I come back they say,

1 "Here, here is all of this", and either I would
2 sign them or somebody else would sign my name to
3 them.

4 Q All right, now, Judge Carrillo, let me look --
5 let's open some of these original forms that have
6 been brought by the Attorney General and let me
7 ask you some questions about them, please, sir.

8 A Yes, sir.

9 Q Now, I made an analysis and I am going to rush
10 hurriedly through those -- these forms, and then
11 I am going to ask you some specific questions.

12 Now, I am not quite clear, for example, what --
13 let's take B-1541.

14 THE MASTER: All right, now we are talk-
15 ing about claim jacket marked 1541?

16 MR. MITCHELL: Yes, sir.

17 THE MASTER: Is that in Exhibit in this
18 case?

19 MR. MITCHELL: It is not --

20 MS. LEVATINO: It is reproduced in
21 E-55.

22 THE MASTER: In E-55?

23 MS. LEVATINO: Yes -- what is the H
24 designation?

25 MR. MITCHELL: H-1-(11).

1 MS. LEVATINO: Oh, that is H-1-(11)
2 in E-55, it begins on page 380.

3 THE MASTER: All right, I don't have a
4 copy of E-55. May I borrow yours?

5 MR. MITCHELL: Here it is, Judge Meyers.

6 THE MASTER: Wait, you keep yours and
7 I will use the one in evidence.

8 MR. MITCHELL: Judge Meyers, for the
9 record, the Exhibit E -- the Exhibit E-55
10 is a reproduction of the document in --
11 that I am asking the witness about claims
12 B-1541, the B-1541, which I am asking the
13 witness, that is H-1-(11), is the original
14 package, am I correct, Counsel?

15 MS. LEVATINO: Yes.

16 Q All right, Judge Carrillo, I notice for example
17 in B-1541 that there appears to be the white
18 form.

19 A Yes, sir.

20 Q And I will hand them to you, that is marked H-1-(11).

21 A Yes, sir.

22 Q Am I correct?

23 A Yes, sir.

24 Q Along with the Yzaguirre -- the Abel Yzaguirre
25 signature on the tickets?

1 A Yes, sir.

2 Q All right, now there was delivered before the
3 Court, as a part of that package, these white
4 slips which I hand you which are also marked
5 E-1-(11), which appear to be what we have been
6 calling as chits, am I correct?

7 A Yes.

8 Q All right, I will hand those to you. Now, Judge
9 Carrillo, on A-3040, there appears to be fifteen
10 chits and my analysis there is thirty-five dollars,
11 fifteen twenty dollars and five twenty-five dollars
12 for a total of twenty-five total orders.

13 THE MASTER: I am lost.

14 MS. LEVATINO: Excuse me, Counsel, are
15 you taking about A-3040 or B-1541?

16 MR. MITCHELL: I am sorry, I stand
17 corrected. There should not have been a
18 reference to A-3040. It should have been
19 B-1541 and I stand corrected.

20 Q According to my analysis on B-1541, what you are
21 holding in your hand, Judge Carrillo.

22 A Yes.

23 Q You can assume, so we can move on, it is twenty-
24 nine total orders and there is seven for thirty-
25 five dollars, one for twenty-five dollars and five

1 for thirty dollars and one for ten dollars and
2 fifteen for twenty dollars for a total of twenty-
3 nine.

4 Now, there appears to be only, however, I
5 counted thirteen white chits and you counted
6 fourteen white chits, am I correct, for twenty
7 dollars each?

8 A (Witness counting fifteen.)

9 Q Now, we count fifteen, well, all right.

10 THE MASTER: All right, now where is
11 that reproduced here -- oh, I see, wait, let
12 me --

13 MS. LEVATINO: It is on page 380, 381,
14 382 and 383.

15 THE MASTER: All right.

16 MR. MITCHELL: Judge, I want to hand
17 these to you.

18 (Handed to the Master.)

19
20 Q Judge Carrillo, have you looked at them because
21 I am going to hand them to you, Judge.

22 A Yes, sir.

23 Q Obviously, they are not chits in support of each
24 item ordered? Am I correct?

25 A Yes, sir.

1 Q All right, and likewise, it appears that the
2 chits have been stapled and the stapling removed,
3 and they appear not to support each and every
4 item, am I correct, Judge Carrillo?

5 A Yes, sir.

6 Q Now, look at A-3040, Judge Carrillo, open that
7 one up.

8 Now, Counsel had previously asked you about
9 A-3040 and that would be H-1-(4).

10 MR. MITCHELL: Am I correct, Ms.

11 Levatino?

12 MS. LEVATINO: Yes, that appears
13 beginning on page 360 in Examiner's Exhibit
14 E-55 and runs through page 363.

15 Q All right, now, Judge Carrillo, in it, and I
16 believe -- have you counted the yellow chits
17 again?

18 A Fifteen.

19 Q All right. Fifteen yellow chits and if you will
20 take my word for it, there are twenty-five orders,
21 five for thirty-five dollars, fifteen for twenty
22 dollars and five for twenty-five dollars indicating
23 that they are not yellow chits in support of the
24 order, am I correct?

25 A Yes, sir.

1 Q Let me have those and I would like to hand them
2 to the Court to indicate the actual physical con-
3 dition of the chits, that is, that they appear to
4 be stapled and the Court can make his own physi-
5 cal examination.

6 MS. LEVATINO: Pardon me, Counsel, how
7 many orders did you say? I didn't hear you.

8 MR. MITCHELL: Counsel, I counted the
9 number of orders at five for thirty-five
10 dollars, fifteen for twenty dollars and
11 five for twenty-five dollars. That might
12 be correct and it might not be.

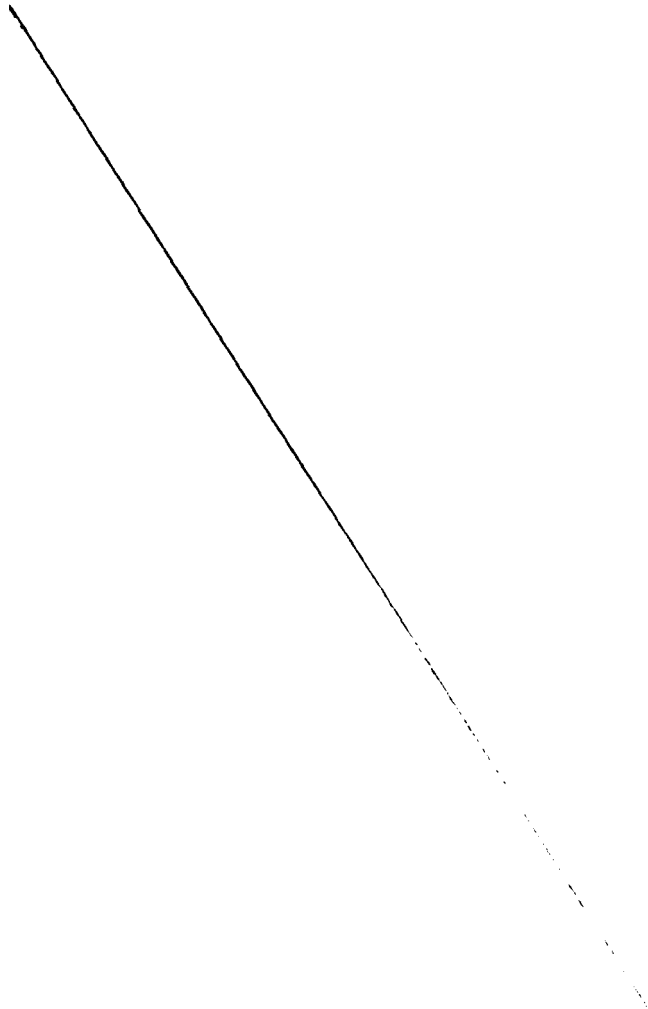
13 MS. LEVATINO: Are you just adding up
14 each name and number that appears on every
15 line, not by slip numbers?

