

**INQUIRY CONCERNING A JUDGE  
NO. 5**

**DECEMBER 18, 1975**

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BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

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INQUIRY CONCERNING A JUDGE, NO. 5

DECEMBER 18, 1975

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

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1 MR. ODAM: Are you ready to proceed,  
2 Your Honor?

3 THE MASTER: Yes.

4 Mr. Odam, the witness who was on the stand  
5 when you recessed rather early yesterday,  
6 Mr. Carl Williams, are you ready to proceed?

7 MR. ODAM: Yes, sir, but before we  
8 proceed, may I on the record deliver what we  
9 got in by way of bus from Austin that  
10 Ms. Levatino picked up?

11 THE MASTER: Surely.

12 MR. ODAM: I inadvertently yesterday  
13 picked up from the court reporter, the  
14 Master's copy of yesterday's testimony.

15 THE MASTER: You want it, Mr. Mitchell?

16 MR. MITCHELL: I am going to check the  
17 Court's invitation and not turn down any that  
18 I can get, Judge Meyers, at this stage. It  
19 doesn't amount to much, does it?

20 MR. ODAM: Also, I would like to hand  
21 to the --

22 THE MASTER: Mr. Mitchell, I do want it  
23 back to deliver to Mr. Pipkin's office, which  
24 I do every weekend.

25 Now, you also have from me the 19th of

1 November to the 5th of December testimony  
2 and you're welcome to keep it, but do, please,  
3 remember to give it back to me sometime.

4 MR. MITCHELL: Yes, sir, Your Honor,  
5 I have it in the courtroom and just in the  
6 event the cross-examination of Brother Couling  
7 becomes necessary.

8 THE MASTER: Yes.

9 MR. ODAM: Also delivered to us were  
10 copies made -- work copies for the Master  
11 of December 8th, 9th, 10th and 11th, which  
12 I will give to the Master.

13 THE MASTER: Thank you.

14 MR. ODAM: I also received and I give  
15 to Mr. Mitchell a transmittal letter of copies  
16 of proceedings of the cause, dated December  
17 8th, 9th, 10th and 11th, which will be the  
18 same.

19 Now, again, with the understanding  
20 that these are copies being furnished at  
21 his request which is really copies that  
22 were made up for the commission members at  
23 some point, so, they are not turned over  
24 forever, but for use --

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

1 MR. ODAM: That is 2 through 11.

2 Now, I hand to him what we received on  
3 the bus pursuant to earlier conversations,  
4 a letter of transmittal signed by Mr. Pipkin  
5 by Mrs. Pearson, and it's dated December the  
6 10th, addressed to Mr. Mitchell, dated  
7 December 1, 2, 3, 4 and 5, and these copies  
8 have been sitting available to Mr. Mitchell  
9 at the court reporter's office -- correction,  
10 at the commissioner's office since they were  
11 reproduced on December 10th, which was last  
12 week.

13 We give these also under the same  
14 situation to Mr. Mitchell.

15 MR. MITCHELL: Will the Court take  
16 judicial notice where Mr. Mitchell asked for  
17 that, approximately one month --

18 THE MASTER: Yes, but in connection with  
19 our conversation two days ago, the question  
20 was where were the copies of the daily copy.  
21 It was then indicated that it was available  
22 to you at the commissioner's office and they  
23 apparently put them on the bus and sent them  
24 down here.

25 MR. ODAM: And that deliverance of the

1           daily copy, I will suppose Mr. Flusche is  
2           ready to proceed with the recall of  
3           Mr. Williams, I presume.

4           MR. MITCHELL: Your Honor, I don't want  
5           to interrupt. I understood that I was to  
6           have an opportunity at some point to object  
7           to the massive tender that I was inundated  
8           in yesterday. If he has got some more, I  
9           really -- I think I am getting to the point,  
10          in other words, where it's physically and  
11          mechanically impossible for me to be  
12          intelligent about controlling this record.  
13          I wonder if I might undertake the Court's  
14          permission to register some objections purely  
15          of a technical nature without soliciting  
16          testimony which I will have to have some  
17          from Mr. Williams as to what has been proffered  
18          at this point, Judge Meyers. It would be very  
19          difficult for me to keep up with --

20          THE MASTER: Well, my notes do not  
21          reflect, Mr. Mitchell, and Mr. Odam and  
22          Mr. Flusche, that either E-186, E-187 or  
23          E-190 have actually been offered.

24          Now, they have been tendered to  
25          Mr. Mitchell yesterday at about noon, but I

1 do not understand that they are yet offered;  
2 is that correct?

3 MR. FLUSCHE: That's correct. So,  
4 Mr. Mitchell, what we did yesterday was in  
5 effect to accommodate you so that you would  
6 have the rather large number of exhibits that  
7 have been marked, including 186 -- E-186,  
8 188 and 189, although they are to be  
9 authenticated, as I understand, by  
10 Mr. Couling, but they have all been tendered  
11 to you so that you could prepare yourself for  
12 objection, but they have not yet been offered  
13 and that is why it seems to me it's  
14 inappropriate at this time to make an  
15 objection.

16 MR. MITCHELL: Well, Your Honor, that's  
17 correct, and I, of course, understand the  
18 rules outlined by the Court and the Court is  
19 correct in the outlining of the rule, but I  
20 submit for the record and for this Court and  
21 for the consideration of people looking at  
22 this record that the format adopted is unfair  
23 and I am not reflecting on this Court, of  
24 course, but it's an unfair method and I am  
25 submitting it only, Judge, as an attorney

1 addressed to people who are attorneys that  
2 I have been given way in excess of, I  
3 would say, seven hundred to a thousand  
4 exhibits, many of those that had sub-parts  
5 which I spent the greater part of yesterday  
6 and last night examining and the Court is  
7 quite correct through the expediency and  
8 technicalities, the Examiner has not offered  
9 them and, therefore, I, of course, have no  
10 standing to object; however, I think out of  
11 fairness to the judge who is on trial here,  
12 that I should be permitted to make a motion --  
13 to be permitted, Your Honor, to register at  
14 least some on-going objections before the  
15 matter just completely inundates me and renders  
16 me totally incompetent as counsel, and I do  
17 feel and I am going to confess to this Court  
18 and to the record that the drainage of my  
19 competency is being reached, and from the  
20 sheer physical inundation of the record and  
21 with that knowledge and notice in the record,  
22 I, of course, will abide by the Court's  
23 rulings. I am certainly going to do that and  
24 will sit down.

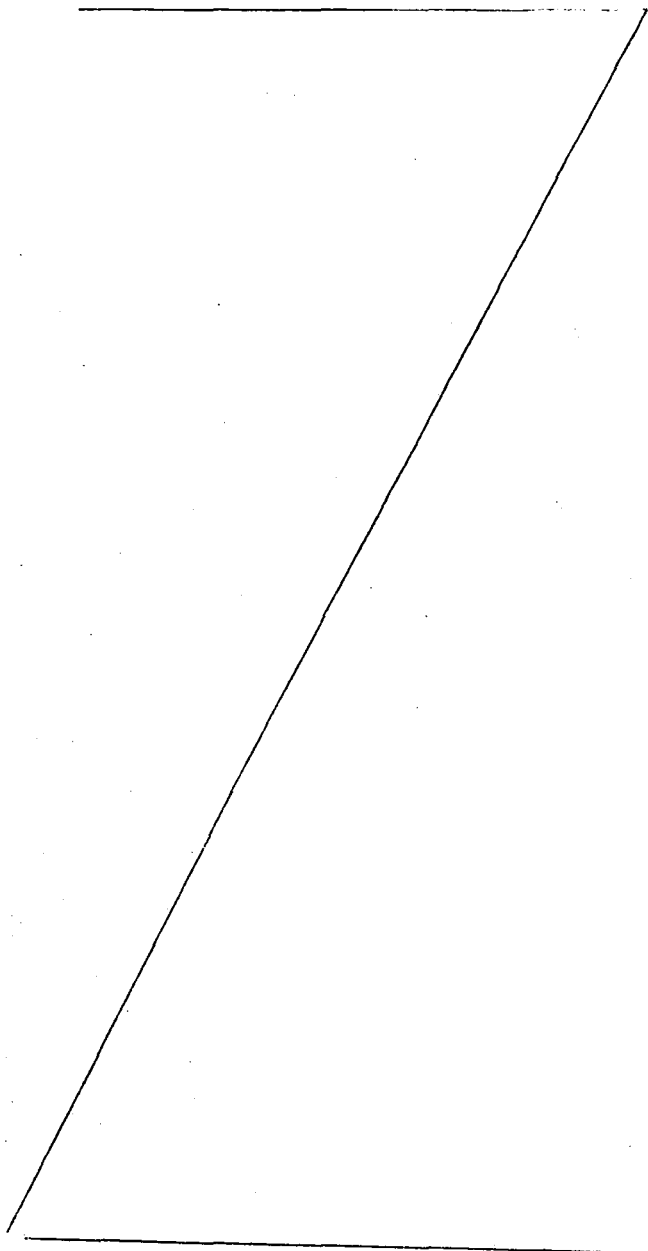
25 THE MASTER: You may proceed, Mr. Odam.



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You still want Mr. Williams?

MR. ODAM: Yes, sir.





VOIR DIRE EXAMINATION

1  
2  
3 BY MR. MITCHELL:

4 Q Have you and Mr. Flusche gotten together about  
5 these Exhibits this morning?

6 A I have looked at these, yes.

7 Q What was the nature of your looking at those, did  
8 you give him those or how did that come about,  
9 or did he just hand them to you?

10 A Yes, sir.

11 Q You had never seen them until a few minutes ago?

12 A I saw them when they were made.

13 Q Did you supervise the making of them?

14 A Yes, sir.

15 Q How did they get to Mr. Flusche?

16 A Yes, sir.

17 THE MASTER: Did you bring them and  
18 give them to Mr. Flusche, I believe is the  
19 question.

20 THE WITNESS: Yes, sir.

21 THE MASTER: You may proceed, Mr.  
22 Flusche.

23  
24 - - - - -  
25

FURTHER EXAMINATION

BY MR. FLUSCHE:

Q Mr. Williams, those documents marked as Exhibit E-191 were prepared in your bank under the same mechanical means as you described yesterday?

A That is correct.

Q And you have on file a microfilm for each of these documents and are able to reproduce them from that microfilm there in your bank?

A Yes, sir.

Q And these are the advices of charge which are debited to the account of Benavides Implement and Hardware Company, is that correct?

A That is correct.

MR. FLUSCHE: I believe that is all I have at this time, Your Honor.

THE MASTER: Do you pass the witness?

MR. FLUSCHE: Pass the witness.

MR. MITCHELL: May I ask, for the series 191, if they are being offered?

THE MASTER: I understand no Exhibits of all of the ones marked yesterday or today have been offered. I presume they are going to put Mr. Couling on and offer the Exhibits

1 with him.

2 MR. MITCHELL: If there is no offer,  
3 I have no examination, Your Honor, but I  
4 certainly reserve the right of examination.

5 MR. FLUSCHE: The reason I don't offer  
6 at this time is I don't have the originals  
7 and I can prove that with Mr. Couling.

8 THE MASTER: I understand that.

9 MR. FLUSCHE: And out of an abundance  
10 of caution --

11 THE MASTER: Well, Mr. Mitchell, let's --

12 MR. MITCHELL: I have had the rule  
13 invoked and there has been no technical  
14 offer and I can't levy an objection. That  
15 rule is on one side of the law as well as  
16 the other.

17 THE MASTER: That is correct. All Mr.  
18 Williams is here to testify to is that these  
19 are photographic reproductions of records  
20 from his bank. It will be Mr. Couling's job,  
21 I assume, to testify that he doesn't have  
22 the originals and doesn't know where they  
23 are, then, they will offer these photostatic  
24 copies.

25 Do you think there is any cross-examination?

1 MR. MITCHELL: I understood there  
2 would be an offer through this witness except  
3 for the best evidence rule, which would be --

4 THE MASTER: Well, if that is helpful to  
5 you -- why don't you offer E-176, E-178,  
6 E-190 and E-191. That is what I understand  
7 he was attempting to authenticate, is that  
8 correct?

9 MR. FLUSCHE: That is right.

10 MR. MITCHELL: It doesn't agree with  
11 my list. I have E-174, E-174 through E-178.

12 THE MASTER: E-174 through 178 has  
13 been admitted.

14 MR. MITCHELL: Those were the new  
15 checks previously objected to, I believe.

16 THE MASTER: They were previously  
17 offered and not admitted, but were admitted  
18 yesterday.

19 MR. MITCHELL: How about E-186?

20 THE MASTER: E-187, E-186, E-190 and  
21 E-191 with sub-parts were authenticated by  
22 this witness.

23 MR. MITCHELL: I don't believe E-189  
24 has been authenticated by this witness, I  
25 believe they are originals, is that right,

1 Mr. Flusche?

2 MR. FLUSCHE: Yes, sir.

3 THE MASTER: And you are going to use  
4 Mr. Couling on those?

5 MR. FLUSCHE: Yes, sir.

6 THE MASTER: Mr. Mitchell, as I under-  
7 stand, E-188 with sub-parts 1 through 207  
8 and E-189, which is 1 through 130, are  
9 originals, and this witness has not been  
10 asked a question about those.

11 MR. FLUSCHE: That is right.

12 THE MASTER: He has been questioned  
13 about E-186-1 through 33 and he has been  
14 questioned about E-174 through 178 and they  
15 have been admitted. E-186-1 through 33 has  
16 not been offered and E-187-1 through 23  
17 is about to be offered. E-190, sub-part 1  
18 through 193 has been authenticated by this  
19 witness and he also has 191 with it's sub-  
20 parts.

21 Mr. Flusche, out of an abundance of  
22 caution, has just said he doesn't formally  
23 offer them at this time, because he wants to  
24 out Mr. Couling on and let his testify he  
25 doesn't have the originals of the Exhibits.

1                   With that one exception, he is ready  
2 to offer and subject to that I understand that  
3 you do offer these Exhibits.

4                   MR. FLUSCHE: Yes, sir.

5                   MR. MITCHELL: May I ask two questions?

6                   THE MASTER: Of me or Mr. Flusche?

7                   MR. MITCHELL: Mr. Flusche.

8                   THE MASTER: All right.

9                   MR. MITCHELL: May I ask for a request  
10 of a statement of the relevancy of which  
11 these Exhibits are being offered? He sug-  
12 gested yesterday in my question to him that  
13 they were rebuttal. I would like to know the  
14 rebuttal of what.

15                   MR. FLUSCHE: There is a suggestion in  
16 the record by Mr. Mitchell that Mr. Couline  
17 has stolen this three hundred twenty thousand  
18 dollars and all of these documents reconstruct  
19 and show the payees to whom the money was  
20 paid.

21                   THE MASTER: Well --

22                   MR. MITCHELL: That is R-191, 192 and  
23 193.

24                   THE MASTER: I believe it is R-91, 92  
25 and 93; also probably R-100, which is a



1           recapitulation.

2           MR. FLUSCHE: Yes, there is one other  
3           thing. In the Exhibits which we offer now,  
4           there is a showing there was no equipment to  
5           rent and no checks were payable for equipment  
6           in these Exhibits, which is another point in  
7           our case.

8           MR. MITCHELL: Your contention there is  
9           no equipment owned by Mr. Couling to rent,  
10          notwithstanding the tax returns, and that is  
11          what you are telling this court?

12          I would like to know, Judge, because it  
13          does bear on my objection.

14          THE MASTER: Well, you may request, and  
15          I may ask the Examiner to state his relevancy,  
16          but you have no right to demand.

17          MR. MITCHELL: That is why I asked the  
18          Court to make a request, I didn't demand  
19          anything.

20          THE MASTER: Mr. Flusche has stated it  
21          is in effect rebuttal to R-91, 92 and 93 and  
22          it is to show a full explanation of the  
23          bank account of Benavides Implement and  
24          Hardware and also Mr. Flusche said to show  
25          there was no equipment to rent, is that the

1 relevancy?

2 MR. FLUSCHE: Yes, sir.

3 THE MASTER: Is there any other?

4 MR. ODAM: I don't want Mr. Mitchell to  
5 think there might not be checks in here,  
6 just as before, that might say equipment,  
7 but might say something else on them, but  
8 to fully explain and rebut is the purpose of  
9 these Exhibits.

10 THE MASTER: You may proceed, Mr.  
11 Flusche.

12 MR. MITCHELL: May I ask one more ques-  
13 tion?

14 THE MASTER: Yes.

15 MR. MITCHELL: Are they offering E-190  
16 on the following sub-parts, and they are  
17 multiple sub-parts. I would like to know if  
18 E-190 series includes the following sub-parts,  
19 6, 11, 12, 13, 14, 15, 16, 17, 19, 23, 25,  
20 26, 27, 29, 30, 34, 35, 36, 37, 38, 39, 41,  
21 42, 43, 46, 47, 48, 53, 55, 57, 60, 69, 71,  
22 74, 76, 81, 87, 91, 92, 94, 95, 98, 99, 100,  
23 101, 103, 105, 108, 109, 111, 112, 116, 117,  
24 118, 120, 123, 128, 135, 136, 139, 142, 144,  
25 146, 148, 151, 153, 154, 161, 164, 171, 175,

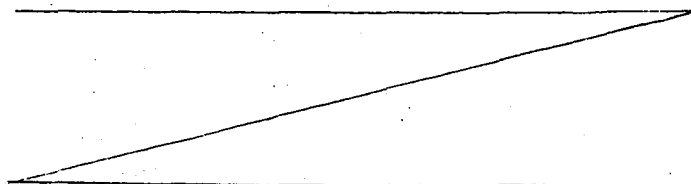
1 180, 182, 188, 189, 190, 191, 192, and I  
2 believe that is them.