16 MR. MITCHELL: Right, I'm taking the
17 orders on Yzaguirre's testimony, being that
18 she filled that out and I'm taking those
19 orders and comparing them with the chits
20 that are in there.

21 Our position being, Your Honor, it has
22 no reflection whatsoever on Counsel, that
23 the chits don't go with the Exhibits as
24 indicated from the physical condition of the
25 chits, as indicated from the disparity in

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the number of chits, from the order fulfilled
and the official order on the form.



1 Q Now, let me hand you 2015, Judge Carrillo, and
2 that would be in Examiner's Exhibit 55, what is
3 that?

4 MS. LEVATINO: What is the designation?

5 MR. MITCHELL: H-1 (2).

6 Q All right. Judge Carrillo, there we have four
7 blank checks, am I correct?

8 THE MASTER: Wait. This is something
9 written on the back of a blank check.

10 MR. MITCHELL: Yes, sir. I am going to
11 hand them to the Court.

12 THE MASTER: All right.

13 Q That is four blank checks and eleven yellow chits,
14 am I correct?

15 A Yes.

16 Q Now, if you will take my word for it, in counting
17 the orders, there appear to be fifteen orders and
18 a total of twenty-eight orders and only fifteen
19 supporting chits?

20 A Yes, sir.

21 Q And finally, Judge Carrillo, I am going to hand you
22 C-2139. That would be Examiner's Exhibit E-55 --

23 MS. LEVATINO: Page 405 and running
24 through Page 407.

25 MR. MITCHELL: All right.

1 Q All right. Now, the number of white chits you
2 just counted are fifteen in number?

3 A Yes, sir.

4 Q Now, if you will accept my word for it, there are
5 a total of twenty-seven orders there in the jacket,
6 E-55, Page 405?

7 A Yes, sir.

8 Q Now, Judge Carrillo, the white chits here, there
9 was reference, and your testimony earlier as to
10 Mr. Cleofus Gonzalez's testimony before the House
11 Subcommittee --

12 A Yes, sir.

13 Q And did I ask you to make a page reference on
14 that?

15 A Yes, sir.

16 Q What is that page reference?

17 A Page 88, I believe, at Line 12 -- well --

18 Q Get the full, complete body of it, Judge Carrillo.

19 A All right.

20 MS. LEVATINO: Pardon me, Counsel, excuse
21 me for the reference, but when you are
22 referring to House Committee articles, give
23 me the volume number.

24 MR. MITCHELL: It is the direct testimony
25 of Cleofus Gonzalez, questions by

1 Representative Maloney, Page 87.

2 MS. LEVATINO: I believe that is Volume
3 1.

4 MR. MITCHELL: Thank you.

5 Q (By Mr. Mitchell) I have asked you to pick out
6 that testimony where you stated earlier that it
7 would appear as regards the yellow chits.

8 A Yes, sir. I will read it.

9 Q All right.

10 "Question. When you get those from the store
11 owner, what do you do with them?"

12 "Answer. After I make those orders?"

13 "Question. No. When the store owner
14 brings them to you, what is the next thing that
15 you do?"

16 "Answer. The county orders or these white
17 slips here?"

18 "Question. No. The grocery store man that
19 brings you the white slip."

20 "Answer. Yes."

21 "Question. Now, he brings those to you?"

22 "Answer. Those white slips. He brings
23 those. Yes."

24 "Question. Now, what do you do with them?"

25 "Answer. I would make a county welfare order

1 and write all these names, all I could on one
2 page, and take them back to him."

3 "Question. Would you take the white slips
4 with your county order?"

5 "Answer. No, sir. Those white slips, I just
6 throw them away."

7 "Question. But you didn't throw these away?"

8 "Answer. No. I kept them for some reason."

9 "Question. What reason?"

10 "Answer. I knew I was doing something wrong
11 and maybe I was going to get in trouble one of
12 these days, and I wanted some evidence."

13 All right, Judge Carrillo --

14 MR. MITCHELL: Let's see if I can't --
15 may I go off the record, Judge?

16 THE MASTER: Yes.

17
18 (Whereupon, an off-the-record
19 discussion was had.)
20

21 Q (By Mr. Mitchell) All right, sir. Judge Carrillo,
22 let me ask you some questions.

23 Beginning now in 1971, does December of
24 1974, your place in that picture, the welfare
25 picture changed, is that your testimony?

1 A Yes.

2 Q What -- specifically, I would like to have you
3 refer your answer to my questions to these
4 exhibits that we have gone over.

5 THE MASTER: Give the time reference
6 again.

7 MR. MITCHELL: That would be those that
8 appear in E-55, 360, E-55, 353 and E-55,
9 404. I will hand them to you, Judge Meyers.

10 THE MASTER: All right. Here is another
11 one.

12 Q (By Mr. Mitchell) I have them in front of you,
13 Judge Carrillo, and there are in August, 1972,
14 October, 1970, and July, 1970, am I correct?

15 A Yes, sir.

16 THE MASTER: And here is one in 1971.
17 It is H-1 (11).

18 Q (By Mr. Mitchell) So it looks like we are talking
19 about four varying in time from the latter part of
20 1970 to 1972, correct?

21 A Yes.

22 Q Judge Carrillo, looking at the originals of these
23 chits, can you tell us when, first of all, the
24 white chits were written by you?

25 A Back in the sixties.

1 Q It is your testimony that if found in a jacket
2 with an official welfare order, an order signed
3 by Abel Yzaguirre, they have been misplaced in
4 there incorrectly?

5 A Yes, sir.

6 Q You are understanding what I am asking?

7 A Yes, sir, perfectly.

8 Q You have told me about Claim 1541 appearing at
9 H-1 (11) and being in E-55 --

10 MS. LEVATINO: That is the sixties
11 series -- I am sorry, eighty series, starting
12 at 380.

13 Q (By Mr. Mitchell) I hand you the same page again
14 This is Claim 2015.

15 A Yes, sir.

16 Q Look at it, please.

17 A Yes, sir.

18 Q And that is E-55 at Page 353?

19 A Yes, sir.

20 Q The chits signed by you on the checks, are they
21 not?

22 A Yes, sir.

23 Q And the yellow slips?

24 A Yes, sir.

25 Q You note the date on the official welfare form is

1 in the seventies?

2 A Yes, sir.

3 Q Can you tell us under oath whether or not these
4 chits were written at the time the supporting
5 documents were?

6 A They had to be back in the sixties.

7 Q It is your testimony then that if they appeared
8 in the jacket, A-2015, they were taken from one
9 point of time in the sixties and put into a jacket
10 in the seventies?

11 A Yes. I cannot explain it, but they were put in
12 there.

13 Q Why?

14 A I was not making those orders in those years. They
15 were made before 1967.

16 Q I hand you 3040. These have been stapled some-
17 where else, isn't that correct?

18 A Yes.

19 Q And looking at that claim jacket, and that is
20 3040, which is E-55, 360 and you are looking at
21 the yellow chits?