3 THE MASTER: Does it include the offer  
4 of those sub-parts, is that the question?

5 MR. MITCHELL: No, Judge, on these  
6 sub-parts, they are multiple instruments  
7 and they bear only one designation, for  
8 example, E-190-91.

9 Does the offer include the E-190 series  
10 through and including the sub-parts as to  
11 the specific ones I called out, are they  
12 offering the multiple documents on those?

13 MR. FLUSCHE: We have tried in E-190  
14 to offer only those which have not already  
15 been introduced. There may be some very  
16 few duplications and they may be certainly  
17 no more than two or three omissions, but  
18 we have tried to fill the gap with E-190  
19 so as to add to all of those Exhibits  
20 already in evidence and thereby that is the  
21 offer.



1 MR. MITCHELL: Well, that was my  
2 next question, if it please the Court. The  
3 list that I went through is not the  
4 duplication. That is a separate list, and  
5 I can understand why there would be a  
6 duplication, the case having proceeded as it  
7 was. My next question would be, are they  
8 offering still of those 190 series, those  
9 that are duplicates that have been previously  
10 introduced?

11 MR. FLUSCHE: Well, I am not going to  
12 pretend to be an auditor here, but I am  
13 introducing only those which have not already  
14 previously been introduced and if there is a  
15 duplication or two, I think that that can be  
16 understood. I think even Mr. Mitchell  
17 might understand that.

18 THE MASTER: Well, I am not sure I  
19 understand Mr. Mitchell's question. He  
20 indicates that E-190, sub-parts 1 through  
21 193 includes some additional sub-parts. That  
22 is some of those have apparently what is  
23 stapled together and have a number of --

24 MR. MITCHELL: Judge, may I approach  
25 the bench?

1 THE MASTER: Yes.

2 MR. MITCHELL: Let me hand you a  
3 typical example, E-190-170, and on some  
4 there are multiple checks. There are debit  
5 slips. I am not fussing. I want to know  
6 if they are offering those multiple documents  
7 so I can be advised?

8 THE MASTER: Well, obviously E-190-170  
9 is the face of a check and then the second  
10 page is the back, endorsement side of the  
11 check. I take it you're offering both of  
12 those?

13 MR. FLUSCHE: Yes, sir.

14 MR. MITCHELL: Yes, sir, plus the two  
15 documents on the face, Judge, was my inquiry.  
16 Are they offering both of those checks?

17 THE MASTER: The one to Hebbbronville  
18 Feed and Seed and the one to --

19 MR. MITCHELL: Right, I think the record  
20 should speak to that. Yes, sir, that is my  
21 question.

22 MR. FLUSCHE: Let me look at it just a  
23 minute, Your Honor.

24 MR. MITCHELL: I point out, Your Honor,  
25 it's not a question of duplication with other

1 exhibits. It's a question simply in my mind  
2 if that one sub designation carries with it --  
3 that one exhibit carries -- correction, that  
4 one designation carries two exhibits and  
5 that again is not for any purpose other than  
6 to be sure that the record reflects what we  
7 are offering.

8 MR. FLUSCHE: Both of those checks are  
9 included in this exhibit.

10 THE MASTER: All right. Give it back  
11 to Mr. Mitchell. I take it at least with  
12 respect to that one and I suppose the others,  
13 they are all offered -- included in the  
14 offer?

15 MR. FLUSCHE: Yes, sir. Yes, sir. As  
16 I say, there may be some duplications and as  
17 we go along there will be some advicives of  
18 charges which are also contained in the E-190  
19 and those will be designated in the record.

20 MR. MITCHELL: May I have just a minute,  
21 Judge?

22 THE MASTER: Yes, sir.

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-- -- --

E X A M I N A T I O N

1  
2  
3 BY MR. MITCHELL:  
4

5 Q All right. Mr. Williams, I am going to ask you  
6 some questions first as to the E-190-70 series,  
7 and let me hand them to you, please, sir, so that  
8 you might --

9 THE MASTER: I am sorry. You said  
10 E-190-70.

11 MR. MITCHELL: I am sorry. E-190-1  
12 through 193 series.

13 THE MASTER: That's correct.

14 Q (By Mr. Mitchell) All right. Now, and I will  
15 ask you some predicate questions which would be  
16 applicable to all of the exhibits that have been  
17 reproduced, which as the Court inventoried earlier,  
18 would include that series, and that is the E-190  
19 series and the E-186 series and the E-178 series,  
20 and I am primarily interested, Mr. Williams, in  
21 the mechanics of the reproduction.

22 First, when were you requested, please, sir,  
23 to reproduce the E-190 series and by whom? Do  
24 you recall?

25 A I cannot say at this moment without the records

- 1 from the bank.
- 2 Q Well, an approximation, within the last forty-eight  
3 hours --
- 4 A No, sir.
- 5 Q Six months ago; a year?
- 6 A Within the last sixty days.
- 7 Q Okay. If this procedure started say the first  
8 part of November of this year, would that help  
9 you fix a time from which you could -- your  
10 recollection could be served? Was it prior to  
11 November 1st that you were requested to reproduce  
12 the 190 series?
- 13 A I would hesitate to say exactly when it started.  
14 We have made numerous pictures and for whom and  
15 at the request of whom, I would be at a loss to  
16 say who made the requests and --
- 17 Q When?
- 18 A -- and when.
- 19 Q Are you quite sure that it was not say within the  
20 last ten days --
- 21 A Well --
- 22 Q -- that the 190 was requested?
- 23 A I have had requests within the last ten days for  
24 numerous material, but whether this was part of  
25 it, I cannot say at this time.



1 Q All right. Would that be your answer if I hand  
2 you 186, could you give the Court and the record  
3 an approximation of when you were requested to  
4 reproduce it, 186 series?

5 MR. MITCHELL: Your Honor, in connection  
6 with this series, let me interrupt. The  
7 186-1 is out of order. It's a check that  
8 should belong to another series, and may I  
9 call attention to the Court and the record  
10 that for some reason it was included in that  
11 series that -- I used a bad example for the  
12 witness. The 186-1 should not be in that  
13 series, am I correct, Counsel?

14 MR. FLUSCHE: At the time that I  
15 requested the documents in 186, I didn't have  
16 the exhibits at hand, and, so, I requested  
17 this particular one to be sure that I had it  
18 in the record. It has already been  
19 introduced as another exhibit.

20 MR. MITCHELL: Is it a fair statement,  
21 Counsel, that Exhibit 186-1 is in the E-174  
22 series and it should not be included in the  
23 186-1. It's a duplication, Judge, and it's  
24 in the wrong series. It's the same as, I  
25 believe, E-174, Your Honor; am I correct,

1 Mr. Flusche?

2 MR. FLUSCHE: It's a duplication of  
3 174.

4 Q (By Mr. Mitchell) Mr. Williams, let me ask you --

5 THE MASTER: Well, pardon me. You're  
6 asking Mr. Williams, then, with the exception  
7 of E-186-1 --

8 MR. MITCHELL: That's right.

9 THE MASTER: -- when the others were  
10 requested of him to be duplicated?

11 MR. MITCHELL: Right. When I handed him  
12 the 186 package, I overlooked the fact that  
13 I had been making my analysis of this series  
14 of exhibits, I discovered that 186-1 is a  
15 duplicate of 174.

16 Q (By Mr. Mitchell) And Mr. Williams, ignore my  
17 question insofar as it refers to that top  
18 document, 186-1, and I will take it aside and  
19 ask you if you can look at 186-2 and tell me when  
20 you were called on to reproduce it and the other  
21 series; that is the 2 through and including --

22 A No, sir, I cannot under oath say exactly when I  
23 was requested to produce this.

24 Q All right. And may I ask you, does your  
25 recollection serve you that it was longer than

1 say two weeks, three weeks or shorter; your best  
2 recollection is all I am asking for.

3 A I believe it was longer than two weeks.

4 Q All right. Now, I hand you 187-1 through 187-23  
5 and ask you the same question; that is as to the  
6 time you were called upon to reproduce it, that  
7 series of exhibits.

8 A Well, my answer would have to be the same, as  
9 regards to this series, because I cannot recall  
10 exactly when it was.

11 Q All right. And then the group -- I will take  
12 those back.

13 Now, the group that has been handed to you  
14 this morning, and that is 193 series. I will  
15 hand that to you. I haven't had an opportunity  
16 to examine them, but I will ask you the same  
17 question as to when the request of you was made  
18 to reproduce and when they were reproduced, the  
19 best present recollection?

20 A There again, my answer would have to be the same  
21 because I have no records with me to substantiate  
22 an exact date on it.

23 Q You're quite sure that the request was not made  
24 say within the last two or three days or say week?

25 A Yes, sir.

1 Q All right. Now, once again, please, sir, as to  
2 the time, I will now move as to who -- who  
3 requested you to make those reproductions in this  
4 series that I have handed you, the one that you're  
5 holding there in your hand that was introduced  
6 this morning and the 190 series and the 187 series.  
7 Were you subpoenaed or were you called on the  
8 phone, and if so, tell us who and by what means?

9 A I have been subpoenaed. I have received numerous  
10 subpoenas from the Attorney General's office as  
11 well as from this committee to produce records.  
12 Some of these may include some work that was done  
13 for the Attorney General's office. I cannot say.

14 Q All right. And the procedure, Mr. Williams, and  
15 let me see if I can run through that to expedite  
16 it, if I might be permitted to lead the witness  
17 through that --

18 THE MASTER: Well, you have him on  
19 cross-examination.

20 Q (By Mr. Mitchell) I believe the Court asked you  
21 yesterday, and I think you testified, that the  
22 procedure would be that these documents, that is  
23 whether they are checks or debit memos, et cetera,  
24 are on microfilm and the procedures that someone  
25 in your staff of the bank goes through the

1 microfilm until the document is discovered on a  
2 viewer and picked out and reproduced, is that  
3 correct?

4 A That is correct.

5 Q And the form in which these documents are  
6 reproduced is that basic reproduction that comes  
7 out of your bank?

8 A Yes, sir.

9 Q The checks, the original of the checks are sent  
10 back to the customer?

11 A Yes, sir.

12 Q Benavides Implement and Hardware, Mr. Rudolfo  
13 Couling in this case, am I correct?

14 A I believe that's correct.

15 Q Along with the credit memos, and look at 186.  
16 These are not checks, but I want to be sure -- you  
17 have the 186 series, have you not?

18 A No, sir.

19 Q Where is that one?

20 MR. FLUSCHE: It's probably over there.

21 MR. MITCHELL: Yes, thank you.

22 Q (By Mr. Mitchell) For example, 186-15 --  
23 incidentally, this 186-15 is the same as 18, 26  
24 and 31. What is that?

25 A This is a debit memo.

1 Q Okay. Now, are those picked up by your same  
2 microfilming process?

3 A Yes, sir.

4 Q Now, where you have multiple pages such as that  
5 one when you turned it over, is that a  
6 mechanical process of putting together the back  
7 side and the front side of these documents?

8 A That is done manually.

9 Q Well, the reason I ask, of course, is looking at  
10 E-190-71, I can't make it out. For example,  
11 E-190-71, we have a check at the top that appears  
12 to be to E. Carrillo and one at the bottom that  
13 appears to be to Cash Store, but when I turn it  
14 over, I find that I have got a Cash Store  
15 endorsement behind my E. Carrillo check, and I  
16 have got what appears to be an E. Carrillo  
17 endorsement behind my Cash Store check.

18 You see what I mean?

19 A It's possible that the clerk who assembled these  
20 did so by reversing.

21 Q All right. Would you agree that the back side  
22 is reversed?

23 A I would say so, yes, sir.

24 MR. MITCHELL: And, Your Honor, may I  
25 have the permission to unstaple it and set

1 it right.

2 THE MASTER: Certainly. I think you  
3 ought to hand it to Mr. Flusche and see if  
4 he agrees with that.

5 MR. FLUSCHE: I understand.

6 THE MASTER: I suspect he does.

7 MR. MITCHELL: Is that correct?

8 MR. FLUSCHE: Yes.

9 MR. ODAM: May I be excused, Your Honor,  
10 just a moment?

11 THE MASTER: Yes.

12 Q (By Mr. Mitchell) Mr. Williams, the way that I  
13 have turned it now and I will hand it back to you,  
14 E-190-71, and ask you if it would be correct in  
15 that manner?

16 A That looks correct.

17 Q So that the endorsement of the Cash Store, that is  
18 the Cash Store endorsement by Abel Yzaguirre --

19 A Yes, sir.

20 Q -- and the endorsement on the check 294 on  
21 E-190-71 is now matched up with the front side  
22 of the check.

23 A Yes, sir.

24 MR. MITCHELL: And may I staple the two  
25 together, Judge?

1 THE MASTER: Yes, sir.

2 Q (By Mr. Mitchell) That occurs purely as a  
3 mechanical matter, isn't that correct?

4 A Yes, sir.

5 Q It doesn't affect the authenticity of the checks  
6 or the --

7 A No, sir.

8 Q All right. Now --

9 THE MASTER: Excuse me, Mr. Mitchell.

10 Did you put that back in the right folder?

11 MR. MITCHELL: Yes, sir, the E-190  
12 series is over here, Judge.

13 THE MASTER: All right, fine.

14 Q (By Mr. Mitchell) Now, once again, I note also  
15 on E-191-1, what is that document now?

16 A This E-191-1 is a debit memo of -- a charge for  
17 printing of personal listed checks.

18 Q At any rate, the debit memo, the checks, the  
19 loan -- what did you call that other document?

20 A Loan payments.

21 Q Or advicive charge.

22 A Yes, sir.

23 Q All constitute documents that are on file with  
24 your bank and are kept under the rules and  
25 regulations of the banking board, am I correct?



1 A Yes, sir.

2 C And you're testifying here that you reproduced  
3 those documents and those alone; am I correct?

4 A I produced what I have produced here in court  
5 from the records of the bank.

6 Q All right. And those records include not only  
7 checks, but the deposit slips, the advicive charge  
8 and the minor charges and so forth?

9 A Yes, sir.

10 Q Okay. Mr. Williams, I am going to ask you  
11 concerning another series that have been  
12 previously introduced and mainly so that the  
13 record will reflect still another endorsement;  
14 for example, looking at E-175 on the reverse side,  
15 there appears to be a --

16 THE MASTER: Excuse me. You're referring  
17 to E-175, are you?

18 MR. MITCHELL: Yes, Judge Meyers.

19 Q (By Mr. Mitchell) There appears to be a stamp on  
20 the reverse side. I mean you and I have had an  
21 occasion on a prior occasion to talk about that  
22 stamp, have we not?

23 A Yes, sir.

24 Q Tell the Court, first of all, what it is.

25 A A stamp as it appears in this exhibit reads

1 credited to the account of the within-named  
2 payee, absence of --

3 Q Endorsements?

4 A Absence of endorsements guaranteed, First State  
5 Bank of San Diego, San Diego, Texas.

6 Q I note on E-175 that endorsement appears and for  
7 the record reflects, is the effect an endorsement  
8 where there is no actual endorser by the named  
9 payee on the item?

10 A Yes.

11 C That is true, of course, with 175, that there is  
12 no endorsement of the payee?

13 A Yes, sir.

14 Q Do you know Judge Carrillo's signature? I believe  
15 you have testified in the past you do?

16 A I believe I would recognize Judge Carrillo's  
17 signature, yes, sir.

18 Q Well, first of all, it does not appear on the  
19 exhibit we just mentioned because that is a  
20 stamped endorsement and it does not appear on  
21 E-174, does it?

22 A No, sir.

23 Q The one on E-178, Mr. Williams, that is not his  
24 endorsement, is it, if you can tell, and I will  
25 give you some others if you want to make a

1 comparison.

2 A It's my opinion that E-178 does not bear the  
3 personal endorsement of O. P. Carrillo.

4 Q All right. So that E-178 is not his endorsement.  
5 E-175 is a stamped endorsement and whatever the  
6 other one -- 174 is a stamped endorsement.

7 A Yes, sir.

8 Q Okay, thank you.

9 MR. MITCHELL: We renew our objections,  
10 Your Honor, to that series on the grounds  
11 that the exhibits are hearsay as to Judge  
12 Carrillo; that is E-174, E-178 and E-175.

13 THE MASTER: Well, the objection is  
14 overruled, but I am correct, am I not, that  
15 that series, and that is E-174 through E-178  
16 was identified by Mr. Couling as checks he  
17 wrote, but they were excluded initially  
18 because the photocopies had not been  
19 obtained.

20 MR. FLUSCHE: That's correct, Your  
21 Honor.

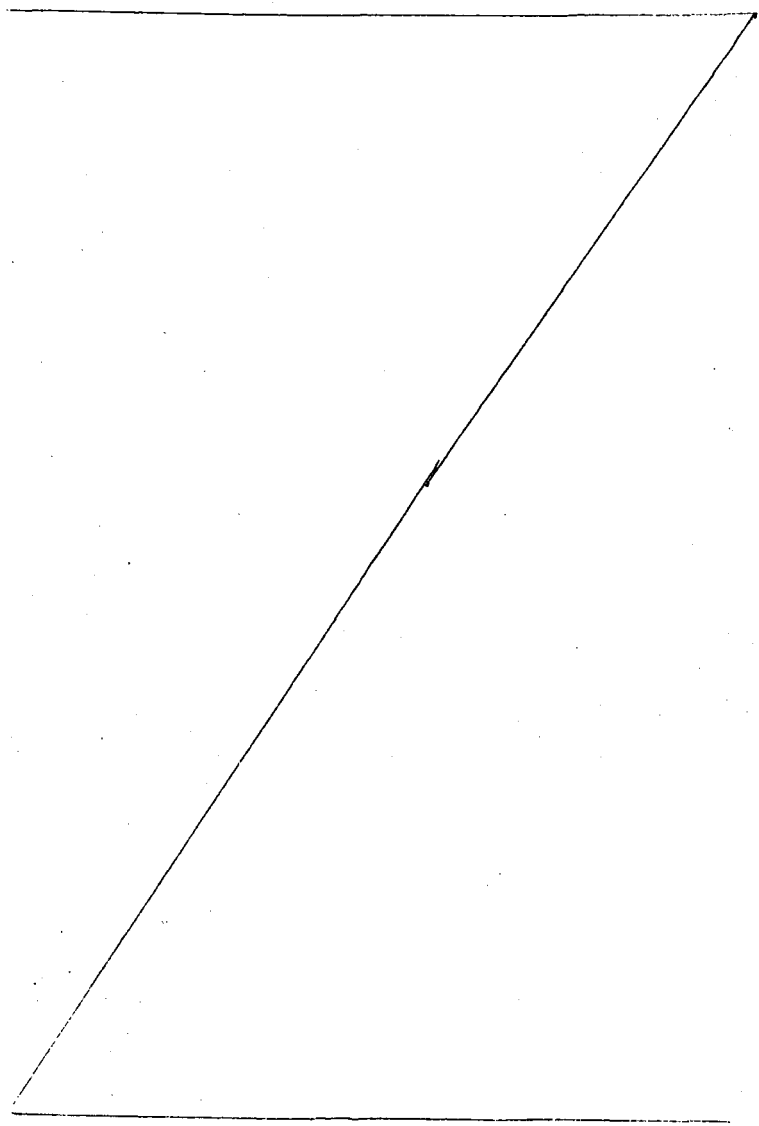
22 THE MASTER: The objection is overruled.

23 MR. MITCHELL: Yes, Your Honor, I  
24 didn't mean to indicate that Mr. Couling  
25 hadn't identified them as his signature on

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the checks, that's right. But as to  
Judge Carrillo, our position is that they  
are hearsay.

THE MASTER: I understand you.



1 MR. MITCHELL: May I have just one  
2 second?

3 THE MASTER: Yes, sir.

4 MR. MITCHELL: Your Honor, would the  
5 Court like for me to pronounce my objections  
6 to the series at this point and not wait  
7 until the entire group is offered?

8 I submit I have a duty at this time to  
9 object to them.

10 THE MASTER: Yes, I think that is fair.  
11 You want to make your objections now so if  
12 I consider the objection good that it maybe  
13 cured by this witness, then the Examiner can  
14 question this witness further, but if not,  
15 then they will be admitted.

16 MR. MITCHELL: Fine. We object to the  
17 186-1 through 186-33 series and all the sub-  
18 parts and 187-1 through and including 187-123  
19 and all sub-parts, 190-1 through and includ-  
20 ing E-190-193 and sub-parts on the following  
21 grounds.

22 THE MASTER: Excuse me. E-191 is also  
23 in that group. Do you wish to object to  
24 that series as well?

25 MR. MITCHELL: I will, Judge, thank

1           you.

2                   It is represented as part of the same  
3           account?

4           MR. FLUSCHE: Yes, sir.

5           MR. MITCHELL: I am in a position to  
6           expand then to 191-1 through E-191-54.  
7           and on the following grounds.

8                   The objections that I have run to each  
9           and every item. Best evidence, not legiti-  
10          mate rebuttal, both sides having rested,  
11          and, therefore, inadmissible at this late  
12          date in the present evidentiary matters:  
13          beyond the original May, 1974, notice; beyond  
14          the First Amended Notice of Hearing and con-  
15          sequently we plead surprise and request a  
16          postponement to prepare a complete defense  
17          and we further, if it please the Court, in  
18          that the data contained therein is contrary  
19          to the Examiner's Roman VII through XII  
20          and beliefs and is contrary to the partner-  
21          ship theory as in Roman VIII through XII  
22          and that is in connection with the surprise  
23          and it is a turnabout on the case theory  
24          and precludes an adequate representation of  
25          Judge Carrillo in this case.

1           We object further that the acts relate  
2           to non-judicial acts and hearsay in that in  
3           many instances it relates to transactions  
4           between third, fourth and fifth persons and  
5           we have no control over those. In addition,  
6           if it please the Court, we object to proper  
7           authentication, proper predicate. In connec-  
8           tion with this objection, we move to strike  
9           R-91, 92, 93 and R-100, the same as being  
10          based on hearsay as previously examined.

11           THE MASTER: You move to strike the  
12          Exhibits you offered?

13           MR. MITCHELL: Yes, if the basis for  
14          this offer is R-91, 92, 93 and 100, is that  
15          the basis for which he is offering now these  
16          Exhibits, and if so, we move to strike R-91,  
17          92, 93 and 100.

18           In addition, we would object -- I  
19          believe I mentioned they go beyond the term  
20          rule and I believe I added that they would  
21          be, therefore, irrelevant and immaterial. I  
22          might add in connection as to assist the  
23          Court in passing on the objection, we have  
24          prepared subpoenses for practically every  
25          payee. We would like, if the Court overrules.

1 to have these issued so we can touch on  
2 the reality of the Benavides Implement and  
3 Hardware business. We will leave the date  
4 of the return of these subpoenas open so  
5 the Court may put in the proper date that  
6 is deemed to be necessary.

7 MR. FLUSCHE: In response to his motion  
8 to strike R-91, 92, 93 and 100, it appears  
9 to me it is impossible to cleanse the record  
10 as to the facts from 8:30 last Friday morn-  
11 ing, so we would move to retain those in the  
12 record.

13 If we can cleanse the record of anything  
14 that happened since 8:30 last Friday, we  
15 would not have introduced any of these docu-  
16 ments.

17 THE MASTER: Well, there are two things  
18 pending before the Master. One is the objec-  
19 tion and it is overruled and the motion to  
20 strike is overruled also.

21 You have nothing more of Mr. Williams,  
22 Mr. Mitchell?

23 MR. MITCHELL: No, I don't, Judge Meyers.  
24 Thank you.

25 Is the motion to postpone and continuance



1                   overruled also?

2                   THE MASTER: Yes, sir, I included those.

3                   MR. MITCHELL: I had a feeling it would  
4                   be, but I didn't want to miss the Court's  
5                   ruling on that.

6  
7                   - - - - -

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9                   RE-EXAMINATION  
10                  (Of Mr. Williams)

11                  BY MR. FLUSCHE:

12                  Q In order to satisfy the curiosity of Mr. Mitchell,  
13                  could you look at 186 and look at your subpoena  
14                  and see if that refreshes your recollection as to  
15                  when that request was made?

16                  A Yes, sir. I hold in my hand a subpoena dated  
17                  December 17, 1975, asking for the material con-  
18                  tained in Exhibit E-186.

19                  Q And prior to my handing you that subpoena, did  
20                  I call your office and request the reproduction  
21                  of these documents?

22                  A Yes, sir.

23                  Q Was that on December 16th?

24                  A I believe so, sir.

25                  Q All right.

1 MR. FLUSCHE: That is all I have.  
2

3  
4 RE-EXAMINATION

5  
6 BY MR. MITCHELL:

7 Q Mr. Williams, you are not telling us the first  
8 notice was yesterday, the 17th, are you?

9 THE MASTER: 16th, I think you said.

10 Q Or 16th, Tuesday?

11 A In that instance, yes, sir.

12 Q And then you undertook and did prepare 186-1  
13 through and including 186-32 day before yester-  
14 day?

15 A I believe that is correct, yes.

16 Q How about -- now, Counsel has undertaken to refresh  
17 your recollection about 186. How about the E-191  
18 series, can you tell us when you reproduced it?

19 A 191?

20 Q Yes, sir.

21 THE MASTER: In fairness to the witness,  
22 hand those to him.

23 Q Yes, I will, Judge.

24 A If my memory is correct, this series of Exhibits  
25 perhaps constitutes part of a number of requests

1 taken out of sequence.

2 Q Karl, beginning when and ending when?

3 A I have no idea.

4 Q It is not included in that December 17th subpoena?

5 A I would not think so, although maybe one or two  
6 items could have been.

7 Q How about the 187 series?

8 A I cannot pinpoint a date for that.

9 MR. MITCHELL: All right. Thank you.

10 I have no further questions, Judge Meyers.

11 MR. FLUSCHE: I believe I have nothing  
12 further.

13 THE MASTER: Thank you, Mr. Williams,  
14 you are free to step down and go back to  
15 San Diego.

16 THE WITNESS: Thank you, sir.

17 THE MASTER: Your next witness is Mr.  
18 Couling?

19 MR. ODAM: Yes, sir. Mr. Flusche is  
20 calling him, and I would like to get from  
21 Counsel the Exhibits which I gave him yes-  
22 terday.

23 MR. MITCHELL: I hand you the E-188-1  
24 through and including --

25 THE MASTER: 1 through 207.

1 Mr. Mitchell, are you with us?

2 MR. MITCHELL: No, I am really not,  
3 Your Honor.

4 THE MASTER: I didn't think you were.

5 MR. MITCHELL: I am floundering a bit.

6 THE MASTER: E-181-1 through 207 is  
7 what my notes reflect.

8 MR. MITCHELL: Yes, I have it. Thank  
9 you, Judge.

10 THE MASTER: You are welcome.

11 Mr. Couling, you are reminded that you  
12 are still under oath.

13 THE WITNESS: Yes, sir.  
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1 RUDOLFO COULING,

2 being recalled as a witness, testified as follows.  
3 to-wit:

4  
5 BY MR. ODAM:

6 Q You previously testified in this proceeding, I  
7 believe?

8 A Yes, sir.

9 Q It is your earlier testimony that you were at  
10 one time the owner of Benavides Implement and  
11 Hardware?

12 A Yes, sir.

13 Q And on previous occasions you have identified  
14 checks, and for the benefit of the record, 174  
15 through 178, and to refresh your recollection, I  
16 show you a copy of 174 through 178 at this time,  
17 and just briefly, could you re-identify that has  
18 been admitted into evidence as 174 through 178?

19 A Yes, sir, they are checks made out to O. P.  
20 Carrillo.

21 Q You identified previously that as being your sig-  
22 nature on those checks?

23 A Yes.

24 Q Those checks are drawn on the Benavides Implement  
25 and Hardware account at the San Diego bank?

1 A Yes, sir.

2 MR. MITCHELL: Pardon me, that is the  
3 174, 5, 6 --

4 THE MASTER: Yes, 174 through and includ-  
5 ing E-178, is that correct?

6 MR. ODAM: Yes.

7 MR. MITCHELL: Thank you, Judge Meyers.

8 Q (By Mr. Odam:) Mr. Couling, previously when you  
9 testified, there was a series of original checks  
10 which have been identified by you, which was the  
11 series 179-1 through 179-29, which are in evi-  
12 dence, and in the possession of the court reporter  
13 at this time.

14 I show you now what has been marked as 179-30,  
15 31, 32, 33 and 34 and ask you, sir, if you can  
16 identify those items which I just handed to you?

17 A Yes, these are all checks made out from Benavides  
18 Implement and Hardware to the Farm and Ranch  
19 Store on the First State Bank of San Diego.

20 Q Did you sign those checks?

21 A Yes, sir, I filled them out, sir.

22 Q And the signature on there, you identify as being  
23 your own signature?

24 A Yes, sir.

25 Q I show you what has been marked, and they are out

1 of order, but they do start off with E-188-1,  
2 and I believe, as the Court stated, through 207.  
3 and ask you if you can identify these items, not  
4 necessarily individually, but generally as you  
5 go through the two hundred seven checks, if you  
6 could identify what those are, sir.

7 A Yes, sir.

8 Q To assist you, I will ask you this.

9 When you have not been here testifying in  
10 Court, have you had an opportunity to examine  
11 these individual checks outside of the presence  
12 of the Court?

13 A Yes, sir.

14 Q Can you identify, please, sir, for the record,  
15 what the 188 series purports to be?

16 A All checks from my bank statements from the  
17 Benavides Implement and Hardware Company.

18 Q And the checks you are looking at there, can you  
19 identify your signature on those checks?

20 A Yes, sir.

21 Q I believe the record has previously indicated, up  
22 until the time you sold the store to Cleofus  
23 Gonzalez, that you were the only person authorized  
24 to draw checks on that business?

25 A Yes, sir.

1 Q I will hand you what has been marked as the 189  
2 series, Mr. Couling, and all of it's sub-parts, and  
3 ask you if you could examine those.

4 As you look through those series of documents  
5 I have handed you, have you had an opportunity to  
6 previously examine these documents handed to you  
7 outside of the presence of the Court?

8 A Yes, sir, I have.

9 Q And can you identify for the record what that  
10 series, 188, purports to be?

11 A Deposits made out to --

12 MR. MITCHELL: Excuse me, I believe that  
13 is 189.

14 THE MASTER: It is 189.

15 THE WITNESS: And transferred from my  
16 own account.

17 Q Deposits into the Benavides Implement and Hardware  
18 account?

19 A Yes, sir.

20 Q Is it correct, let me ask you this question, Mr.  
21 Couling, to the best of your knowledge and recol-  
22 lection, are these series, the 188 series and the  
23 179 series and the 189 series, to the best of  
24 your recollection, are these all of the original  
25 deposit slips and checks on the Benavides Implement



1 and Hardare account which you have had in your  
2 possession until they were offered in evidence?

3 A Yes, sir, to the best of my knowledge.

4 Q They have been previously offered in evidence?

5 THE MASTER: I believe not.

6 Which ones are you talking about?

7 MR. ODAM: 187, sir.

8 THE MASTER: Well, it was offered subject  
9 to his accounting for the originals, is that  
10 correct?

11 MR. ODAM: Yes, Your Honor, it was  
12 offered.

13 THE MASTER: Yes, I regret the interrup-  
14 tion.

15 Q The series 187 has been identified by Mr. Karl  
16 Williams of the bank to be copies of 187-1 through  
17 23 and bank photostatic copies of the other  
18 deposit slips and I will ask you to briefly look  
19 at those.

20 MR. MITCHELL: Pardon me. I thought the  
21 Court previously overruled the objection and  
22 allowed the Exhibits to come in.

23 THE MASTER: I had overruled the objec-  
24 tions, but subject to the representation that  
25 this witness in effect would testify that

1 he didn't have the originals, is that right,  
2 Mr. Odam?

3 MR. ODAM: Yes, that is the purpose of  
4 my asking the witness to check these out.

5 Q (By Mr. Odam:) The series you looked at is the  
6 187 series, which is previously identified as  
7 bank photostatic copies of other deposit slips.  
8 I show you what has been marked and in evidence as  
9 E-190-1 through 193. These have been identified  
10 as copies of checks drawn on the First State Bank  
11 of San Diego and I will ask you if you can to  
12 briefly look through these.

13  
14 (Exhibits handed to witness.)

15 Q Mr. Couling, the series you are looking at there,  
16 the copies of other checks on the San Diego bank  
17 account with respect to E-190 series and E-188  
18 series, are the originals of these items, do you  
19 have those in your possession?

20 A No, sir, I do not.

21 Q So what you did have in your possession are there  
22 on the court reporter's table and what you have  
23 looked at here would be a completion of copies  
24 of other deposit slips and checks on that account?

25 A Yes, sir.

1 Q And one last series that probably was not in  
2 an envelope was the 186 series. These have not  
3 been numbered with sub-parts.

4 THE MASTER: You are talking about the  
5 191 series?

6 MR. ODAM: Yes, sir, I am sorry, the  
7 191 series.

8 Q (By Mr. Odam:) Mr. Karl Williams went through  
9 these, Mr. Couling, and I will ask you to look  
10 at these items which Mr. Williams testified to.

11 As you examine them, Mr. Williams has testified  
12 these appear to be copies of advice of charge on  
13 the account and I believe Mr. Mitchell pointed  
14 out some debit memos.

15 A Yes, sir.

16 Q Now, the ones you have examined here, do you  
17 retain in your possession the originals of those?

18 A No, sir, I do not have the originals.

19 MR. ODAM: Your Honor, we would reoffer  
20 at this time 179-30 through 34: the 188  
21 series, 189 series and 191 series and 190  
22 series.

23 THE MASTER: I thought you said 179.

24 MR. ODAM: Yes, sub-parts 30 through 34.  
25 The first ones have already been admitted.

1 THE MASTER: Right.

2 Mr. Mitchell, as I understand it, 179-30  
3 through 34 have now been offered and as has  
4 E-186, E-187, E-188, E-189, E-190 and E-191.

5 MF. ODAM: And I don't know if the Court  
6 called off 187. I believe he did.

7 THE MASTER: If I did not, I intended  
8 to.  
9



1 MR. MITCHELL: And I will object --

2 THE MASTER: Okay.

3 MR. MITCHELL: -- and some of them are  
4 originals and some of them are not originals.  
5 Some are predicate questions to follow offers  
6 that have been previously made in connection  
7 with those that were photocopies and I am  
8 sure the Court appreciates that. I would  
9 like, with leave of Court, first to direct  
10 certain predicate questions to the Exhibits  
11 186, 187, 190 and 191, which deal with  
12 copies and on 86 -- 186-30 to 34 being  
13 originals and having previously --

14 THE MASTER: Excuse me. I thought 186  
15 was Sub-parts 1 to Sub-parts 33. You said  
16 something about 34, I thought.