22 A Yes, sir.

23 Q Are those -- strike that.

24 The official welfare form appears to be 10-18-70.

25 A Yes.

1 Q And Mr. Abel Yzaguirre signed the form in the
2 seventies?

3 A Yes.

4 Q Do you have any independent recollection of when
5 these yellow slips were made?

6 A I would not have a recollection as to the exact
7 date, but it would have been before 1967.

8 THE MASTER: As you put those back
9 together, would you hand them to me again?

10 MR. MITCHELL: Yes, sir.

11 THE MASTER: Each one.

12 MR. MITCHELL: All right.

13 Q (By Mr. Mitchell) I hand you now -- I believe I
14 asked you about 1541, did I not?

15 A Yes, sir.

16 Q They are the official forms and B-1541, E-55,
17 Page 80, that appears to be in June, 1971?

18 A Yes, sir.

19 Q Can you tell us if these chits out of that file
20 went with those claims, if you know?

21 A This one went back as far as '71, which would be
22 before 1967.

23 Q These chits, how do they interrelate with the
24 forty-four books you have here and which we have
25 an example of marked as R-99, if they do?

1 A I stated that we used this for some time. When
2 we ran out of these forms, we didn't have any of
3 those forms and then we used this as a temporary
4 way of getting it to the different stores or
5 doctors or what have you, the authorization for
6 granting of the orders.

7 Q All right, sir. And finally --

8 A You see, there was no need -- notice this one
9 here.

10 Q You are talking about the ones in C-2139?

11 A Yes, sir.

12 C Which appeared at E-55, Page 405?

13 A Yes, sir.

14 C What about those, those are slightly different?

15 A Yes. They were mimeographed at the school tax
16 office. That was before 1967, before my brother
17 came in and certainly after I got out of the
18 school tax office and I resigned in 1970 from
19 there.

20 Q You notice all of the documents are dated 1972?

21 A That is impossible.

22 Q Are you quite sure the mimeographed forms were
23 discontinued by '72?

24 A Yes, I remember the occasion, definitely.

25 Q Now, Judge Carrillo, as to -- I am going to put

1 these back and they are available to counsel for
2 examination.

3 MS. LEVATINO: I would like to look at
4 them at the recess, please.

5 THE MASTER: I had not planned on a
6 recess, but I will take one.

7 MS. LEVATINO: No, that is fine, I will
8 wait until later, Your Honor.

9 THE MASTER: All right.

10 Q (By Mr. Mitchell) Now, Judge Carrillo, Article 1
11 further continues and states specifically that you
12 received goods and merchandise from the Cash
13 Store of three hundred dollars a month.

14 I asked you at the outset of my examination
15 whether there was such a conspiracy between you
16 and your brother.

17 A There was no such conspiracy.

18 Q Did you have authority from the Commissioners
19 Court, from January, 1971, to December, 1974,
20 Judge Carrillo, in connection with the welfare
21 program in Duval County?

22 A My authority -- I have never been told by the
23 Commissioners Court I could not give them out. I
24 have discontinued that on my own. I didn't have
25 the time for it and when folks came to me, I would

1 send them over to my brother or ask them to see
2 Cleofus.

3 Q I think some of those jackets in evidence, and I
4 refer to this only as to show in 1975, this is all
5 Cleofus Gonzalez?

6 A Yes, sir.

7 Q I am going to hand you now E-55.

8 First of all, you note in E-55, Page 351, did
9 you have anything to do with the execution of
10 that form?

11 A No, sir, I did not.

12 Q Did you have any conversation with your brother as
13 regards Mrs. Elvira DeLeon as to the composition of
14 that, E-55, Page 351?

15 A No, sir.

16 Q How about to the Yzaguirres, the invoices of the
17 groceries?

18 A No, sir, I did not.

19 Q I will ask you as to Duval County welfare form on
20 Page 352, three of them, on Page 354, of E-55, on
21 Page 355 and so on, did you have any conversations
22 with your brother about these?

23 A No, sir.

24 Q How about the Cash Store as regards these little
25 invoices here?

1 A No, sir.

2 Q Now, there is -- there are some tapes in E-55 and
3 you have been questioned about them -- no, that
4 is a separate exhibit.

5 MS. LEVATINO: That is E-56?

6 MR. MITCHELL: No, E-59.

7 MS. LEVATINO: Yes.

8 Q (By Mr. Mitchell) E-59, Counsel asked you about
9 these. They appear to be adding machine tapes
10 and in varying handwritings.

11 A Yes.

12 Q And varying dates?

13 A Yes, sir.

14 Q Looking at E-59 on Page 543, are all of those in
15 your handwriting?

16 A No, this has to do with my own personal account
17 at the Cash Store and signed by these different
18 people.

19 Q That is what I was going to ask you. E-59, does
20 it have anything to do with the welfare program?

21 A No, it does not.

22 Q And your own personal account you had one at that
23 store?

24 A Yes.

25 Q How was that account kept separate and apart from

1 any possible welfare recipients that happened to
2 go over there in connection with the welfare
3 program?

4 A What the Cash Store used to do, if I were to send
5 someone there for the twenty or twenty-five dollar
6 orders for groceries, they would charge that,
7 those groceries to me, because if the county didn't
8 pay for them, and I had authorized the taking of
9 the groceries, then I was responsible for them.

10 What they would do, they would charge that
11 amount of money to me. Then, when they got paid
12 by the county, they credited my account for that
13 amount of money.

14 Q So in effect you were guaranteeing the qualifications
15 of the welfare recipients, as far as you had
16 anything to do with them?

17 A Yes, just like signing an order or a note at the
18 bank. I would be given credit if the county paid
19 the bill.

20 Q Judge Carrillo, you have heard Mr. Meek's testimony
21 and other witnesses testimony as to how the
22 Commissioners Court acted on various claims and
23 they met the first week of each month?

24 A I think it is the second Monday of the month.

25 Q There would be no way of telling, until the

1 Commissioners Court acted, whether or not those
2 were allowed?

3 A That is right and some they did not allow.

4 Q Have you received any communications from the
5 Commissioners Court that persons you authorized
6 for services to be given to were not qualified?

7 A Yes. For example, if you had a two thousand dollar
8 budget and it turned out you issued two thousand
9 two hundred dollars worth of orders, they would
10 give you two thousand and you were two hundred in
11 a hole and I would have to call the different
12 people and say well, look, I owe you two hundred
13 dollars for next month and either that or break
14 it down and that was the way it went.

15 Q All right. The groceries delivered to you on your
16 personal account were paid for by you?

17 A Yes, sir, and there are checks here to evidence
18 that.

19 Q Let me move to the article that Mr. Flusche
20 questioned you about, that is Article 2.

21 A All right, sir.

22 MR. MITCHELL: Might I have a minute,

23 Your Honor?

24 THE MASTER: Yes, sir.

25 Q (By Mr. Mitchell) A question in regard to the

1 workload in the District Attorney's office, I
2 believe there was some questions about criminal
3 cases and you answered to a question by
4 Mr. Flusche that the District Attorney had
5 resigned.

6 A Yes.

7 Q How long a period was that?

8 A One year, approximately.

9 Q Were there any felony cases tried during that
10 period of time?

11 A The county attorney would not try the felony
12 cases. The governor refused to appoint a district
13 attorney and suggested to the court to appoint a
14 special prosecutor, but I didn't feel like I ought
15 to do that, so I didn't do that.