17 MR. MITCHELL: I'm sorry. I'm sorry,  
18 Judge. It's 179-30 to 34, which are  
19 originals.

20 THE MASTER: That's correct, 179-30 to  
21 34, which are five checks that are in the  
22 original.

23 MR. MITCHELL: I had previously  
24 objected to the series 179-1 to 30, and  
25 with leave of Court, I would like to break

1 up my objections to -- first to those, and  
2 then ask some predicate questions with  
3 regard to some best evidence objections on  
4 previous exhibits and level objections to that  
5 series and then ask certain other predicate  
6 questions as to the originals that are being  
7 offered, and that is the 188 and the 189  
8 series, if I might be permitted.

9 THE MASTER: You may.

10 MR. MITCHELL: We object --

11 THE MASTER: Well, state your  
12 objections and then if you have any voir dire  
13 questions; I take it, Mr. Odam, you're not  
14 through with this witness?

15 MR. ODAM: No, sir, simply to authenticate  
16 at this point, Your Honor.

17 THE MASTER: I suppose you have other  
18 questions.

19 MR. ODAM: Yes, sir.

20 MR. MITCHELL: We object, if it please  
21 the Court, to 179-30 to 179-34 on the  
22 grounds, one, of hearsay and no proper  
23 predicate. The offer is at a time too late;  
24 that is both parties having rested; is not  
25 in connection with legitimate rebuttal;

1           beyond the original notice, First Amended  
2           Notice, beyond the term rule. It relates to  
3           nonjudicial acts, hearsay, no proper  
4           predicate; complete surprise as to 179-30 to  
5           179-34; request postponement for reasonable  
6           period of time to prepare complete defense  
7           as to these new exhibits; and improper  
8           authentication.

9           THE MASTER: Do you have any voir dire  
10          questions with respect to those objections of  
11          this witness?

12          MR. MITCHELL: No, I do not.

13          THE MASTER: The objections are over-  
14          ruled.

15          MR. MITCHELL: Now, may I move, if it  
16          please the Court, to the voir dire questions  
17          that relate to offers made by the previous  
18          witness as relates to copies.

19          THE MASTER: Yes, sir.

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

BY MR. MITCHELL:

Q Mr. Couling, you have been asked about a series of exhibits and I believe they are 186, 178, 189, 190 and 191, which are copies.

THE MASTER: No, sir, 188 and 189, my notes reveal are originals.

MR. MITCHELL: I stand corrected, Judge, and set aside 188 and 189. That leaves us to be sure now we are correct --

THE MASTER: Mr. Mitchell, let's take a break and -- I don't mean it the way it sounds -- and get your head screwed on, Counsel, and come back and we'll begin.

188 and 189 are originals. The copies are E-186.

MR. MITCHELL: I understand. 189 is the deposit slips and 188 is the original checks, Judge.

THE MASTER: That's right.

MR. MITCHELL: I understand that.

THE MASTER: E-187 is a copy; E-190 is a copy and E-191 is a copy. Maybe you can



1 go over briefly with this witness during  
2 the recess --

3 MR. MITCHELL: All right. Judge  
4 Meyers, I can ask about four questions on  
5 the copies and get them out of the way.

6 THE MASTER: That is fine.

7 MR. MITCHELL: We'll expedite it.

8 THE MASTER: That is fine.

9 Q (By Mr. Mitchell) Mr. Couling, I am handing you  
10 here the evidence that is in the form of copies,  
11 like the E-190 series that they have in front of  
12 you, the E-191 series that you have in front of  
13 you and the E-187 series that you have over  
14 there, not now including the originals.

15 First of all, those exhibits relate to your  
16 account, do they not?

17 A Yes, sir.

18 Q All right. Now, I believe you have testified  
19 that you have the Benavides Implement and Hardware  
20 account, and that is this account?

21 A Yes, sir.

22 Q But these checks do not relate to the Benavides  
23 Implement and Hardware account and the Rio Grande  
24 City bank, do they?

25 A No, sir.

1 Q They, for example, would not show any deposits  
2 made by you into that account or withdrawal into  
3 that account?

4 A From the Rio Grande City bank?

5 Q Yes, sir.

6 A No, sir.

7 Q The reason I asked that question is because I  
8 noted in inventorying them last night, there were  
9 a number of items missing from these exhibits that  
10 are on that account and that would account for  
11 the fact, would it not, that these exhibits do  
12 not include the Rio Grande City account?

13 A No, sir, it doesn't.

14 MR. ODAM: Your Honor, if I might, and  
15 I don't mean to interrupt, but for the  
16 benefit of counsel, all the Rio Grande  
17 deposits and statements and the checks are  
18 already in evidence.

19 MR. MITCHELL: Yes, I understand, but  
20 this is not a duplication.

21 MR. ODAM: No, sir.

22 Q (By Mr. Mitchell) So that if anyone wanted to,  
23 they could look at the previous exhibits as  
24 suggested by counsel which are the bank  
25 statements, checks, deposit slips which Mr. Bates

1 brought to us which is what is here and would  
2 have a full, complete picture of Benavides  
3 Implement and Hardware, am I correct?

4 A Yes, sir.

5 Q But none of these exhibits relate to your  
6 personal accounts, do they, the non --

7 A Well --

8 Q There are no exhibits in evidence as to your  
9 deposit slips, such as checks on your personal  
10 account?

11 A I don't believe so, no, sir.

12 Q All right. And there are none on the ranch  
13 account; I believe you told us that you maintained --

14 A No, sir.

15 Q Only occasionally there might be transfers back  
16 and forth, but we do not have deposit slips of  
17 the checks on the ranch account?

18 A No, sir.

19 Q And we do not have the deposit slips of the checks  
20 on the special account?

21 A No, sir.

22 Q All right. And we have only the deposit slips  
23 and the checks on the Benavides Implement and  
24 Hardware at the First State Bank there in  
25 San Diego, correct?

1 A Correct, sir.

2 Q Now, all of those checks, and that is the  
3 cancelled checks, the bank statements, advicive  
4 charges, the debit memos were all sent back to  
5 Benavides Implement and Hardware and to you?

6 A Yes, sir.

7 Q So that the originals, if the bank followed the  
8 law, would have been returned to you, would they  
9 not, in due course, that is from month to month?

10 A Yes, sir.

11 Q Now, you do not have those originals, obviously,  
12 of these exhibits that have been made up and that  
13 are here offered in a Xerox or a duplicated form,  
14 do you?

15 A No, sir, that is the only original that I have,  
16 sir.

17 Q By that, when you say the only original, you're  
18 referring to 188, which are the original checks  
19 and E-189, which are the original deposit slips?

20 MR. ODAM: Excuse me. Your Honor, I  
21 might pose a question. I thought this was  
22 on voir dire examination of --

23 THE MASTER: It's supposed to be voir  
24 dire. I think it has lapped over a bit into  
25 cross-examination.

1 MR. ODAM: I think we ran past four  
2 questions.

3 MR. MITCHELL: Your Honor, my questions  
4 would not have been intelligent had they not  
5 been narrowed down to the accounts involved  
6 because the witness obviously has to be  
7 treated fairly. I am not talking about eight  
8 other accounts. I am talking about this one  
9 and he was in control of the account, the  
10 Benavides Implement and Hardware, am I  
11 correct, Mr. Couling?

12 I believe the evidence showed that.

13 A I was the only one that made the checks out.

14 Q (By Mr. Mitchell) You're the only one that made  
15 the deposits and the checks --

16 A I didn't make all the deposits, no.

17 Q The deposit slips and the checks would come to the  
18 Benavides Implement and Hardware location, which  
19 is a location that you had.

20 A Yes, sir.

21 MR. MITCHELL: We are going to renew  
22 our objection on the best evidence, Your  
23 Honor, of the offer made by the Examiner  
24 through the prior witness, Carl Williams,  
25 on the best evidence objection. We renew it

1 on the predicate of nonavailability, which  
2 has not been shown amply and fully enough to  
3 trigger the exception of the rule to provide  
4 for the introduction of the photostats or  
5 copies on E-191 series, E-174 series, E-190  
6 series. I want to be sure I get them all.

7 THE MASTER: E-191?

8 MR. MITCHELL: E-191, thank you, Judge  
9 Meyers.

10 Now, I will be finished with that  
11 portion of the examination by --

12 THE MASTER: Do you have any other  
13 questions of this witness with respect to the  
14 Best Evidence Rule?

15 MR. ODAM: No, Your Honor, I don't.

16 THE MASTER: Where are the originals?

17 THE WITNESS: I don't know. I couldn't  
18 find them, Judge.

19 THE MASTER: The objection is overruled.  
20 We'll be in recess for twenty minutes.

21 Mr. Owen, will you number the sub-parts  
22 of E-191 and then let all of us know how  
23 many sub-parts there are. You had something --

24 MR. MITCHELL: Yes, in view of the  
25 Court's question, which I think is a proper

1 question, I would like to ask one or two  
2 more.

3 THE MASTER: Certainly.

4 Q (By Mr. Mitchell) There is no reason why they  
5 wouldn't come to your address, isn't that correct?

6 A No, sir.

7 Q And no reason why they came to your address that  
8 you wouldn't get them?

9 A No, sir.

10 Q And if you couldn't find them, that would be  
11 perhaps you have disposed of them?

12 A No, sir, Lorenzo used to make my income tax and  
13 he passed away and I don't know what happened to  
14 them. I didn't collect anything when he passed  
15 away and I went to look for my returns and  
16 everything.

17 Q Rudolfo, Lorenzo was your employee and that is  
18 what you had him hired for?

19 A Yes, sir.

20 Q And you delivered the originals to him?

21 A Yes, sir.

22 Q And you simply can't account to this Court or this  
23 record where those originals are?

24 A No, sir.

25 Q It's no doubt that you had them --

1 A I had them at one time.

2 MR. MITCHELL: We renew our objection  
3 and make a motion to strike.

4 THE MASTER: For the record, identify  
5 who Lorenzo was.

6 THE WITNESS: He was my uncle.

7 THE MASTER: His last name?

8 THE WITNESS: Lorenzo Garcia.

9 THE MASTER: He had been referred to  
10 earlier and he is the same Lorenzo Garcia?

11 THE WITNESS: Yes.

12 THE MASTER: Recess for twenty minutes.

13  
14 (Whereupon, court was in recess for  
15 twenty minutes.)  
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1 (Whereupon, said document having  
2 been previously marked for identification  
3 as E-191, sub-parts being marked 1 through  
4 54.)

5  
6 THE MASTER: Let's get on the record.

7 MR. ODAM: Okay.

8 THE MASTER: I have E-186 as offered.  
9 I have E-187 as offered. E-186 includes  
10 Sub-parts 1 through 33. E-187 includes  
11 Sub-parts 1 through 23. E-188 includes  
12 Sub-parts 1 through 207. E-189 includes  
13 Sub-parts 1 through 130. E-190 includes  
14 Sub-parts 1 through 193 and now E-191  
15 includes Sub-parts 1 through 54.

16 I have all of those as offered. I do  
17 not note in my records that they have been  
18 admitted. And I understand that we took the  
19 break -- well, we took the regular break, but  
20 part of the purpose was to finish numbering  
21 E-191, where Mr. Mitchell would have a chance  
22 to look at them. I think you have made  
23 your objection, but I am not sure, and I  
24 think you have --

25 MR. MITCHELL: Yes, Your Honor, I have

1 objected to all except -- pardon me, Judge  
2 Meyers. Except the 189 series and the 188  
3 series, which are the original checks. That  
4 is the 188 series and the original deposit  
5 slips, which are the 189 series. I believe  
6 that is where we stand.

7 MR. ODAM: Yes.

8 THE MASTER: Well, that is correct. I  
9 overrule the objections and E-186, E-187,  
10 E-188, E-189, E-190 and E-191 are all  
11 admitted into evidence.

12 MR. MITCHELL: I didn't object to 188  
13 and 189, Judge.

14 THE MASTER: Oh, I'm sorry. I thought  
15 you had. Go ahead and make your objections.  
16 They are originals.

17 MR. MITCHELL: Yes, sir, they are.

18 THE MASTER: And I assumed you had a  
19 standing objection?

20 MR. MITCHELL: I do. I do, Judge,  
21 without the best evidence objection. That  
22 is precisely right, Judge, and without  
23 burdening the record, if I may have it  
24 clearly understood that they are included,  
25 the objections to 188-1 to 207 and 189-1 to

1 30.

2 THE MASTER: You may as well state it.

3 MR. MITCHELL: Yes, we object, first of  
4 all, Your Honor, to each and every part of  
5 188-1 to 188-207 and E-189-1 to E-189-130,  
6 each and every part on the grounds of  
7 hearsay, relating to transactions between  
8 third parties, parties unrelated to Judge  
9 Carrillo. They would be therefore hearsay,  
10 if it please the Court. They are not  
11 legitimate rebuttal, both sides having rested,  
12 matters contained in these two exhibits,  
13 therefore, it would be inadmissible under  
14 the rule that the rebuttal -- that is the  
15 testimony should come in under the strict  
16 rule of rebuttal; in that connection, if it  
17 please the Court, we move in tandem to strike  
18 R-91, 92, 93 and 100. In addition, Your  
19 Honor, we object to the introduction of the  
20 proffered testimony -- evidence, the  
21 documentary, in that it's beyond the May,  
22 1975 notice. It's beyond the First Amended  
23 Notice appearing and in connection therewith,  
24 we plead surprise and request a postponement  
25 to prepare a complete defense to the matters

1 raised, and incidentally, Your Honor, to  
2 prepare for a complete and careful cross-  
3 examination, which is now raised by these  
4 exhibits, which taken in connection with the  
5 sworn testimony of this witness on prior  
6 occasion.

7 We object further on the introduction  
8 of these documentary in that they relate to  
9 nonjudicial facts, irrelevant, immaterial  
10 and beyond the jurisdiction of this hearing;  
11 no proper predicate; no proper authentication;  
12 contrary to the position taken by the  
13 Examiner in regards Roman VIII through XII  
14 as relates to the conspiracy allegations and  
15 proof; contrary to the position taken to the  
16 Examiner as relates to a partnership, in  
17 connection with Roman VII through XII; and,  
18 Your Honor, in addition we object on the  
19 grounds that the documentary relates to  
20 matters which were within the notice and  
21 knowledge of the Examiner and that should  
22 have been revealed, should not have been  
23 concealed to this point in the trial, thus,  
24 placing Judge Carrillo at a disadvantage in  
25 the proper meeting of the additional facts

1 and allegations raised by those documents  
2 and their sub-parts.

3 Thank you, Judge Meyers.

4 THE MASTER: Objections are overruled.  
5 You may proceed, Mr. Odam.

6 And if it's not clear, the exhibits  
7 that I have just enumerated, E-186, E-187,  
8 E-188, E-189, E-190 and E-191 are all  
9 admitted.

10  
11 (Whereupon, said exhibits having  
12 been previously marked for identification  
13 E-186, E-187, E-188, E-189, E-190 and E-191  
14 were admitted.)  
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E X A M I N A T I O N

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2  
3 BY MR. ODAM:  
4

5 Q Mr. Couling, --

6 MR. MITCHELL: Pardon me, Judge. May  
7 I ask one more question of this witness that  
8 relates to the authentication, particularly  
9 of the 190 series?

10 THE MASTER: Yes, sir.  
11  
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V O I R D I R E E X A M I N A T I O N

(CONTINUED)

BY MR. MITCHELL:

Q Mr. Couling, the reason I previously asked you the reason that the accounts relates to the First State Bank of San Diego accounts, was your prior testimony that all of the dozer and the plow checks went out of the Rio Grande City account; you recall that testimony?

A Yes, sir.

Q Now, I am puzzled at E-190-181, which --

THE MASTER: Is this voir dire?

MR. MITCHELL: Yes, sir. It's in connection with the E-191 -- I can reserve it for cross, Judge Meyers, but I am really torn between whether it's part of authenticating or part of cross and I will let the Court --

THE MASTER: Go ahead and I will stop you if I think it becomes cross rather than voir dire.

MR. MITCHELL: Fair enough, Judge Meyers. I appreciate that.

1 Q (By Mr. Mitchell) I notice, for example, E-190-  
2 181, Mr. Couling, is a copy of a check from you  
3 to B. D. Holt and it says rent on plow out of the  
4 bank that you told me there were no checks on  
5 that relates to that dozer or that root plow and  
6 that is the First State Bank of San Diego?

7 A No, sir, I don't believe -- I didn't say they were  
8 from San Diego. I said there could have been one  
9 or two from San Diego bank at that time, sir.

10 THE MASTER: I think that is cross-  
11 examination.

12 MR. MITCHELL: Right. May I reserve --

13 THE MASTER: Of course.

14 MR. MITCHELL: May I ask the reporter  
15 to duplicate for me, if he would, my previous  
16 question put to him within the last five  
17 minutes, as to what -- whether or not there  
18 is any questions -- any checks on that  
19 account, and thank you, Judge Meyers, for  
20 permitting me to ask him about E-190-181.

21  
22 - - - - -  
23  
24  
25



FURTHER EXAMINATION

BY MR. ODAM:

MR. ODAM: We would like to have this marked as E-192.

(The above mentioned document was marked E-192-1 through E-192-12 for identification.)