16 MR. MITCHELL: I might move to one that
17 I don't intend to waive, and I would like to
18 ask a question or two put to counsel on the
19 plea.

20 My client exercised the right of self-
21 incrimination and he would not take the same
22 plea, and the court made him go ahead and
23 answer.

24 THE MASTER: I am not sure about that
25 procedure. I think if you wanted to ask him --

1 this is direct.

2 MR. MITCHELL: I don't believe I will
3 chance the waiver, Your Honor.

4 THE MASTER: All right.

5 Q (By Mr. Mitchell) Judge Carrillo, on Article 4,
6 did you have a full-time welder?

7 A Yes, I did.

8 Q And I believe the records reflect you paid him
9 personally?

10 A Yes, sir. Mr. Chapa testified I paid him personally.

11 Q And you did not appropriate, therefore, from
12 January, 1971, to June, 1974, for your own benefit
13 the service and use of Francisco Ruiz?

14 A I did not.

15 MR. MITCHELL: I don't think, Your
16 Honor, I will go into 5.

17 THE MASTER: All right.

18 Q (By Mr. Mitchell) The total time of the backhoe
19 use, and this is No. 6, how long was it out there?

20 A I figured about two or three hours.

21 Q All right. Judge Carrillo, I am going to now ask
22 you questions about the series Mr. Odam asked you
23 about and that would be beginning with No. 8.

24 A All right.

25 THE MASTER: Skipping No. 7.

1 MR. MITCHELL: I am sorry, 7 is what I
2 meant.

3 Q (By Mr. Mitchell) Now, Judge Carrillo, we have
4 the benefit in the record of R-19, ^{91 92 93} 29 and 39,
5 which are identified as an analysis made up by
6 the Attorney General's office of the input into
7 the Benavides Implement and Hardware bank account.

8 A Yes, sir.

9 Q Let's look on Page --

10 MR. MITCHELL: This is R-⁹¹19, Your Honor.
11 This is beginning 12-12-72. That would be
12 about Page --

13 THE MASTER: Do you want it?

14 MR. MITCHELL: I would like the Court
15 to keep a copy. I have a duplicate made for
16 the witness.

17 THE MASTER: All right. 12 what?

18 MR. MITCHELL: 12-12-72.

19 THE MASTER: Well, the pages aren't
20 numbered.

21 MR. MITCHELL: No, they are not.

22 THE MASTER: It is the fifth page.

23 MR. MITCHELL: All right.

24 Q (By Mr. Mitchell) Now, Judge Carrillo, if you
25 recall, in answer to a subpoena, R-⁹¹19 and ⁹²92 and

1 993 were processed.

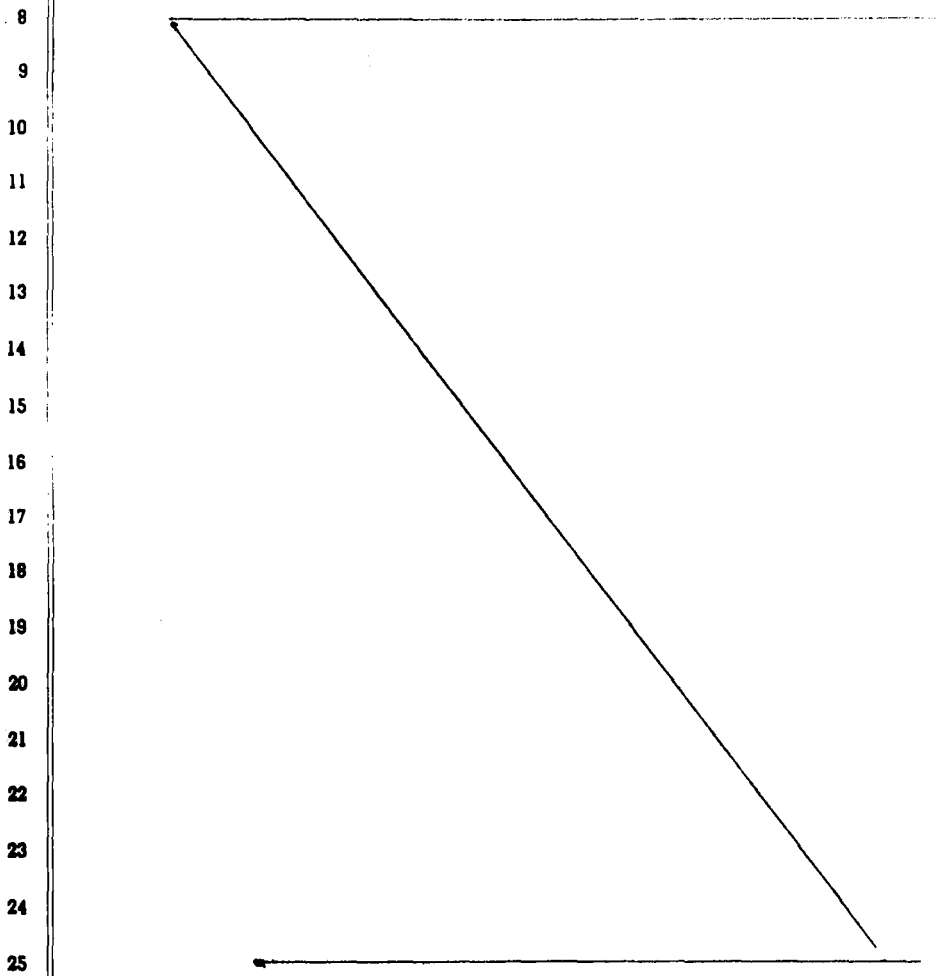
2 A Yes.

3 Q And they were work sheets made up of checks into
4 Benavides Implement and Hardware?

5 A Yes, sir.

6 Q Do you recall that?

7 A Yes, sir.



1 Q The checks from Duval County?

2 A Yes, sir.

3 Q Checks from the water and conservation district
4 which would be ninety-three, let's see, Duval
5 County Conservation and Reclamation District?

6 A Yes, sir.

7 Q And R-92 which was the Benavides Independent
8 School District?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q Now, you will note the position, of course, of
13 the Articles of the Specifications here that you
14 entered into some -- first of all, a partnership
15 in May of 1971?

16 A Yes, sir.

17 Q With Mr. Couling?

18 A Yes, sir.

19 Q You had no partnership, I believe you said?

20 A I had no partnership whatsoever.

21 Q Is that in your testimony that covers March,
22 April, May, June or any time?

23 A It covers all during my lifetime.

24 Q All right. Secondly, as to the bulldozer opera-
25 tion in December, there was an allegation of a

1 conspiracy to rip off the county for monies to
2 pay for that bulldozer?

3 A Yes, sir.

4 Q All right, now, the total cost -- let me ask you
5 some overall questions. First of all, the checks
6 that came in April of 71, to that period of time,
7 they are in evidence here, of course, and are
8 reflected on your tax return in a manner which
9 the record already speaks, am I correct?

10 A Yes, sir.

11 Q And you will recall that the -- that your testi-
12 mony is, and except in certain instances where
13 those checks were labeled, that those income
14 items were in the form of rents?

15 A Yes, sir.

16 Q On equipment?

17 A Yes, sir.

18 Q All right, now the reason I pointed that up, that
19 is on that page in R-91, that is a detailed
20 analysis contained in R-91 of the rent income,
21 am I correct, Judge Carrillo?

22 A Yes, sir.

23 Q In the Benavides Implement and Hardware?

24 A Yes, sir.

25 THE MASTER: Now where are you?

1 MR. MITCHELL: I am on that page, Judge,
2 on page that starts 12, 1271, and that is in
3 R-91.

4 THE MASTER: 12-12-71?

5 THE WITNESS: 1972.

6 MR. MITCHELL: Let me see it.

7 THE MASTER: It is not on the right page.

8 MR. MITCHELL: No, here we are, Judge
9 Meyers, it says 12-12-72, Judge Meyers.

10 THE MASTER: Well, no, that starts
11 from 73.

12 MR. MITCHELL: Right, but the top entry
13 there was 12-12-72, but it does start in 73.

14 THE MASTER: Oh, all right.

15 Q You will note, Judge Carrillo, beginning in 73,
16 that this analysis does undertake to identify the
17 rent of Benavides Implement and Hardware Company
18 of various pieces of equipment, am I correct?

19 A Yes, sir.

20 Q Now, I haven't -- let me see if I can get them
21 all, the rent on the tractors, right?

22 A Yes, sir.

23 Q The rent on -- that is your individual property,
24 and Ramiro's individual property, read them there
25 as I go along and see if you can find some individual

1 property.

2 A Rents on tractors, county roads, Ramiro Carrillo
3 and Brothers.

4 Q Rent on Ramiro Carrillo and Brothers personal
5 property?

6 A Yes, sir.

7 Q Rent on Farm and Ranch property, see if there are
8 some entries on there.

9 A The second payment on barbed wire, Farm and Ranch.

10 MR. ODAM: Pardon me, if I might, for
11 my own clarification, are we reading for
12 1973 or 1972 or --

13 THE MASTER: 1973.

14 THE WITNESS: 1973.

15 MR. ODAM: I thought we were on a
16 paragraph about a check in 1971.

17 MR. MITCHELL: I am making these questions,
18 Mr. Odam, as preparatory to going back to
19 these entries in R-91 on that paragraph, but
20 my questions now relate to Roman VII on
21 through and including the last one.

22 MR. ODAM: For my own clarification,
23 is there a page in R-91 that relates to
24 income reported or -- or on 1971?

25 MR. MITCHELL: Yes, there is but there

1 is no breakdown 'n the Exhibit furnished me
2 by the Attorney General.

3 MR. ODAM: All right.

4 MR. MITCHELL: I'm now asking some
5 basic questions as regards the Exhibit.

6 Q Now, Judge Carrillo, you understand that Mr.
7 Couling testified under oath that there was never
8 any income to his operation from rental from you,
9 your brother, Farm and Ranch or anybody, do you
10 recall that testimony?

11 A Yes, sir, I do.

12 Q Well, it appears that on at least beginning in
13 January of 1973 that he took in a lot of money
14 in the Benavides Implement and Hardware on
15 account of rent from various pieces of equipment,
16 isn't that correct?

17 A Yes, sir.

18 Q All right, now as a matter of fact, Judge Carrillo,
19 do you know that the -- let's take going back to
20 70, December of 70 or the year of 70, the rental
21 of equipment was handled how, by you on your per-
22 sonal equipment or by Farm and Ranch, a partnership
23 of which you owned fifty percent.

24 A No, the rental of equipment was handled through
25 the Farm and Ranch. However, that equipment that

1 was there that belonged to me, as different from
2 that which belonged to my brother and myself on
3 a partnership basis, and he had him several
4 personal rental equipment pieces also.

5 Q All right.

6 A It was paid to me directly.

7 Q All right, now let me ask you this, the physical
8 grounds for the Farm and Ranch, describe them,
9 how big was it?

10 A The Farm and Ranch Supply is a yard and also is
11 large, it used to be a lumber yard.

12 Q All right.

13 A It is a large building that I bought, lock, stock
14 and barrel, including the lumber and pipes and
15 materials and sewage equipment and things like
16 that.

17 Q All right. Was the equipment kept there that
18 belonged to Farm and Ranch, as a usual rule?

19 A Yes.

20 Q Was it a block, half a block, two blocks, how
21 big was it?

22 A It is a good half a block.

23 Q And it is fenced?

24 A It is fenced, and partly by fence and partly by
25 the buildings themselves, which go right down

1 the line, the property line.

2 Q All right. Now the evidence indicates that there
3 were -- there was a rental of equipment owned by
4 Farm and Ranch, both to governmental agencies and
5 non-governmental agencies at a time, say, from
6 December, 70, and back.

7 A Yes, sir.

8 Q Who handled the rental, Judge Carrillo, if you
9 know, who did the actual mechanics of renting?

10 A The renting was handled through the Farm and
11 Ranch, either through my brother, Ramiro or Cleofus
12 Gonzalez.

13 Q Did you have anything to do with the day to day
14 operations?

15 A No, I was not there. The equipment was, but I
16 was not there handling any of it at all.

17 Q There was also evidence of equipment rented by
18 Farm and Ranch that had to be in turn rented by
19 Farm and Ranch?

20 A Yes, sir.

21 Q That would be equipment that was not owned or
22 depreciated, am I correct, by Farm and Ranch?

23 A Well, for example, if you needed an air compressor,
24 we would go out and get us an air compressor and
25 bring it in and lease it to you and make some

1 money in the process.

2 Q The tax consequences would be that there would
3 be a deduction for rent paid for the compressor,
4 is that correct?

5 A Yes, sir, if I rent --

6 Q Okay.

7 A If I rent an air compressor, say, for a hundred
8 dollars and I lease it to you for two hundred
9 dollars, I make a hundred dollars on the trans-
10 action.

11 Q Now, Judge Carrillo, did you --

12 MR. MITCHELL: Strike that.

13 Q Now, your personal equipment that might have
14 been rented, where would it be kept as a usual
15 rule?

16 A There was two or three trucks, and one -- I'm
17 trying to think of the name of the tractors,
18 Massey-Ferguson keeps coming back to me, it was
19 not a Massey-Ferguson.

20 Q A Farm-all?

21 A Internation Harvester, a Farm-all tractor.

22 Q All right.

23 A And a post hole digger with a small tractor was
24 kept there on the premises and then the rest was
25 kept at a warehouse, at which is down the road

1 from the Farm and Ranch Supply.

2 Q All right now, Judge Carrillo, if you will take
3 the figure in 91, 92, 93, there is a total volume
4 business of around four hundred thousand dollars.
5 That is not exact, but it is --

6 A Not quite, but just approximately, which includ-
7 ing the twenty thousand dollars that I paid
8 Benavides Implement and Hardware which is not
9 reflected here, and this is only from the govern-
10 mental agencies and myself.

11 Q All right.

12 A That might exclude other customers that they might
13 have had.

14 Q In other words, you heard the testimony that Mr.
15 Couling had that Benavides Implement and Hardware
16 was a part time operation?

17 A Yes, sir.

18 Q Opened it every now and then?

19 A Yes, sir.

20 Q As a matter of fact, it appeared that from the
21 period shown there in R-91, R-92 and R-93, that
22 those governmental agencies alone and the record,
23 of course, speaks the dates of the sales, whether
24 he was opened or closed, were right at four hundred
25 thousand and those Exhibits do not purport to

1 reflect his other business, am I correct?