Q Mr. Couling, I show you what the court reporter has marked as E-192 with sub-parts E-192-1 through 12. Mr. Couling, I will start with page E-192-1, and for clarification of the record, this is for the purpose of authentication only.

What is the chart, E-192, have you seen it before?

A Yes, sir, I have.

Q Was this chart prepared under your supervision and direction?

A Yes, sir.

Q And the information contained on here, could you describe to the Court what it purports to be?

A It came from the bank statements and from papers that were fixed in by Mr. Don Lee.

1 Q Papers fixed by Mr. Don Lee?

2 A Yes, Don Lee.

3 Q When you refer to papers fixed by Mr. Don Lee,  
4 I show you what has been marked as E-91, 92 and  
5 93, and ask you to examine those for a moment.

6 THE MASTER: Do you mean R?

7 MR. ODAM: Yes, Your Honor.

8 Q Correction, Mr. Couling, R-91, 92 and 93.

9 A Yes, sir.

10 Q Now, the papers you referred to from which this  
11 was prepared, is that what you referred to, R-91,  
12 92 and 93?

13 A Yes, sir.

14 Q I believe you said it was prepared from bank  
15 statements?

16 A Yes, sir.

17 Q What bank account was it prepared on?

18 A First State Bank of San Diego.

19 Q What period of time is covered by the bank state-  
20 ments as well as those Exhibits?

21 A April, 1971, to December, 1974, sir.

22 Q And the chart which we are referring to here  
23 was prepared from bank statements, Exhibits R-91,  
24 92 and 93, and did you examine those deposit slips  
25 which were offered in evidence?

1 A Yes, sir. I did.

2 Q Did you examine the checks which are offered in  
3 evidence?

4 A Yes, sir.

5 Q Checks, deposit slips and the advices of charge?

6 A Yes, sir.

7 Q Up in the column where it says date, the dates  
8 are down the lefthand margin, what are those?

9 A The deposits made to the bank, sir.

10 Q And the word under the clip is the word deposit --  
11 source?

12 A Yes.

13 Q Could you identify the next column?

14 A That is whether it came from the county or school  
15 or water district or from individuals.

16 Q The first four entries where it says county, what  
17 is that?

18 A Checks that came from the county.

19 Q And this is the source of it?

20 A Yes.

21 Q Now, skipping down --

22 MR. MITCHELL: I am not able to see  
23 the Exhibit and there is no way I know where  
24 Counsel is going with those questions. He  
25 has an Exhibit that takes a magnifying glass

1 to read, in the first place, and --

2 MR. ODAM: Is Counsel saying the copy  
3 you have before you is not the same as this  
4 one here?

5 MR. MITCHELL: I am asking you to  
6 point up where you are talking about.

7 THE MASTER: Have you given one to Mr.  
8 Mitchell?

9 MR. ODAM: Yes, sir.

10 MR. MITCHELL: I am trying to follow  
11 and this is one you gave me.

12 MR. ODAM: Yes, I said page 1 and I  
13 started at the top and just went across and  
14 I thought it was clear.

15 MR. MITCHELL: Well, if he could identify  
16 the date, the deposit, the check or something  
17 more specific, because I am looking at a  
18 sheet filled with information.

19 MR. ODAM: I will clarify that. I  
20 thought that was exactly what I did.

21 THE MASTER: I thought you were going  
22 item by item, not necessarily each individual  
23 item, but you were describing the Exhibit.

24 MR. ODAM: Yes.

25 THE MASTER: You may proceed.

1 Q (By Mr. Odam:) The first column is the date, the  
2 second column is the general description of the  
3 deposit and the source of the deposit?

4 A Yes.

5 Q And the third column is identified as the date,  
6 and I refer to this column throughout, and page 1  
7 through 12, what does the date that is depicted  
8 there represent?

9 A The date represents the date of the check to an  
10 individual.

11 Q And the next column, which is the caption at the  
12 top, says check and under the clip it says payee,  
13 what would generally be the information contained  
14 on here?

15 A The amount of the check and the name of the payee  
16 to whom the check was made from Benavides Implement  
17 and Hardware and the check number.

18 Q And it refers to the amount and the payee?

19 A Yes.

20 Q And would the same be true throughout this  
21 Exhibit on sub-pats 1 through 12?

22 A Yes.

23 Q Now, identified on the original here and on  
24 Mr. Mitchell's copy -- strike that.

25 There is a dash line across from the source,

1 across, in some instances, and not completely  
2 throughout the chart, but a dash line from the  
3 source to the payee. The red lines here are dash  
4 lines and not red on Mr. Mitchell's copy, but  
5 the dash lines across, could you generall explain  
6 for the benefit of the record what these dash  
7 lines refer to?

8 A Yes, sir, they trace the deposits from the check  
9 made to the individual from the Benavides Imole-  
10 ment and Hardware store.

11 Q Take, for example, on April 26th, and again, for  
12 the benefit of the record and Counsel and the  
13 Master, if this is admitted, we will go into  
14 detail, but, take for example, the second entry,  
15 the date of April 16, 1971.

16 There is a school district check in the  
17 amount of one thousand seventy-four dollars forty-  
18 eight cents and it says school district and looking  
19 at R-92, I see the first entry on the school dis-  
20 trict there is a like amount, is that correct?

21 A Yes.

22 Q And that is from your earlier testimony, that is  
23 why it says school district?

24 A Yes.

25 Q And that is a school district sheet, R-92?

1 A Yes.

2 Q And the dash line dashes across to a check  
3 written on the same date and in the same amount  
4 to Farm and Ranch Store, is that what you mean?

5 A Yes.

6 Q And the number is outside that, that is what?

7 A The check number from the source.

8 Q Mr. Couling, what is this chart, E-92-1 through 12,  
9 is this a reflection in chart form of a recon-  
10 struction of evidence or documents which are  
11 admitted in evidence?

12 MR. MITCHELL: That is beyond this  
13 witness' knowledge. He is an expert, but --

14 MR. ODAM: I will strike that question.

15 Q The information contained on the chart is from  
16 the sources of information in evidence in the  
17 record already.

18 A Yes.

19 MR. MITCHELL: We again object and ask  
20 to strike that as an improper question to  
21 ask a lay witness.

22 MR. ODAM: Let me rephrase the question.

23 Q I believe from your previous testimony that the  
24 amounts of money here on the lefthand column and  
25 the sources and the amounts of checks written out

1 and their payees, that information which is on  
2 the chart prepared under your supervision and  
3 direction, that information was taken from the  
4 evidence that was here in evidence through the  
5 documents Counsel has previously made objections  
6 to, is that correct?

7 A Yes, sir.

8 MR. MITCHELL: We are going to object  
9 again to that question. I have taken the  
10 evidence from Mr. Odam's information and taken  
11 that evidence and cross-entered it on this  
12 Exhibit and have at least several hundred  
13 instances where I can't identify the Exhibits.  
14 I can't identify them and I will take him  
15 on voir dire to question him concerning that  
16 situation.

17 I have tried to do that and spent  
18 quite a bit of the night to do that.

19 THE MASTER: You are entitled to do so.  
20 Well, go ahead and take the witness on voir  
21 dire. I may have questions of him also.

22 MR. MITCHELL: Out of fairness, I didn't  
23 have the advantage of the E-191 series and  
24 it is perhaps that that will fill in the gap.

25 THE MASTER: All right. That may fill



1 in the gap.

2 MR. MITCHELL: I did take the rest of  
3 them, Mr. Cutwright and I did, and tried to  
4 inter-relate to them, but if Counsel will  
5 represent to me that the R-191 series, 189,  
6 190 series and so forth are tied into this  
7 Exhibit, then I can perhaps withdraw my  
8 objection.

9 THE MASTER: I assume it includes 186  
10 and 187.

11 MR. MITCHELL: Yes, and if the ones  
12 testified to by Mr. Williams are --

13 MR. ODAM: May I respond, Your Honor?

14 THE MASTER: You may respond, Mr. Odam.

15 MR. ODAM: The ones which I didn't ask  
16 Mr. Couling about, the checks on the San  
17 Diego bank, those are copies from the bank  
18 used in setting up this Exhibit. Whether or  
19 not Judge Carrillo personally signed his  
20 name to is or did not, in my judgment, would  
21 go more to the weight of that document for  
22 whatever purpose it was admitted.

23 I do represent 174 through 178 is on  
24 here and we probably could identify it  
25 exactly.

1 I will represent to the Master and to  
2 Judge Carrillo and Mr. Mitchell that the  
3 Exhibits which Mr. Mitchell referred to yes-  
4 terday, he said eight hundred and fifty-three  
5 of them, that is probably that and with the  
6 addition of the others, more than that.

7 With those documents, this chart was  
8 prepared. Now, I am going to be subject,  
9 on cross-examination, or Mr. Couling will, to  
10 the extent that Mr. Couling in instructing  
11 how to prepare this, that it is not yet  
12 complete.

13 Mr. Mitchell stated a great deal of time  
14 was spent by him in crossing this and it is  
15 intended, as Mr. Couling stated, to reflect  
16 all of the eight hundred fifty-three Exhibits.  
17 To the extent it is not then clear, we are  
18 subject to those omissions. We will try,  
19 if it is admitted, to clarify why and where  
20 it is not complete.

21 That is a long-winded answer, but it  
22 is a reconstruction of the San Diego bank  
23 account.

24 MR. MITCHELL: And not the special account  
25 or the Rio Grande City bank account or the

1 ranch account?

2 MR. ODAM: That is correct, simply the  
3 Benavides Implemment and Hardware account.

4 MR. MITCHELL: All right.

5 MR. ODAM: Well, Your Honor, I would  
6 offer in evidence E-192 and it's sub-parts  
7 at this time.

8 MR. MITCHELL: May I have the witness  
9 on voir dire?

10 THE MASTER: You may.

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VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q Mr. Couling, you testified you undertook the preparation of E-192-1 through E-192-12, either you did it directly or it was done under your supervision.

A Yes, sir, I was there when it was made.

Q The reason I questioned you about that, if you look at E-192-2, 3 and 4, you find those in one handwriting and E-192-5 and 6 are in another and E-192-7, 8 and 9 are in another handwriting and E-192-10, 11 and 12 are in another handwriting.

Whose handwritings are those?

A Don Lee, Ms. Levatino and Max Flusche.

Q Max Flusche and Ms. Levatino are attorneys for the Examiner here?

A Yes.

Q And Mr. Lee, for the record, who is Mr. Lee?

A He is with D.P.S.

MR. FLUSCHE: He works for the D.P.S.

in the Intelligence Division.

Q When did the four of you, you, Mr. Lee and Mr. Flusche and Ms. Levatino commence the preparation of E-192-1 through 192-12?

1 A I believe it was Monday, sir.

2 Q This week?

3 A Yes, sir.

4 Q That would be the 16th day of December?

5 MR. FLUSCHE: 15th.

6 Q 15th day of December?

7 A Yes.

8 Q It is a chart that appears to contain deposits,  
9 dates of those deposits, the source and also  
10 checks coming out of that Benavides Imolement and  
11 Hardware account at the First State Bank of San  
12 Diego, is that correct?

13 A Yes.

14 Q Now, at the time you were given the information --  
15 who, first of all, gave you the information?

16 Let's look at this Exhibit. Who gave you  
17 the information that went to page 1 of E-192-1?

18 A We took the bank statements from the bank.

19 Q Well, where did they come from, did somebody give  
20 them to you?

21 A I believe I had given them to John Blanton a  
22 few months ago.

23 Q Is it a fair statement to say that all of the  
24 material that went into E-192-1 through 12, that  
25 the Exhibit was prepared and given to you on

1 December 15th, all of the checks and deposit  
2 slips in evidence --

3 A Repeat the question.

4 Q I say, all that material was given to you and was  
5 in existence by December 15th?

6 A Yes.

7 Q I am trying to find out whether it is your work  
8 or Ms. Levatino's or Mr. Flusche's or Mr. Lee's  
9 work.

10 Did they funnel the material to you -- you  
11 did not write it down, did you?

12 A No, sir.

13 Q The material was given to you by whom?

14 A We were all together.

15 Q Was the material given to you and you called it  
16 off and they wrote it down and all of them pre-  
17 pared the separate part of it so you could look  
18 at it?

19 A I was there, sir.

20 Q You didn't have any part to do with the input,  
21 Ms. Levatino did hers and Mr. Flusche took his  
22 and did those and Mr. Lee took his and did those?

23 A No, sir, I did not do any of the writing.  
24  
25

1 MR. MITCHELL: We are going to object.  
2 Your Honor, as I understand the rule on evi-  
3 dence on charts and summaries and I will  
4 treat this as a chart and a summary for  
5 the purpose of my objection. Objections are  
6 two-fold: One, as to improper characteriza-  
7 tions contained on the document and two, as  
8 to the document itself. We would object to  
9 192-1 through and including 12 on what we  
10 will consider improper characterizations  
11 amounting to comments upon the weight of the  
12 evidence such as the use of the word source,  
13 Your Honor, nayee, such as the use of the  
14 words school district, words and expressions,  
15 Your Honor, which we deem to be improper  
16 characterizations, improper notations.

17 That is the first objection. The second  
18 one, inter-relates under this second class of  
19 objection now reaches to the heart of the  
20 documents, Your Honor. It would be first  
21 that the matters contained in E-192-1 through  
22 and including 12 would be -- first of all,  
23 the chart would be inadmissible. The graph  
24 would be inadmissible insofar as it's based  
25 on rank hearsay. It would be inadmissible

1 as far as it attempts to resolve conflicting  
2 testimony as to any given item because it  
3 cannot, as I understand the rule on charts  
4 and summaries, resolve a conflict between  
5 evidence.

6 We would, therefore, object on improper  
7 authentication, upon hearsay, and this  
8 witness has no personal knowledge of it.

9 THE MASTER: All right. I admit the  
10 Exhibit.

11 MR. MITCHELL: One other objection,  
12 Judge Meyers. Until I am satisfied, I must  
13 protect my record. I do not have and I am  
14 unable to tie in each and every entry with  
15 the evidence that has been introduced, but  
16 I understand that, for example, the 191  
17 series, I did not have the 191 series when  
18 I made the analysis and I want the record  
19 to reflect that, but I would object that is  
20 not based upon the evidence that has been  
21 introduced before the Court in addition --

22 THE MASTER: Well, I don't understand  
23 that objection. It's represented that --  
24 it's my view that it's merely a summary  
25 Exhibit of the checks and deposit slips that



1 are in evidence and to the extent that it is  
2 not supported by the underlying evidence,  
3 and, of course -- well, it's not going to  
4 have any weight.

5 MR. MITCHELL: Right Your Honor. So  
6 the Court understands my objection, let me  
7 show you my copy of 192 that I have been  
8 able to make up from the evidence. I have  
9 added the evidence out to the right as the  
10 Court could determine. There are many entries  
11 that are not supported by any Exhibit numbers  
12 on E-192. My objection is that I did not --  
13 not that's is there. I just didn't simply  
14 have it. I have everything that had been  
15 introduced. I thought, Your Honor, except  
16 E-191 series and Counsel, of course, has  
17 made representation which I am willing to  
18 accept, but I do want to preserve the record  
19 to the extent that the Exhibit 192 does not  
20 support any evidence and we would object to  
21 it.

22 THE MASTER: To the extent that there  
23 are not any underlying documents in this  
24 record that are supportive of the Exhibit,  
25 the objection is sustained, but as you know,

1 we had a huge number of Exhibits offered  
2 yesterday.

3 MR. MITCHELL: I understand, Judge, and  
4 it's quite possible, as I say, that they  
5 were included in this series that we did  
6 not have the benefit of at the time we had  
7 the Exhibits.

8 THE MASTER: I take it, Mr. Odam, every  
9 item on there is documented in this record.  
10 You may be wrong, but you don't think you  
11 are.

12 MR. ODAM: And for --

13 THE MASTER: But the Exhibit is  
14 admitted as a summary Exhibit of underlying  
15 Exhibits that have previously been admitted.

16 MR. MITCHELL: Right, Judge, in order  
17 to protect my record further, then, I would  
18 have to object -- I have leveled what I  
19 consider as technical objections to the  
20 Exhibits. That is the summary in short;  
21 If it's going to be introduced now as it  
22 has been by the Court, I would move to strike  
23 it and level with further objections as  
24 follows: That is not a legitimate rebuttal.  
25 It's beyond the scope of legitimate rebuttal.

1           It's beyond any character of notice to this  
2           witness, that is, Judge Number 5, contained  
3           in the May, 75, letter from the Commission  
4           of First Amended Notice of Hearing. It cer-  
5           tainly, if it results in his disqualification  
6           or removal would be a violation of his  
7           rights without due process because of no  
8           notice, horizontal or lateral; beyond the  
9           term rule: that is the 75 term does not  
10          relate to any matters dealing with the exer-  
11          cise of his office as judge. It relates to  
12          non-judicial acts. There is no support in  
13          that I have been able to ascertain the formal  
14          or the amended notice which would in any  
15          manner suggest any inter-relation between  
16          the payees, for example, Continental Oil  
17          Company and Sears Roebuck and C P and L and  
18          Judge Carrillo in any misconduct upon the part  
19          of the Judge.

20                 It violates the best evidence rule: no  
21          proper predicate. I would like to plead  
22          surprise at this time and request a reason-  
23          able period of time, and that is suggested  
24          really in the rule of fifteen days to meet  
25          what I consider this entirely new grounds for

1 notice here, if it please the Court, and  
2 improper authentication. I think which is  
3 the summary of our prior objections.