2 A That is correct.

3 Q All right, now, the total of the checks, Judge
4 Carrillo, in E-69, 75, 76, 82 and --

5 MR. MITCHELL: Strike that.

6 Q In 82 are about seven thousand four hundred and
7 seventy-six dollars that he did with you?

8 A Yes, sir.

9 Q And if you add all that up -- as Mr. Odam did, in
10 some fashion, added on payments as regards the
11 bulldozer, which I think came to a total -- and
12 I took his figures down, something like thirty
13 thousand dollars, correct?

14 A Thirty thousand dollars?

15 Q Well, the twenty thousand that you had paid?

16 A And the eleven thousand dollars that he had
17 received from the county.

18 Q That's right, that is thirty-one thousand dollars,
19 I'm talking about business -- I'm talking about
20 checks that you received, this seven thousand
21 four hundred and seventy-six dollars was all
22 that I --

23 A -- checks that I received.

24 Q Yes, sir.

25 A I received seven thousand four hundred and some

1 odd dollars plus I believe also the fifty-seven
2 hundred dollars.

3 Q All right.

4 A That would be what I received.

5 Q All right. Now, the witness Couling says you're
6 his partners.

7 A Yes, sir.

8 Q And, of course, you heard him testify he never
9 has accounted to you or never has reported it and
10 certainly you never reported it, am I correct?

11 A I never have because I don't own any of it.

12 Q The Exhibits indicate that you got -- that there
13 were some sales, some transactions then and there
14 was one check and we have run it down, a thousand
15 and eighteen dollars that we have -- that was not
16 reported out of all of those checks. Do you
17 recall that?

18 A Yes, sir. This today was the first time that I
19 realized that that check has not been reported.
20 I seems to me that all checks were reported.

21 The policy that I have is that every check
22 that I receive goes to my office and my office
23 will send it out for deposit only to the bank,
24 and then however we were having trouble and Mr.
25 Kirkland got on me a couple of times because

1 sometimes I would lump checks together, they
2 would be five or six checks and they were out --
3 the total amount of the deposit showing five
4 thousand dollars, which would indicate that
5 there was a five thousand dollar check, but, in
6 fact, it might be five different checks for a
7 thousand dollars each or something like that.

8 Then, we would have trouble identifying the
9 checks because he would have to go back and he
10 would call when he was preparing the income tax
11 returns and he would say, now look, I have this
12 deposit here that would either say list or checks
13 and it wouldn't have any notations. Now, going
14 back from memory, it was quite a banking activity,
15 we would have to go back to the bank and try to
16 run down that deposit and try to run down the
17 checks that were deposited that made up that
18 deposit and sometimes it was impossible to do so.

19 Q All right. Now, the total connection that you
20 have had with the Benavides Implement and Hard-
21 ware is reflected, I believe, in your testimony
22 in the Exhibit 151 series, am I correct, Judge
23 Carrillo?

24 A Yes, sir.

25 Q Now, Judge Carrillo, I noticed in 182-A and

1 and 183-A, I noticed the notations IMP.

2 A Yes, sir.

3 Q First of all, who made up the 182-A and the
4 183-A?

5 A The 182-A, page number 1, I made it, that shows
6 equipment bought.

7 Q All right.

8 A It is a 1972 Ford pickup, one 1973 Buick, three
9 1965 Dodge pickups, one kitchen trailer, one
10 gooseneck trailer, one feed mixer and one bunk-
11 house trailer.

12 MR. ODAM: Is that 183?

13 THE MASTER: I thought he said 182-A,
14 page 1.

15 A 182-A, page 1.

16 MR. ODAM: All right. I stand corrected.

17 THE MASTER: It is really page 2.

18 THE WITNESS: It is page 2. Page 1 is
19 also a summary of thirty-two hundred dollars
20 evidently.

21 Q All right, Judge.

22 A I don't know who made that.

23 Q All right, who made page 3?

24 A Page 3 is -- I made part of it and this looks
25 like Mr. O. D. Kirkland's handwriting. He made

1 part of that.

2 Q All right, and the next page, page 4?

3 A That, I don't know who made that, that is not
4 mine.

5 Q All right. The next page, which would be page 5?

6 A That is not my handwriting.

7 Q Well, it is a mixture of handwritings.

8 A It is a mixture, that's right, it is several.

9 Q The work papers?

10 A They are work papers coming out of either my
11 office or through working together with Mr.
12 Kirkland's office.

13 Q And the next page 6 would be --

14 A That is not my handwriting. Like I say, it is
15 again -- Mr. Kirkland's writing on part of it.

16 Q All right, a mixture again?

17 A It is a mixture.

18 Q How about the next page, Judge Carrillo, now the
19 fifty-six fifty on that page, whose handwriting
20 is that in on E-182-A, do you know?

21 A No, I don't.

22 Q Is it a mixture?

23 A It is a mixture.

24 Q Well, he -- Mr. Kirkland testified he put, "fees"
25 out to the side of it, opposite it.

1 A Yes, sir, because sometimes Mr. Kirkland would
2 call my office to try to find out what a particu-
3 lar deposit was about, and unless the personnel
4 in my office knew, they would ask me.

5 I believe that insofar as the Benavides
6 Implement is concerned, I told them that Benavides
7 Implement was mostly rentals, rent.

8 Q All right, and it is so reflected, is it not?

9 A Yes, sir.

10 Q The IMP, what does that indicate?

11 A That is Implement, that is Benavides Implement
12 and Hardware.

13 Q Had you had a conspiracy with Benavides Implement
14 and Hardware, you certainly could have hidden it
15 a lot better than you did, wouldn't you, Judge
16 Carrillo?

17 A Yes, sir.

18 Q Look, for example, on page in 183-A, the word
19 implement appears, that is, appears in several
20 locations.

21 Now, looking on the first page, for example,
22 hurriedly, there is one entry on it and on page 3
23 there is --

24 A Well, let's see.

25 Q On page 4.

1 A This would have been in November of 19 -- I'm
2 trying to find it so that we could locate over
3 here the month of November.

4 Q At any rate, it does reflect the IMP, which is
5 for Implement, is that correct?

6 A Yes, sir.

7 Q All right, I notice --

8 A This is November of 72, he paid rental to me of
9 nine hundred dollars and he collected approximately --

10 Q Twenty-six hundred and ninety dollars, didn't he?

11 A No.

12 Q How much did he collect?

13 A Approximately six thousand dollars or seven thou-
14 sand dollars.

15 Q He paid you for rental of equipment of how much
16 again?

17 A Nine thousand dollars.

18 Q And if you look over --

19 A I mean nine hundred dollars.

20 Q All right, if you look at R-91, he got how much?

21 A Approximately seven thousand dollars.

22 Q From the Duval County?

23 A Yes, sir.

24 Q As a matter of fact --

25 A Well, this is --

1 Q Judge Carrillo --

2 A This is just one.

3 Q All right, there would be another one from --

4 A This is from Duval County. There would be another
5 one for that month, from Benavides -- from the
6 school district.

7 Q Yes.

8 A And another one from --

9 Q Well, look at the Benavides -- the water district
10 and see if he didn't collect some money from it
11 for rental of equipment.

12 A Yes.

13 Q There are equipment rentals on it, too, aren't
14 there on R-93?

15 A In November there are approximately fifteen
16 hundred dollars here.

17 Q All right, so how much did he get in November
18 from the water district and from Duval County,
19 just looking at R-91 and R-93?