4 THE MASTER: Those objections are over-  
5 ruled.

6 MR. ODAM: Your Honor, I would proffer  
7 to the Court, as we go through the Exhibit  
8 E-192 what I would represent to be a photo-  
9 static reproduction of that for the Court  
10 to examine which is identical to what Mr.  
11 Mitchell has before him and which is identi-  
12 cal to what I would be sneaking from and  
13 what is identical to what the witness has.  
14 In other words, our three photostatic copies  
15 are the same. The pages are numbered and  
16 the --

17 MR. MITCHELL: Judge, I hate to be just  
18 incredulous, but I understand that Counsel  
19 represents these errors to indicate that the  
20 various dollars, for example, 6-30-71 of  
21 nine eighty-two sixty-five --

22 THE MASTER: Slow down, Mr. Mitchell.

23 MR. MITCHELL: For example, the dollars  
24 received, nine eighty-two sixty-five on  
25 6-30-71, and just picking me at random on

1 E-192-1.

2 THE MASTER: On what page?

3 MR. MITCHELL: On the first page.

4 THE MASTER: Sir?

5 MR. MITCHELL: E-192-1, and I am taking  
6 that example. Is Counsel telling this Court  
7 and the record --

8 THE MASTER: Mr. Mitchell, I didn't  
9 follow you. Say it over again.

10 MR. MITCHELL: I am actually requesting  
11 that I be able to ask a question. I can't  
12 believe that this Exhibit is being intro-  
13 duced for the truth of assertion such as,  
14 for example, the way-out assertion that the  
15 nine hundred ninety-two dollars and sixty-  
16 five cents shown as the deposit on 6-30-71  
17 is the same money, dollars and cents-wise  
18 that went out to O. P. Carrillo in check  
19 number 134, nine eighty-two period zero zero  
20 period. I mean that line, that dotted line  
21 indicates, perhaps -- that is what he is  
22 talking about or, for example, looking up  
23 there at 6-17-71, how in the world would  
24 anyone know that the two checks of seven  
25 fifty on 6-17, Your Honor, would be the

1 same two checks or composites of one to  
2 Oscar Carrillo, number 126. That is E,  
3 incidentally, 188-9, for five hundred and  
4 two hundred and fifty dollars to Ramiro  
5 Carrillo and Brothers. That is E-188-10.  
6 I can't believe that anyone would contend  
7 that that is one and the same dollars or that  
8 Judge O. P. Carrillo has got anything to do  
9 with it.

10 MR. ODAM: As I stated before, these  
11 lines and the whole chart is going to be sub-  
12 ject to explanation on direct and cross-  
13 examination.

14 THE MASTER: Well, Counsel's comment,  
15 Mr. Mitchell's comment, is perhaps well  
16 taken in that no one has yet identified the  
17 lines. The Exhibit has been admitted as  
18 showing the receipts and the date of those  
19 receipts, the checks and the payee and the  
20 dates of those checks, but the coordination,  
21 that is to say, for example, as Mr. Mitchell  
22 said on 6-30-71 there is a nine hundred and  
23 eighty-two dollars and sixty-five cent check  
24 and then there is a line over on the payee  
25 side on 7-2-71 of nine hundred and eighty-two

1 dollars to O. P. Carrillo.

2 MR. ODAM: Yes, sir.

3 THE MASTER: That is not any proof.

4 MR. ODAM: Yes, sir. And I had asked --

5 THE MASTER: That is what you're saying  
6 in part, Mr. Mitchell.

7 MR. MITCHELL: Yes, that is true. Inci-  
8 dentally, one other matter, too, Judge,  
9 that I will have to object to. His Exhibits --  
10 I forgot to note this. 189-1 to 189-130 don't  
11 show the source of these checks. So, to the  
12 extent that this Exhibit 192-1 shows the  
13 source, somebody -- I want to know where that  
14 information came from. So, the Court under-  
15 stands this --

16 MR. ODAM: Well, --

17 MR. MITCHELL: Excuse me, Mr. Odam.  
18 So, the Court will understand, you will have  
19 to look at 189 --

20 THE MASTER: You mean the deposit slips  
21 don't show?

22 MR. MITCHELL: No.

23 THE MASTER: Wait.

24 MR. MITCHELL: It don't show where they  
25 come from.

1 MR. ODAM: Some of them do.

2 MR. MITCHELL: Right, but it don't  
3 show they are county, that they are water  
4 district or school district as shown on  
5 192, Mr. Odam. That is the thing. That  
6 certainly would be hearsay. The designa-  
7 tions, the water district, the school dis-  
8 trict, it's not on their original Exhibits.

9 MR. ODAM: Well, as the Master can see  
10 in examining -- in some instances they do  
11 state water district or W.D. or Benavides  
12 School District and as pointed out with the  
13 witness on reference to R-90, 91, 92 and 93  
14 as an example on the water district, it's  
15 that amount and it was also used as the  
16 witness stated to compute the source --

17 MR. MITCHELL: Some of those water --  
18 deposits that the Court is now looking at  
19 refer to invoices. Some the Court will --

20 THE MASTER: Invoices or check numbers,  
21 I am not sure that they are referring to.

22 MR. MITCHELL: It don't say county and  
23 it certainly don't say school district.

24 THE MASTER: Mr. Mitchell, to the  
25 extent --



1 MR. MITCHELL: Excuse me, Your Honor.  
2 What I am really worried about, Judge Meyers,  
3 is if those are invoice numbers the testi-  
4 mony shows that Cleofus Gonzalez forged  
5 those on Benavides Independent School Dis-  
6 trict -- Benavides Implement and Hardware  
7 invoices and that man didn't have any notice,  
8 so that would be hearsay upon hearsay.

9 THE MASTER: To the extent that 192  
10 is not supported by any underlying evidence,  
11 it's not probative to me: that is because  
12 Mr. Don Lee or Ms. Levatino or Mr. Flusche  
13 wrote in county, and unless that is in the  
14 record, it's not proof.

15 MR. MITCHELL: I agree, Judge. I wish  
16 there was some way I could take that out of  
17 that Exhibit along with those other errors.

18 THE MASTER: Well, the errors are not  
19 proof. The lines are not proof and to some  
20 extent, I assume that the source shown on  
21 this chart will be reflected by the under-  
22 lying evidence: to some extent it may not  
23 be.

24 MR. ODAM: I would -- it should be  
25 fully supported as the source by underlying

1 evidence in the record. As I used, for  
2 example, the entry on R-92 where it says  
3 water district, and it's supported either  
4 by R-91, 92 and 93 or by the Exhibits that  
5 Mr. Mitchell has in his hands.

6 MR. MITCHELL: R-91, 92 and 93 were  
7 objected to.

8 THE MASTER: Now, R-91, 92 and 93 --

9 MR. MITCHELL: Were objected to by  
10 Counsel that they were hearsay and we agreed.  
11 We have gone back to the raw data which is  
12 the input. When 189-1 through and including  
13 E-189-1 to 30, which Your Honor has examined  
14 and as I sit here and examine, there are no  
15 designations, very few designating the source  
16 of the deposit and to the extent that E-192  
17 1 through and including 12, designate that  
18 source. That is pure old unadulterated hear-  
19 say, Judge Meyers.

20 THE MASTER: Well, I disagree with that,  
21 but you and I don't agree on hearsay anyhow.

22 MR. MITCHELL: Never have, have we,  
23 Judge?

24 MR. ODAM: For clarification --

25 THE MASTER: But I agree that is not

1 proof. It's not to me. Hearsay is simply  
2 not probative and I do not think, Mr. Odam,  
3 that R-91, 92 and 93 can be supportive of  
4 this E-192. They were introduced by Mr.  
5 Mitchell. They were not vouched for by him.

6 In fact, he offered them only as rebuttal  
7 to your overall position and he did not  
8 adopt them as his Exhibits. They weren't  
9 made by him. They simply were Exhibits pre-  
10 pared by someone with the Attorney General's  
11 office or working for the Attorney General's  
12 office that he thought refuted your position  
13 and that is the only basis upon which they  
14 were offered and admitted.

15 So, I do not think they can support  
16 this. I think that the figures, if you have  
17 checks indicating these amounts, showing  
18 these payees, that is fine, and deposit slips  
19 indicating these deposits. But if the  
20 deposit slip that says on 6-30-71, nine  
21 hundred and eighty-two dollars and sixty-five  
22 cents does not reflect that the source is  
23 the county, then, you have not proved that  
24 it's the county.

25 MR. ODAM: Well, Your Honor, the -- if

1 I could recall then, of course, the record  
2 sneaks for itself what happened on R-91,  
3 92 and 93 and I give a little bit of what  
4 I consider record history up to the point  
5 where we are today. What had happened, was,  
6 as I recall the situation, Mr. Mitchell asked  
7 a series of questions of Mr. Couling if he  
8 got money from other sources the water dis-  
9 trict, county and school district and he  
10 said, yes, he did. He wanted to know where  
11 the underlying documents were and he said  
12 it was turned over to the Attorney General.  
13 There was a Mr. Octavio Hinojosa and Mr.  
14 Mitchell asked where all of the claims were,  
15 where all the records supporting that was and  
16 he said turned over to the Attorney General's  
17 office. And then Mr. Mitchell wanted to  
18 subpoena from Attorney General Hill that  
19 underlying documentation. We had a discus-  
20 sion off the record and I talked with Mr.  
21 Blanton about the extent to which it would  
22 take time to get all of that documentation  
23 and et cetera and it was agreed and then  
24 stipulated, as I recall, and the stipulation  
25 is in the record that the top of R-91, 92 and

1 93 shows the claim number. the amounts of  
2 money and the amount and that was the stimu-  
3 lation to that point.

4 I certainly objected that I thought it  
5 was irrelevant and immaterial and that was  
6 overruled. But that was the basis for all  
7 of that. And then after that was done, we  
8 proceeded to, or Mr. Mitchell proceeded with  
9 Judge Carrillo to indicate that the documen-  
10 tation which had been proffered pursuant to  
11 subpoena was all of this money received from  
12 all of these sources that Mr. Couling got.  
13 They are R-100, which Mr. -- Judge Carrillo  
14 had prepared again, and it sets out that  
15 here's all of this money received from the  
16 water district and the county and the school  
17 district. And, so far we have been building  
18 the record, impeaching the credibility of  
19 Mr. Couling based on that documentation and  
20 now when the same information which under-  
21 lined that impeachment of credibility is used  
22 to prepare this chart, it would appear to me  
23 that it could be used because that is the  
24 very purpose for which his credibility has  
25 been impeached thus far is the use of R-100.

1 91, 92 and 93, to say this is all the money  
2 that you purported to receive.

3 THE MASTER: Well, I am not sure I  
4 disagree with much that you said, but where's  
5 the proof as an example, going to the same  
6 entry that we have referred to earlier,  
7 6-30-71, that nine hundred and eighty-two  
8 dollars and sixty-five cents came from Duval  
9 County.

10 MR. MITCHELL: Pardon me, Your Honor.  
11 May I --

12 THE MASTER: No, I want him to answer  
13 the question.

14 MR. MITCHELL: I want to know where the  
15 proof is period. It's not in the deposit  
16 slips. You note the deposit slips don't  
17 start until November.

18 THE MASTER: Mr. Mitchell, please. I  
19 am asking Mr. Odam. Where in the record,  
20 either in R-91, 92 and 93 -- where is the  
21 support that nine hundred and eighty-two  
22 dollars and sixty-five cents deposited on  
23 6-30-71 came from. It says county. I  
24 assume that means Duval County.

25 MR. MITCHELL: Judge --

1 MR. ODAM: Well, it's not there.

2 MR. MITCHELL: It's not. Can I speak,  
3 Judge?

4 THE MASTER: Are you trying to help or  
5 hurt him?

6 MR. MITCHELL: No, I am trying to hurt  
7 him.

8 MR. ODAM: May I respond to the question?

9 THE MASTER: Please.

10 MR. ODAM: R-91 is labeled County of  
11 Duval, Benavides Implement and Hardware,  
12 and drop down to a date which was the date  
13 that is in the lefthand corner, 6-14-71,  
14 claim number B-1329, amount nine hundred and  
15 eighty-two dollars and sixty-five cents,  
16 fund: road and bridge fund, code 229. That,  
17 at least, was the basis for the entry of  
18 this amount of money.

19 Now, I could go through either with this  
20 witness on the stand or off of the stand,  
21 and we could do it in a recess to show the  
22 extent to which the deposit specifically  
23 would indicate County of Duval. In other  
24 words, pick out a deposit slip which is in  
25 evidence and it says county of Duval. Some

1 of those deposit slips are in bulk form.  
2 For example, you might have -- let's take  
3 the first one, the 4-16. There are a number -  
4 there are four county ones. It might very  
5 well be that those four county checks which  
6 are identified, for example, 4-16 on 4-12,  
7 and it says date, over the left, B-961. The  
8 amount of money, two ninety eighty. Drop  
9 down to 9-14 which is right above it. On  
10 R-91 a thousand eight is right above that  
11 and the three o eight is right above that.

12 Now, I think that the deposit slip  
13 shows, you know, a total of all of that  
14 together. I don't know that without looking  
15 at the Exhibit that it indicates that, but  
16 my response is that either the deposit slip  
17 the Court has in his hand or the entry on  
18 here is the basis for that notation of water  
19 district or school district.

20 THE MASTER: Well, of course, if an  
21 original document such as the deposit slip  
22 contains a notation that is some support,  
23 but R-91, 92 and 93 are themselves summary  
24 Exhibits. That is they represent somebody's  
25 conclusions with respect to source of various



1 funds, but no one has vouched for those  
2 Exhibits yet. They were introduced as  
3 Exhibits prepared by the Attorney General or  
4 someone under his direction in order to  
5 refute the Examiner's position with respect  
6 to the status of the Benavides Implement and  
7 Hardware Company, but no where unless it's  
8 in these deposit slips or elsewhere in the  
9 evidence is there proof of the source of  
10 this money and I don't think you can rely  
11 on R-91, 92 and 93 for that proposition.

12 MR. ODAM: Well, Your Honor, I could --  
13 what I would suggest doing then is that --

14 THE MASTER: Well, I am willing for you  
15 to disagree with me and convince me I am  
16 wrong.

17 MR. ODAM: Well, as I stated, I think  
18 that the stipulation --

19 THE MASTER: And I simply don't recall  
20 the stipulation and that copy is not even  
21 here, but it's at my -- unless I gave it  
22 to you, and that December 12th daily copy.  
23 It's at my motel room.

24 MR. ODAM: Yes, sir. May I refer to it  
25 now?

1 THE MASTER: Yes, sir.

2 MR. MITCHELL: Judge, I am dying to  
3 make an observation, if I could.

4 THE MASTER: I don't want you to die,  
5 Mr. Mitchell. Go ahead and make your  
6 observation.

7 MR. MITCHELL: Where is the deposits?  
8 Where are the deposit slips in E-189. Judge  
9 Meyers, that cover down through and includ-  
10 ing -- that is the first two pages. I don't  
11 find an original deposit slip, for example,  
12 for March, April, May, June, July of 71.  
13 The first one I find which is Exhibit 189-1,  
14 if I recall correctly, is in November of  
15 1971 and I might be incorrect.

16 THE MASTER: That's correct. Well, that  
17 is the first one on this stack. If it's in  
18 order, that is the first one, yes, sir.

19 MR. ODAM: Your Honor, I --

20 MR. MITCHELL: So, that, in addition,  
21 Your Honor, the objection would be that not  
22 only is there no documentary in support of  
23 the first two pages, that the reliance has  
24 been placed on R-91 --

25 THE MASTER: However, they are not in

1 order because I have turned five or six down  
2 and it goes from November to December and then  
3 back to September of 71.

4 MR. MITCHELL: Yes, I noted that last  
5 night, Judge Meyers, but I didn't note any  
6 as early as April. I might be wrong. I  
7 didn't note any in April, May, June, July  
8 or August of 71. I might be wrong, but I  
9 didn't find any.

10 THE MASTER : You are. Here is one in  
11 May of 71. Why don't you come and look at  
12 it and check to see --

13 MR. ODAM: What is the date of that  
14 deposit, sir?

15 THE MASTER: It's hard for me to read.  
16 It seems to me to read 5 --

17 MR. ODAM: Is there a stamp on it?

18 THE MASTER: Yes, it's stamped -- again,  
19 what appears to be May 12th, 71.

20 MR. ODAM: That would be --

21 THE MASTER: Two hundred and forty-seven  
22 dollars.

23 MR. ODAM: Sir?

24 MR. MITCHELL: A hundred and forty-seven  
25 dollars.

1 THE MASTER: It is two forty-seven.

2 MR. ODAM: And that is the entry over  
3 to the right.

4 MR. MITCHELL: No, Your Honor. The  
5 Court said two forty-seven, not two fifty-  
6 seven.

7 MR. ODAM: Well, that number only --

8 THE MASTER: Well, it's two -- it's  
9 right here. It's the one that is forty-nine  
10 dollars and a hundred and ninety-eight dollars,  
11 a total of two fifty-seven.

12 MR. ODAM: That is the basis --

13 THE MASTER: It's on the Exhibit.

14 MR. ODAM: Whoever added those numbers  
15 up didn't carry a one to the top of the  
16 next column, but carried a two and it should  
17 be two forty-seven rather than two fifty-  
18 seven, eight and nine and carry your one.  
19 That is an example of where that entry came  
20 from.

21 THE MASTER: Well, the record properly,  
22 it seems to me, reflects that there is no  
23 disclosed source.

24 MR. ODAM: That's correct, Your Honor.  
25

1 MR. ODAM: That is correct, Your  
2 Honor, and the exhibit does not disclose  
3 the source and the reason for that is that  
4 the deposit slip does not disclose the source  
5 as well. It is simply the deposit slip and  
6 so forth that didn't show that, and for that  
7 reason it is not a school district deposit  
8 or a water district deposit.

9 THE MASTER: All right. The very next  
10 one is the 5-13-71, eight hundred seventy-  
11 five dollar deposit.

12 There is a symbol indicating a number,  
13 but it doesn't show school district at all.

14 MR. MITCHELL: May I note, Your Honor,  
15 there is no comparable entry on R-91.

16 MR. ODAM: Well, that is not the school  
17 district.

18 What was the notation, sir?

19 THE MASTER: Why don't you come and  
20 look at it.

21 MR. ODAM: That is what I thought, the  
22 number is A-426.

23 THE MASTER: Correct.

24 MR. ODAM: And the check number is  
25 A-426 and it is in the amount of eight

1 hundred seventy-five dollars.

2 THE MASTER: Well, Mr. Odam, do you  
3 think -- correction, do you contend that  
4 there is proof in this record, that for  
5 example, that this May 13th, 1971 deposit  
6 of eight hundred seventy-five dollars  
7 represents a check from the school district  
8 to Benavides Implement and Hardware?

9 MR. ODAM: Yes, sir, I do.

10 THE MASTER: What is that proof?

11 MR. ODAM: Well, the proof on that one  
12 is number one, R-92, which shows the check  
13 number of the school district, it shows the  
14 amount of the check and at the top it says  
15 this is the amount of money that that check  
16 from the school district went to BIH.

17 THE MASTER: You were referring to a  
18 stipulation and you were going to quote it to  
19 me and I don't have it before me.

20 MR. MITCHELL: Your Honor, while he is  
21 looking at that, we would object further to  
22 E-192-1 through 12 in that it is hearsay on  
23 hearsay and opinion on opinion in part.

24 MR. ODAM: Your Honor, I have the  
25 record for December 12th, which was Friday.

1 THE MASTER: Yes.

2 MR. ODAM: That was the time the  
3 discussion was had. The stipulation as to  
4 when they came in was at an earlier date.

5 THE MASTER: On R-91, 92 and 93?

6 MR. ODAM: Yes, sir, and I would have  
7 to refer to that date on my notes.

8 THE MASTER: I don't know that it  
9 requires the taking of this much time, but  
10 I do say to you and to Mr. Mitchell, that  
11 unless the stipulation amounts to  
12 acknowledgment of proof, there is no proof  
13 supporting the exhibit E-192, that the  
14 source of these various funds are as  
15 reflected on that exhibit, except as reflected  
16 by other underlying documents and Mr. Mitchell  
17 is correct. Most of these deposit slips  
18 don't show a source.

19 MR. ODAM: Your Honor, if I might, and  
20 certainly a significant point would be to  
21 what extent the case proceeds, but --

22 THE MASTER: Well, we can break now.  
23 We will break until 12:00 o'clock.

24 MR. MITCHELL: May I have, before we  
25 break, touch on what a work schedule would be

1 of the Court on the pending holiday season.

2 I am going to want to proceed and --

3 THE MASTER: Does this need to be on  
4 the record?

5 MR. MITCHELL: Whatever the Court  
6 desires.

7 THE MASTER: It is a fair inquiry, but  
8 I don't see that it needs to be on the  
9 record.

10 Off the record.

11  
12 (Whereupon, an off-the-record  
13 discussion was had.)

14  
15 (Short recess taken.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 THE MASTER: On the record.

2 The record will reflect that the Examiner  
3 and counsel for the Respondent and the Court  
4 have had a discussion off the record  
5 concerning our work schedule.

6 The record, of course, reflects today  
7 is Thursday the 18th, that next week is  
8 Christmas week. The Examiner has stated he  
9 is ready to continue the hearing, starting  
10 the 22nd and going through the 23rd.

11 He suggests that Christmas Eve Day might  
12 be a day we ought not to hear the case and  
13 I agree with that.

14 Mr. Mitchell, for the Respondent, and  
15 Mr. Mitchell, make sure I am saying this  
16 correctly, and I think I am, but if you had  
17 your preference, you would prefer to have  
18 the week of the 22nd to reorganize, prepare  
19 and rest some?

20 MR. MITCHELL: That is right.

21 THE MASTER: And on behalf of Judge  
22 Carrillo, you are requesting that week, is  
23 that correct?

24 MR. MITCHELL: Yes, I have requested a  
25 postponement on the grounds of surprise.

1 THE MASTER: I may well do that. I  
2 will tell you at 1:00 o'clock. I did want  
3 the record to reflect, if we recessed, it  
4 is -- well, it is not the Examiner who is  
5 asking for the time off.

6 MR. MITCHELL: That is right, and  
7 truthfully, I know the holiday spirit is in  
8 the air, but that is not it. I am hardput  
9 to assimilate the material and I do need  
10 time to prepare my presentation.

11 THE MASTER: You may proceed.

12 MR. ODAM: Your Honor, I think it would  
13 be appropriate to make additional comments  
14 about R-91, 92 and 93.

15 THE MASTER: I would like to have that  
16 happen. I have read the stipulation and I  
17 don't understand it to say there is a  
18 stipulation with respect to source. I may  
19 have misread it.

20 MR. ODAM: Well --

21 MR. MITCHELL: May I invite a  
22 stipulation that R-91, 92 and 93 are true  
23 in each and every instance in all instances?  
24 I will invite that stipulation.

25 MR. ODAM: If I could go to the Court's

1 inquiry about the source and refer to  
2 Page 2691, and there, where Mr. Hinojosa was  
3 on the stand, the question was asked of him  
4 that he was asked to compile a schedule of  
5 the checks to Benavides Implement and  
6 Hardware from Duval County commencing in 1971  
7 and running through and up to date and  
8 Mr. Hinojosa says he picked them up.

9 The dates and check numbers and claim  
10 numbers, budget code of monies going into  
11 R-91, as being from the county, and R-92  
12 as being from the Benavides Independent  
13 School District and as to R-93, from the  
14 Reclamation District, so I think the document,  
15 as it was intended by the questions posed,  
16 and the proffer of it was the summary of all  
17 the documentation we had of checks and as  
18 identified.

19 The stipulation states the dates of the  
20 checks and the amount and budget copy from  
21 all of these government entities to Benavides  
22 Implement and Hardware. That is what it is  
23 used for in the use of R-91, 92 and 93, and  
24 the examination of Judge Carrillo and the  
25 preparation of R-100 is to be just that and

1 that was turned over for those purposes.

2 When Mr. Couling was previously  
3 questioned, he was asked if he did business  
4 with the county and so forth and I objected  
5 and we did get those records and it was  
6 turned over pursuant to agreement and the  
7 entire, or a great deal of the impeachment  
8 of the credibility of Mr. Couling was based  
9 on that business going into Benavides  
10 Implement and Hardware.

11 If it were not for that development,  
12 which we objected to as irrelevant and  
13 immaterial, we would not be here today, so  
14 I am saying they have been used to showing  
15 money into the company and that chart was  
16 prepared on those and the water district and  
17 school district and the county notations were  
18 used on 91, 92 and 93, as well as the other  
19 deposit slips.

20 It has been used by one side and to use  
21 Mr. Mitchell's words, I don't think it is a  
22 fair summary of a summary.

23 It is incredible for me to go for one  
24 purpose, but yet pull it back when it begins  
25 to hurt a little bit.

1           **THE MASTER:** There is some logic to  
2 the statement you made.

3           On E-192, where is anything about rental  
4 income which is on R-91. He is hardput on  
5 any evidence on the first one, two, three,  
6 four, five pages of R-91, because there is  
7 no designation, but when he gets over here  
8 on E-192, it doesn't correspond or comport to  
9 R-91.

10           I don't care what he wants to do with  
11 it. I will either live with it or I want  
12 him to live with it.

13           **MR. ODAM:** I don't understand.

14           **MR. MITCHELL:** I don't see, if you have  
15 any rental income, where is it?

16           **MR. ODAM:** Of course, it is not there,  
17 it is in evidence.

18           **THE MASTER:** That is not the purpose.  
19 The purpose of E-192 is to represent the  
20 deposits into the Benavides Implement and  
21 Hardware and the withdrawals and showing the  
22 source of the deposit and the payee of the  
23 check withdrawing money.

24           **MR. MITCHELL:** That is my point. They  
25 want to say it is accounting. When you go to

1 R-91, it says rent on O.P.'s two D-8  
2 dozers. I am saying fine. --

3 THE MASTER: Let me see R-91.

4 MR. MITCHELL: What is the expression;  
5 what is good for the goose is good for the  
6 gander, if he says it is county income, but  
7 don't put the generic term county behind it  
8 and then hide behind that, because it doesn't  
9 fit our scheme of things.

10 Do you see what I mean, Judge Meyers?

11 You will have to have the others, too,  
12 R-91 and R-92 and R-93 as well.

13 THE MASTER: Mr. Odam, you are saying  
14 under the stipulation, where R-91 shows the  
15 fund being road and bridge, that was, of  
16 course, the county?

17 MR. ODAM: Yes, sir.

18 THE MASTER: Let me see the stipulation  
19 again, please.

20 MR. ODAM: Yes, sir.

21 MR. MITCHELL: And I am saying where he  
22 says county, and R-91 says rental on tractors,  
23 that ought to go in there and I will buy that,  
24 but I don't want him to come in and say  
25 that is not true and this is true and, that

1 is, of course what I am talking about.

2 THE MASTER: Well, I think the stipula-  
3 tion does stipulate R-91 represents funds  
4 from Duval County to Benavides Implement and  
5 Hardware; that R-92 represents funds from  
6 Benavides Independent School District to  
7 Benavides Implement and Hardware and R-93  
8 represents funds from Duval County  
9 Conservation and Reclamation into the  
10 Benavides Implement and Hardware account.

11 You may proceed, Mr. Odam.

12 MR. MITCHELL: But Judge Meyers, that  
13 does not explain my quandry. There are no  
14 designations on the first five pages. I am  
15 not quarreling with the Court, but when he  
16 gets on '73, he says 192 doesn't pick it up.  
17 He is selecting the input in E-192 from what  
18 is on R-91 and now, secondly, Judge, I, of  
19 course, agree that the stipulation is a  
20 stipulation, but I further agree that it  
21 would be improper to take counsel's remarks  
22 in that regard and stipulate the truth of  
23 the matters involved in R-91, R-92 and R-93  
24 unless counsel for Examiner is willing to do  
25 likewise. I want to know what he wants to do,

1 because he has been objecting to it.

2 In other words, is it my stipulation or  
3 both of ours and can I now treat R-91, when  
4 it comes down here and says county, for  
5 example, on 1-8-73, when it says rent on  
6 O.P.'s tractors, then he flips over on E-192  
7 and it says county, can I be told that is  
8 what it is and take the position that is also  
9 rent on O.P.'s tractor or are they going to  
10 take the position it is not?

11 THE MASTER: Well, I don't know that the  
12 stipulation addresses itself to that. You  
13 requested the stipulation and Mr. Odam  
14 stipulated it and agreed.

15 If you are suggesting that the Examiner  
16 cannot now attempt to prove that some of the  
17 recitals on R-91, 92 and 93 are not the  
18 facts, it is my position that he may do so.

19 MR. MITCHELL: May I be likewise  
20 released from my bond and do likewise?

21 THE MASTER: Have you read the  
22 stipulation?

23 MR. MITCHELL: I read it.

24 THE MASTER: The stipulation was that  
25 R-91 represented funds from the county and



1 R-92 from the school district and R-93 from  
2 the conservation district. You called for it  
3 and he agreed to it.

4 MR. MITCHELL: I am saying it is bilateral.  
5 The Court is saying, if he wants to renig,  
6 then I want to do the same thing. It is --

7 THE MASTER: How is it bilateral?

8 MR. MITCHELL: If it is evidence, he  
9 can't impeach it.

10 THE MASTER: He is not going to under-  
11 take, and I would not permit it, to prove  
12 that monies did not come from the county or  
13 school or conservation district --

14 MR. MITCHELL: For the purpose of  
15 stipulating in R-91, 92 and 93 --

16 THE MASTER: Read that to me.

17 MR. MITCHELL: Source, fund --

18 THE MASTER: That is maybe right, but  
19 point it out to me.

20 MR. MITCHELL: Well, I don't have it.  
21 The Court has it.

22 MR. ODAM: Here is December 5th.

23 THE MASTER: What page is it?

24 MR. ODAM: 2693.

25 MR. MITCHELL: Going down the columns,

1 the date, the check number, claim number,  
2 amount, funds, budget code -- of course, that  
3 Page 1 didn't have the purpose and didn't  
4 commence until Page 6 of R-91 on those.

5 Now, all I want to know is, is the  
6 stipulation covering from six on as to the  
7 purpose? I just need to know the rules.

8 MR. ODAM: Well, I stipulated and as I  
9 stated there. I said R-91, 92 and 93 are  
10 what Mr. Mitchell just read off of them and  
11 what they contain. I stipulated what it was  
12 stating at that time.

13 MR. MITCHELL: All right.

14 MR. ODAM: I listened to him say it,  
15 and if it says check and claim number and so  
16 forth, then I stipulated to that.

17 THE MASTER: Let's see what the problem  
18 really is.

19 To what extent do you intend to attempt  
20 to disprove the recitals as to what the funds  
21 were used for in R-91, for example?

22 It says rent on O.P.'s tractor. Do you  
23 intend to show it was not rent on O.P.'s  
24 tractor?

25 MR. ODAM: Well, that recital on there --

1 THE MASTER: Or do you intend to show  
2 that was the recital on the check?

3 MR. ODAM: No, sir. The 10-18 -- I used  
4 January 8, 1973, and someone put a notation,  
5 rent on O.P.'s two D-8 dozers.

6 THE MASTER: Put on the exhibit or the  
7 check?

8 MR. ODAM: On the exhibit.

9 THE MASTER: All right.

10 MR. ODAM: That that rent on O.P.'s two  
11 D-8 Caterpillar dozers was not put on there  
12 for the purpose of saying that the county  
13 check was -- you have to take this in a  
14 context of the entire case. It is not the  
15 fact that the D-8 dozer went out to the  
16 county, but our evidence shows that particular  
17 check in evidence, that that money that came  
18 back was applied and then used to pay for  
19 O.P.'s two D-8 Caterpillars.

20 That is what I asked Judge Carrillo,  
21 why or what that notation meant, because  
22 obviously that would not be an invoice from  
23 the county.

24 That, as our case with that January 8th,  
25 1973, and we could get the county check in

1 that amount, but that check went into a bank  
2 account and from that, that check went for  
3 the payment for the two D-8 Caterpillars.

4 It was purported that the money was in  
5 the scheme of being obtained for those  
6 purposes. The same thing down on -- and it  
7 might -- you see, Your Honor, what I am  
8 saying, as far as the -- like our evidence  
9 has been all along that the 10-18 was  
10 connected with the rent that was being paid  
11 all along to Plains Machinery under the  
12 rental-purchase agreement, rent on O.P.'s  
13 two D-8 Cats. They were the ones being  
14 rented and the money was taken from the county  
15 into the fund and from that on out, not that  
16 as to leave the impression that those two  
17 D-8 Cats were out doing work.

18 There is no evidence in this record  
19 they were used for the county, but that the  
20 money was taken from the county to pay for  
21 those. That was a notation and this one was  
22 put down here on here all along. That is a  
23 different type of notation.

24 THE MASTER: I see what you mean. You  
25 say because this exhibit says rent on O.P.'s

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1 two D-8 dozers doesn't necessarily mean they  
2 were rented to the county. You are  
3 suggesting that on the lease-purchase  
4 agreement, it was money paid for the two  
5 Caterpillars?

6 MR. ODAM: Yes, sir, and that was my  
7 question to Judge Carrillo, what does that  
8 mean, and he said I don't know.

9 MR. MITCHELL: In other words, what, as  
10 I understand -- we are not going to agree on  
11 Page 6 on that?

12 THE MASTER: I don't think counsel says --  
13 you see, that is in a sense ambiguous. That  
14 doesn't necessarily mean the tractors were  
15 rented to the county.

16 MR. MITCHELL: I am not fussing, because  
17 it is going to be an intricate process  
18 where parties stipulate and then don't.

19 MR. ODAM: I really object to that, to  
20 say that I would back out of a stipulation.  
21 I don't want this record to indicate that I  
22 have done anything other than that all along.

23 THE MASTER: I will agree with that.

24 You may proceed, Mr. Odam.  
25

EXAMINATION CONTINUED  
(Of Mr. Couling)

1  
2  
3 BY MR. ODAM:  
4

5 Q Mr. Couling, I would like for you to pick up page 1  
6 of R -- correction, E-192.

7 MR. MITCHELL: Excuse me, Judge, didn't  
8 I have him on voir dire?

9 MR. ODAM: I am sorry. Maybe that is  
10 where we are.

11 THE MASTER: I thought you had --

12 MR. MITCHELL: I had not quite -- I  
13 had one more question.

14 THE MASTER: You may proceed. I thought  
15 you had finished.

16 MR. ODAM: I thought he had, too, and I  
17 am sorry.  
18  
19  
20  
21  
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23  
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VOIR DIRE EXAMINATION  
(Continued)

BY MR. MITCHELL:

Q I want to ask you, Mr. Couling, where you got the information on E-91, page 1, as regards the deposits.