20 A Well, R -- it is approximately -- in other words,
21 it is approximately eighty-five hundred dollars
22 and we still have another one to go.

23 Q All right, that is about -- let's say roughly
24 one month's business of rental for Benavides
25 Implement and Hardware was the difference between --

1 MR. MITCHELL: Strike that.

2 Q That was how much again?

3 A Between the water district and the county of
4 approximately eighty-five hundred dollars and
5 there are probably some more there from the
6 school.

7 Q And he paid you how much?

8 A Nine hundred and ninety-five dollars.

9 Q That is not bad for a man that doesn't have any
10 equipment to rent, is it?

11 A No, sir.

12 Q Judge Carrillo, have you had an opportunity to
13 add up all of the deposits in the Rio Grand City
14 Bank made by Mr. Couling over a period of time,
15 the period of time reflected by it?

16 A I don't believe so, Mr. Mitchell.

17 Q All right.

18 A I may have, but I have been adding up different
19 things.

20 Q Those are substantial sums, they are deposits,
21 all the way as high as eight, nine, ten, as high
22 as twelve thousand dollars a month for the life
23 of that Exhibit?

24 A Yes, sir.

25 Q Into his account for the Benavides Implement and

1 Hardware account in the Rio Grande City Bank?

2 A Yes.

3 Q Well over a quarter of a million dollars, you
4 didn't have an interest in that, did you?

5 A No, sir.

6 Q Here it is.

7 MR. MITCHELL: I have roughly three
8 hundred and twenty thousand dollars, give or
9 take fifty thousand dollars one way or the
10 other, being the mathematician that I am.

11 Q Well, we have no reason -- that is the direct
12 Exhibit?

13 A Yes, sir.

14 MR. ODAM: What Exhibit number is that?

15 MR. MITCHELL: That is R-89.

16 Q All right now, in R-89-1, that is the bank
17 account that the state alleges was set up for the
18 purpose -- you conspiring to defraud the county
19 out of enough money to buy those two Caterpillars
20 that you bought in December of 1972. Do you
21 remember that general allegation?

22 A Yes, sir.

23 Q How much did those two tractors run, what was the
24 contract price?

25 A The contract was for thirty-five hundred dollars.

1 Q The two -- no, thirty-five thousand dollars.

2 A Thirty-five thousand dollars and I ended up paying
3 forty some odd thousand dollars on it.

4 Q That would be Exhibit -- what, 160?

5 A I believe so.

6 Q Total purchase price of the two tractors was how
7 much?

8 A Thirty-five hundred -- thirty-five thousand dollars.

9 Q Have those two root plows in there?

10 A That would be forty-five thousand dollars.

11 Q And if you will add up the amount of money that
12 went through his bank account in R-89-1, through
13 and including R-89-48, you will find roughly, Judge,
14 there is over three hundred and twenty thousand
15 dollars went into that account.

16 That is an awful lot of overkill, isn't it,
17 to buy two thirty thousand dollar Caterpillars?

18 A Yes, sir.

19 Q Of course, your records reflect there is no
20 deposits from this account into your account?

21 A None whatsoever.

22 Q As a matter of fact, Judge Carrillo, he defaulted
23 on that contract and you had to pick it up in
24 1973, am I correct?

25 A Yes, sir.

1 Q And there was still due and owing on the amount
2 of that contract at that time roughly twenty-five
3 thousand dollars, am I correct?

4 A Yes, sir.

5 Q So assuming that he paid the difference between
6 the purchase price, which was what, thirty-five
7 thousand dollars, did you say?

8 A Yes, sir.

9 Q And the twenty-five that was owing, he didn't pay
10 but ten thousand dollars out of that account on
11 that Plains Machinery contract, am I correct?

12 A Approximately, I couldn't tell you right off my
13 head.

14 Q And assuming Arthur Mitchell's arithmetic is
15 anywhere near right, and that three hundred and
16 twenty thousand dollars --

17 MR. MITCHELL: Which, Judge Meyers,

18 I did very hurriedly, I took them off the
19 Exhibit and I want the record to reflect
20 that.

21 Q He got away with three hundred thousand dollars out
22 of that account, didn't he?

23 A Evidently.

24 Q And that, of course, does not include checks from
25 the R-92, from the Benavides Independent School

1 District to him, which did not go in that account
2 or checks from R-93 from the Conversation District
3 that did not go in that account.

4 A Yes, sir.

5 Q It went into that other bank account that he had
6 up at San Diego, didn't he say?

7 A The one at San Diego, and I know for a fact
8 because Mr. Couling told me that him and his
9 brother-in-law, Pancho, and his brother-in-law,
10 Armando, Olivera, had banking accounts in Mexico.

11 He was talking to me as we were very close
12 personal friends about the difficulty that he
13 might have because a friend of mine, Mr. Enrique
14 Gonzalez, from Rio Grande City went out and
15 opened up an account in Monterrey, Mexico, and
16 he lost his money.

17 He opened up a savings account over there
18 and somewhere along the line it showed that
19 someone had authorized a lady who worked at the
20 bank to withdraw the money and she withdrew it
21 and went off with the money, and the bank, all
22 they could say was they know she did and they
23 fired her but he lost his money and he couldn't
24 get it back.

25 Mr. Couling was worried because they owned

1 that ranch in Mexico, they own these cattle in
2 Mexico and it is owned by all of the family.
3 They had it in the name of an uncle, because they
4 could not own property in Mexico because they were
5 American citizens and they are right on the river,
6 and within a certain distance of the river, they
7 cannot own any property.

8 Q Judge Carrillo, by his own admission I believe he
9 settled on the face of the record on his trade-
10 out with the I.R.S. a claim of seventy thousand
11 dollars, am I right?

12 A Yes, sir, he did.

13 Q All right.

14 A But what I meant to say, Mr. Mitchell, he told
15 me he had a large amount of money deposited in
16 Mexico and he was worried that he would lose it.

17 THE MASTER : Let's take a ten minute
18 break.

19 MR. MITCHELL: Thank you, Judge, I'm
20 about finished.

21 THE MASTER: I thought you might be.

22
23 (Whereupon the hearing was in recess
24 from 12:20 p.m. until 12:30 p.m.)
25

1 THE MASTER: You may resume.

2 Q (By Mr. Mitchell) Judge Carrillo, I am going to
3 ask you questions as regards R-91, R-92 and R-93.

4 I am going to hand you E-65, which is a check
5 to you in the amount of one thousand eight dollars,
6 is that correct?

7 A Yes.

8 Q And that, as you testified earlier, is that check
9 to you on rental equipment?

10 A Yes.

11 Q Can you turn in to R-91, 92 and 93 and tell us
12 what monies were deposited in that period of time
13 to Benavides Implement and Hardware?

14 A Yes.

15 Q I would like to have you not include anything
16 except that rental income and extract that, if you
17 can, the rental income.

18 A From this one?

19 Q Yes.

20 A This one doesn't have anything in 1971. It shows
21 he had these checks come in, but there is no
22 explanation.

23 Q There is a total income of how much shown there
24 that month to Benavides Implement and Hardware?

25 A Approximately twenty-five hundred dollars.

1 Q All right, sir.

2 MR. ODAM: For the record, R-91 refers
3 to what year?

4 MR. MITCHELL: The testimony refers to
5 the same month for 1971.

6 MR. ODAM: All right. I fail to see the
7 relevancy of checks that were into the
8 Benavides Implement and Hardware accounts,
9 comparing those with the total amount of
10 checks from the county or the water district
11 or the school district any more than taking
12 some other instance of total amounts of money
13 into an account and we are talking about a
14 small amount of money out.