MR. ODAM: Wait. What --

MR. MITCHELL: E-92-1. I might have misstated it.

Q Where did you get the information showing under the deposits or the source?

THE MASTER: E-192-1?

MR. MITCHELL: Right.

A I stated before that we got it from the bank deposits.

Q Where?

A From San Diego, First State Bank of San Diego.

Q You talked about it in terms of evidence. I want to find where it's in evidence so I can object to this Exhibit, if I have got one.

A I believe it was presented last time I was here in court, the bank statements.

MR. MITCHELL: Counsel, may I ask --  
Your Honor, if Mr. Odam wants to help, I want to know where the deposit information



1 came from on E-192-1, the first page.

2 THE MASTER: If this witness can tell  
3 you. I mean your questions are addressed  
4 to him.

5 MR. MITCHELL: He testified, if the  
6 Court will recall under oath, that the  
7 deposit data, check data, payee, all came  
8 from testimony that was in evidence, docu-  
9 mentary in evidence as I recall his testimony,  
10 and I am simply asking him to tell or point  
11 up to the Court where the data came from  
12 on page 1 of 192-1.

13 MR. ODAM: Your Honor, I believe that  
14 the witness testified that it came from  
15 documentary evidence. If Mr. Mitchell's  
16 question is to point out specifically where --

17 MR. MITCHELL: Yes, that is it.

18 MR. ODAM: Then, we can do that.

19 THE MASTER: The question is, can this  
20 witness do that. The question to Mr.  
21 Couling is in the development of E-192,  
22 specifically page 1, but I assume it goes  
23 also to the other pages, how did you deter-  
24 mine the source of the deposits?

25 A Well, we worked from a chart that was prepared

1 by Mr. Don Lee, my bank statements, sir, from the  
2 bank. We prepared them from the bank statements  
3 and we noticed we had the statements from the  
4 county, the water district and the school dis-  
5 trict, sir.

6 MR. ODAM: Also, the question Mr.  
7 Mitchell asked I was getting ready to ask  
8 him and that was what Mr. Mitchell's ques-  
9 tion was. I was going to ask him, for  
10 example, to -- I would not want to unless  
11 the Court or Mr. Mitchell wanted me to, but  
12 I was going to take him now through 192 and  
13 pick out the source from which that was and  
14 work through this for a bit and those were  
15 exactly my questions when I started to pick  
16 up was to take R-91 and proceed.

17 THE MASTER: You have offered E-192 and  
18 it has been admitted which ruling I will  
19 happily reconsider, but I think Counsel has  
20 a right to examine on the Exhibit before  
21 you start voir dire.

22 MR. MITCHELL: I didn't mean to step  
23 on his toes. I thought I had the witness  
24 on voir dire.

25 THE MASTER: But he says he intends to

1 develop the very same material. I think he  
2 has a right to do that. You may proceed,  
3 Mr. Odam.  
4

5 - - - - -  
6

7 EXAMINATION CONTINUED

8  
9 BY MR. ODAM:

10 Q Mr. Couling, you're looking at the entry, and  
11 let's take, for example, the first four, five  
12 entries on page 1 and all these references for  
13 the benefit of the Master and Counsel and the  
14 record until indicated otherwise, I will try to  
15 make clear that I am referring to the first entry  
16 on page 1 unless I am referring to some other  
17 Exhibit. And I am referring now to the entries,  
18 Mr. Couling, dated April the 16th, 1971, and the  
19 first one is two ninety-eighty, nineteen fourteen  
20 forty-seven, a thousand eight, three o eight  
21 eighty and the seven eighty.

22 THE MASTER: No, no, it's just three  
23 hundred and eighty.

24 Q All right, sir. Let me take those four, first of  
25 all, and the notation out beside it on the Exhibit.

1 Mr. Couling, is county, is that correct?

2 A Yes, sir.

3 Q And will you state for the record what the nota-  
4 tion county means?

5 A Okay. Duval County, Texas. That was checks from  
6 Duval County, Texas.

7 Q I show you what has been marked as R-91 and refer  
8 you to the entries on this one and if you could  
9 first of all read the claim number and explain, if  
10 you know, what this is referring to when it says  
11 claim number, for example, B-889.

12 A I believe the county uses a jacket form for this  
13 to write down the amount of the bill and then they  
14 put a claim number beside it.

15 Q For example, I show you here a jacket that has  
16 a claim number at the top?

17 A Yes.

18 Q And could you read that claim number?

19 A B-1541.

20 Q And I am referring to what was marked as H-111,  
21 claim jacket, just for clarification, which was  
22 used on welfare store or Cash Store, I believe,  
23 just for clarification. So, this claim number is  
24 the claim number assigned by the county of Duval?

25 A Yes, sir.

1 Q And the amount would be the amount of money turned  
2 in by your store to Duval County?

3 A Yes, sir.

4 Q And the road and bridge fund is again notations  
5 that are kept by the County?

6 A Yes, sir.

7 Q And this amount of money, three o eight, can you  
8 identify the R-91, three o eight? Can you identify  
9 it on the --

10 A Yes, sir, it's the first check on the first four  
11 checks.

12 Q And examining R-91, the first four entries on  
13 R-91, can you find those first four entries on  
14 R-91 as being money paid from Duval County --

15 A Yes, sir.

16 Q To the store?

17 A Yes, sir.

18 Q And are the first four entries on R-91, do they  
19 appear to be duplicated on the first entries on  
20 192, page 1?

21 A Yes, sir.

22 Q The first four entries?

23 A Yes, sir.

24 Q I show you what has been marked as R-89-1 which  
25 is the Respondent's Exhibit and ask if you can

1 identify, please, sir, for the record, what  
2 Respondent's Exhibit 89 appears to be.

3 A That is a copy from the First State Bank of San  
4 Diego, statement to the Benavides Implement and  
5 Hardware Company on April the 30th, 1971.

6 Q What is the amount of the first entry of deposit  
7 in that bank account?

8 A Three thousand three hundred and one dollars and  
9 twenty-seven cents.

10 Q And what is the second entry?

11 A One thousand three hundred and forty-four ninety-  
12 five.

13 Q And referring back to the page 1, I would like  
14 for you to skip down. We can -- skip down to the  
15 water district entries, for example.

16 MR. MITCHELL: Pardon me, Counsel. I  
17 didn't follow where those went into E-192-1,  
18 those last items, where they carried over.

19 MR. ODAM: 92?

20 MR. MITCHELL: Yes, sir.

21 MR. ODAM: 192-1.

22 MR. MITCHELL: The last one.

23 THE MASTER: He didn't do that.

24 MR. MITCHELL: He hasn't? I'm sorry.

25 Judge. I didn't mean to address Counsel

1 directly, but --

2 THE MASTER: I think that is his pre-  
3 sent question, if I understand it. You are  
4 asking where those deposits are reflected  
5 in E-192 on page 1, are you not?

6 MR. ODAM: Yes, sir.

7 THE MASTER: All right.

8 MR. ODAM: Let's take the --

9 THE MASTER: Are you going to let him  
10 answer that question?

11 Q Well, the first ones, the two hundred and ninety,  
12 the nine fourteen, the thousand and eight and  
13 three o eight, where would those be reflected on  
14 R-89 -- R-89-1, I'm sorry.

15 A It should be on the three thousand three hundred  
16 and one dollars and twenty-seven cents.

17 Q In other words, the two ninety --

18 A Right.

19 Q Point eight o and the nine fourteen point four  
20 seven and the thousand and eight and the three  
21 o eight and the next entry down, the seven hundred  
22 and eighty, if that seven hundred and eighty were  
23 added to the deposit would come to a total of  
24 three thousand three hundred and one dollars and  
25 twenty-seven cents?

1 A That's correct, sir.

2 Q You skipped down to the next two entries on the  
3 chart, the seven hundred and fifty dollars plus  
4 the five hundred and --

5 A Ninety-four ninety.

6 Q Ninety-four dollars and --

7 A Ninety-five cents.

8 Q Ninety-five cents equals the second entry?

9 A One thousand three hundred and forty-four ninety-  
10 five.

11 Q Which are backed up by deposit slips in the bank  
12 account?

13 A Yes, sir.

14 Q I see on the 4-26-71, the bank accounts reflect  
15 the deposit of four hundred and sixty-one dollars  
16 and fifty cents, is that correct?

17 A Yes, sir.

18 Q And it's referring to the inter-relationship between  
19 R-89-1 and that deposit is four twenty-eight on  
20 the bank deposit and then the two school district  
21 checks, one for a total of one thousand.

22 A Seventy-four forty-eight.

23 Q Seventy-four dollars and forty-eight cents.

24 A One for six hundred and --

25 Q Plus six hundred and forty-four dollars and



1 twenty cents was also deposited in the bank  
2 account?

3 A Yes, sir.

4 Q Now, skip down, for example, to the May 12th,  
5 1971, entry and turning to page R-89-2 for forty-  
6 nine dollars and the one hundred ninety-eight  
7 dollars?

8 A Yes, sir.

9 Q Those total up to how much?

10 A Two hundred and fifty-seven dollars, sir.

11 Q And I believe as indicated earlier, that was --  
12 that was incorrect on the charts. That should be  
13 two hundred and forty-seven dollars. do you  
14 agree?

15 A Yes.

16 MR. ODAM: And with leave of Court and  
17 Counsel, I would like to change this second  
18 digit or have it -- leave it as is?

19 THE MASTER: Well, I thought the deposit  
20 slip on that one was also erroneous.

21 MR. ODAM: No, sir, it was two forty-  
22 eight.

23 MR. MITCHELL: No, it was two forty,  
24 Judge, and I think he was right.

25 THE MASTER: Oh, I am sorry. I thought

1 it had a mistake on it.

2 MR. ODAM: No, sir.

3 THE MASTER: 247?

4 MR. MITCHELL: Yes, I will find it if  
5 the Court wants me to.

6 THE MASTER: Well, that is fine. I  
7 think it's five or six down, Mr. Mitchell.

8 Q And then you heard the earlier testimony --

9 THE MASTER: You may amend the Exhibit  
10 to reflect the correct total.

11 Q And we are changing the second digit and total  
12 amount of those to two hundred and forty-seven  
13 dollars and seventy cents.

14 And skip down, for example, to the next entry  
15 which is how much on the chart?

16 A Eight hundred and seventy-five dollars.

17 Q What is the second entry on the R-89-2 statement  
18 for the San Diego bank account?

19 A Eight hundred and seventy-five, sir.

20 Q And as you will recall earlier, we looked at  
21 the deposit slip which had the invoice number  
22 on it and compared it with the invoice number  
23 that was on the deposit slip for that particular  
24 one from the school district and the court had  
25 pointed out it was --

- 1 A The check number?
- 2 Q Yes what is the check number?
- 3 A 8746.
- 4 Q And the amount of that check?
- 5 A Eight hundred and seventy-five dollars.
- 6 Q And the statement has an entry on it, R-89-2 of
- 7 three thousand dollars. And I refer you on the
- 8 chart to the entry for May the 27th and what is
- 9 the notation on there?
- 10 A Notes from the First State Bank of San Diego,
- 11 sir.
- 12 Q And what is the notation on R-89-2?
- 13 A It was a deposit made on the 27th day of May,
- 14 sir.
- 15 Q And this would be the three thousand dollar note
- 16 that had been alluded to earlier that you and
- 17 Ramiro took out?
- 18 A Yes, sir.
- 19 Q Let's skip over, for example, to the bank state-
- 20 ment for August of -- 31st of August, 71, and
- 21 R-89-5. Will you skip down to the August entries
- 22 which began at the top of page 2 of 192-2. What
- 23 is the first deposit there?
- 24 A A hundred and fifty dollars, sir.
- 25 Q Will you identify that on the bank statement,

1 R-89-5?

2 A Yes, sir.

3 Q And what is the second on R-89-5? What is the  
4 second amount?

5 A Four hundred and ten dollars, sir.

6 Q Does that appear on the chart?

7 A Yes, sir.

8 Q And the next entry, August the 13th of 1971,  
9 those have been totaled up on the chart, have  
10 they not?

11 A Yes, sir.

12 Q And what is the total there on the chart?

13 A Five thousand five hundred and forty-six dollars  
14 and ninety-nine cents.

15 Q What is the total of the deposit entry on R-89-5?

16 A Five thousand four hundred and forty-six ninety-  
17 nine, sir.

18 Q Let's take that one, for example, August the 13th  
19 of 1971, the notation beside it is county?

20 A Yes, sir.

21 Q I believe you testified earlier that that was a  
22 reference to Duval County. And I will ask you if  
23 you could read from R-91, the first page the  
24 entry on R-91, the claim number and the amount  
25 and the funds there?

1 A B-1776 in the amount of nine ninety-six, road  
2 and bridge funds and the code number 229.

3 Q And the next entry you have on the chart is three  
4 hundred and ten dollars. Does that coincide with  
5 R-91?

6 A Yes, sir, it's B-1750 for three hundred and ten  
7 dollars, road and bridge funds, code 229.

8 Q Skin down, for example, and also the total deposit  
9 there on August the 13th was a water district  
10 notation, seven hundred and fifty dollars and  
11 skipping over to R-93, that is August of 1971.  
12 What is the notation on R-93?

13 A The check number 6026 in the amount of a hundred  
14 and seventy-five -- seven hundred and fifty  
15 dollars and said supplies for water system in  
16 Benavides.

17 Q And let's take, just for example, another entry  
18 here in September. On the chart you have, can  
19 you read the September entry of September the 2nd?

20 A Yes, sir, one thousand five hundred and ninety-  
21 four dollars and ten cents.

22 Q And I refer you to the bank statement which is  
23 in evidence which is -- I refer to page R-89-6  
24 and do you find a deposit of the same amount on  
25 the bank statement?

1 A Yes, sir, one thousand five hundred ninety-four  
2 dollars and ten cents.

3 Q And the next entry on the chart is how much?

4 A Three thousand six hundred and twenty-seven thirteen.  
5 sir.

6 Q And do you find that entry on the entry into the  
7 bank?

8 A Yes, sir.

9 Q And the next two entries, just for example, two  
10 water district checks and their total amount?

11 A One thousand two hundred and ninety thirty-three.

12 Q And those are composed of two water district  
13 checks?

14 A Yes.

15 Q And that is the 1st of September. I am referring  
16 you to the R-93, first one is five hundred and  
17 forty dollars and thirty-three cents. Do you  
18 find it on R-93?

19 A Yes, sir, check number 6109 for seven hundred  
20 and fifty dollars.

21 Q Is one entry and do you find the entry on R-93  
22 of the five hundred and forty dollars and thirty-  
23 three cents?

24 A Yes, sir. 6109 is five hundred and forty dollars  
25 and thirty-three cents.

1 MR. ODAM: Your Honor, and for the benefit  
2 of Counsel, the reason I have just taken these  
3 few examples in light of earlier conversa-  
4 tion, is to show the pattern and the basis,  
5 as my representation earlier, that the amounts  
6 of money and the deposits and the source  
7 were taken from the deposit slips, from the  
8 B-91, 92 and 93 and from the bank statement,  
9 R-89-1 and I have simply taken these as a  
10 few examples and I would not unless desired  
11 by the Court to do so, I would not take 12  
12 pages and take every one of these to prove  
13 them up, although that certainly can be  
14 done, but it would take an inordinate amount  
15 of time and that is the whole purpose of the  
16 summary in the first place, is to summarize  
17 them by the charts.

18 In other words, I would move on today  
19 or another time to another section of the  
20 chart. I will make that comment at this  
21 time.

22 MR. MITCHELL: Judge --

23 THE MASTER: You can ask the witness if  
24 that pattern is true of the balance of the  
25 chart.

1 MR. ODAM: Yes, sir, let me do that.

2 Q Mr. Couling, we have taken you through, or I have  
3 taken you through for a few minutes in comparison  
4 of the R-91, 92 and 93 and the bank statement,  
5 R-89-1 or, correction, R-89 with the sub-parts  
6 and the Court has referred to and we have examined  
7 the deposit slips themselves which are in evidence.  
8 And my question to you is: That documentation, was  
9 that used as a pattern of what we have discussed  
10 here: was that used to make up the amounts of  
11 deposits that appear throughout the chart?

12 A Yes, sir.

13 MR. MICHELL: I was going to make  
14 observation, Judge, but perhaps I might do  
15 it when I get him and I was going to see if  
16 couldn't agree that E-192 does not include  
17 any other recital material beginning on page 6  
18 of R-91 or the recital material that is in  
19 the for. F-O-R column, and on R-92 or the  
20 for column in 93. I think it's obvious.

21 THE MASTER: The Exhibit speaks for  
22 itself, but as I have seen it, your state-  
23 ment is correct.

24 MR. ODAM: And I would certainly agree  
25 with that statement, that is obvious --



1 MR. MITCHELL: That will save me from  
2 going back in on Mr. Couling when I get him  
3 to show that it doesn't carry forth and I  
4 think to that extent we have accomplished  
5 that. Thank you, Judge Meyers.

6 Mr. Odam has pointed out by the evidence,  
7 it's intended, the chart is intended to carry  
8 forth the amount of deposit and the source  
9 of the deposit and that is the label at the  
10 top.

11 THE MASTER: Well, this is a breaking  
12 point, I believe.

13 MR. ODAM: Yes, sir.

14 THE MASTER: Let's break until tomorrow.

15 (Whereupon the hearing was recessed on  
16 December 18th at 1:00 until 8:30 on Decem-  
17 ber 19th, 1975.)  
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