15 Unless we are going to be taken to task
16 to prove away that all of that money was
17 retained by Mr. Couling and -- well, I just
18 don't see the relevancy.

19 THE MASTER: What is the inference that
20 you are leading up to, Mr. Mitchell?

21 MR. MITCHELL: Well, Your Honor, I --

22 THE MASTER: I will tell you what I
23 drew and it may be rather crude and I might
24 need to reread the evidence, but what I drew
25 from the evidence you adduced just before we

1 broke, that apparently Benavides Implement
2 and Hardware Company, contrary to
3 Mr. Couling's testimony, had just a lot of
4 rental income, and if it had no equipment to
5 rent, then it was either using Judge
6 Carrillo's equipment or other equipment.

7 MR. MITCHELL: That is right and it is
8 also testimony that he was not in any way a
9 partner to Judge Carrillo, Your Honor, either
10 by the conspirator allegations or --

11 THE MASTER: Well, that is another
12 aspect. Are you taking now to prove that
13 Benavides Implement and Hardware Company
14 either did have equipment or didn't have
15 equipment, and if it did not, then it was
16 extensively using Judge Carrillo's equipment
17 and others?

18 MR. MITCHELL: Plus one other factor.
19 It negates his sworn testimony again.
20 Without any doubt, I heard him say that he
21 had no equipment to rent and no rental income
22 period.

23 THE MASTER: I am not sure about the
24 latter. Certainly that he had no equipment
25 to rent.

1 MR. MITCHELL: And he left the inference
2 that he was a part-time operation and he
3 opened only to receive the checks he received
4 from the county. That is not so and the
5 evidence reveals numerous transactions, all
6 through that period of time, of governmental
7 agencies.

8 We are going to try to show he not only
9 did this five thousand or so dollars worth of
10 governmental business as well as private, but
11 he says it was a -- I think it touches on
12 that basic loan.

13 THE MASTER: Judge Carrillo said that
14 loan was a fuzzy notation, that it was
15 reimbursement for rents owed, but they didn't
16 identify the amount.

17 MR. MITCHELL: That is right. Judge
18 Carrillo's testimony was that it was not a
19 loan. I think he is telling the truth, but
20 on the other checks, Your Honor, where
21 Mr. Couling testified --

22 THE WITNESS: I think in effect what I
23 said was that in effect it was sort of a loan,
24 because it was an advance of money owed and
25 it was paid.

1 THE MASTER: I think that is correct,
2 but there is no question it was not a loan,
3 in the sense that you were ever going to pay
4 it back, it was to be deducted from what
5 money was owed to you.

6 THE WITNESS: Exactly.

7 THE MASTER: And to that extent it was
8 rent.

9 MR. MITCHELL: And I might make one
10 other observation.

11 R-91 has been composed by the Attorney
12 General's office and they have taken the
13 position there was no equipment available
14 to rent and this was a colossal scheme by
15 Couling and Cleofus Gonzalez and the county
16 cranked out the dough and it was going to my
17 client and it is not true.

18 THE MASTER: Counsel asked the question
19 and I stated the inference that I had reached,
20 and it may be erroneous, and I take it that
21 was what you wanted me to reach, that
22 conclusion.

23 MR. MITCHELL: Yes, that is correct,
24 Your Honor. All of that money went into
25 Benavides Implement and Hardware and they

1 tried and tried to put into Judge Carrillo's
2 account and we say Mr. Couling is not telling
3 the truth and we say there was no such scheme
4 and that is the essence of Roman VII right
5 through XII.

6 MR. ODAM: Well, in light of testimony,
7 in getting into R-91, 92 and 93, it opens up
8 an area I feel by Mr. Couling's testimony,
9 with respect to the water district and the
10 school district and all of this rental, while
11 we put him on just with respect to, first of
12 all, the checks, is going to require more
13 extensive examination and --

14 THE MASTER: Yes, and this thing keeps
15 developing like that. Can either of you
16 tell me how that testimony is not relevant?

17 Mr. Couling did testify he had no
18 equipment to rent and yet here are documents
19 showing lots of money coming in for rentals.

20 MR. MITCHELL: And not going to Judge
21 Carrillo.

22 THE MASTER: And not going to Judge
23 Carrillo.

24 MR. ODAM: That is right, it didn't go
25 to Judge Carrillo.

1 I hate to go into the record and tell
2 where I think the money did go, but when we
3 get into it, in my judgment, it is not going
4 to help the case any. All we are attempting
5 to show is where part of the money went. It
6 puts us to the burden of showing where that
7 money went and if it went to the Farm and
8 Ranch Supply or to Oscar Carrillo or taking
9 and proving up checks and showing the entire
10 scheme of how Benavides Implement and
11 Hardware was used and getting much further in
12 this particular case than we attempted to go.

13 We can do that, although I am saying
14 this: That it takes more time with all of
15 that money that came in.

16 MR. MITCHELL: And, Your Honor, we all
17 realize the burden on me. I have a man
18 testifying, and I am taking to paint the
19 picture of his credibility, he said he
20 opened it up to give Judge Carrillo money and
21 that is not the fact.

22 I am susceptible to them, if you can
23 show me those, but the man was obviously not
24 telling the truth.

25 MR. ODAM: I would not say that. I

1 would say the checks explained from evidence
2 and legitimately and some of those checks
3 came back that were legitimate to them and it
4 was testified to that if we could get those
5 checks in, but we didn't, but I am saying
6 Mr. Couling said he rented no equipment from
7 Judge Carrillo and this is money paid out to
8 him.

9 MR. MITCHELL: Well, you have shown on
10 your own analysis, R-191, and this is --

11 THE MASTER: You said R-191, this is
12 R-91.

13 MR. MITCHELL: Yes, Your Honor, that is
14 correct.

15 MR. ODAM: That is like the store
16 counter check. The testimony was it was not
17 for that. All I am saying it means we will
18 have to go back through and show where it
19 went and who got that money and it is the
20 same as Judge Carrillo saying -- Mr. Couling
21 saying he didn't rent any equipment and made
22 payments to Judge Carrillo's brother and
23 whatever.

24 MR. MITCHELL: For the record, I would
25 appreciate an explanation as to where he took

1 in the eight thousand and paid out one
2 thousand to Judge Carrillo.

3 MR. ODAM: You want to know where that
4 eight thousand went?

5 MR. MITCHELL: That is right.

6 MR. ODAM: Well, the reason --

7 MR. MITCHELL: Well, the reason for that
8 is the partnership allegation and so forth.

9 MR. ODAM: If he took out eight thousand
10 dollars and out of that he paid one thousand
11 to O. F. Carrillo by other checks, you want
12 to see that, or if he kept that, you want to
13 see that?

14 MR. MITCHELL: And if he reported it on
15 his tax returns.

16 THE MASTER: Well, let's get off the
17 record. This has been helpful on the record,
18 but let's now get off.

19
20 (Whereupon, an off-the-record
21 discussion was had.)

22
23 THE MASTER: Well, we will be in
24 recess until 8:30 Monday morning.

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