

**INQUIRY CONCERNING A JUDGE
NO. 5**

DECEMBER 30, 1975

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BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

DECEMBER 30, 1975

COPY

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

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1 MR. MITCHELL: May I call Oscar
2 Carrillo?

3 THE MASTER: Yes, you may.
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9 OSCAR CARRILLO,
10 called as a witness, was duly sworn upon his oath
11 to tell the truth, the whole truth and nothing but
12 the truth, testified as follows, to-wit:
13

14 MR. MITCHELL: May I proceed?

15 THE MASTER: Yes, please.
16

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

19 BY MR. MITCHELL:
20

21 Q State your name.

22 A Oscar Carrillo, Sr.

23 Q Are you the brother of Ramiro Carrillo?

24 A I respectfully decline to answer the questions
25 put to me by the Commission. I claim this right

1 under the provisions of the Fifth Amendment to
2 the Constitution of the United States and
3 Article 1, Section 10 of the Constitution of the
4 State of Texas.

5 THE MASTER: In the future, you simply
6 may say I respectfully decline to answer and
7 it is agreed by all that includes the full
8 statement you just made, is that correct,
9 gentlemen?

10 MR. MITCHELL: Yes.

11 MR. ODAM: Yes.

12 Q (By Mr. Mitchell) Are you related to Judge O. P.
13 Carrillo?

14 A I respectfully decline to answer.

15 Q Are you related to D. C. Chapa?

16 A I respectfully decline to answer.

17 Q Do you know Rudy Couling, sometimes known as
18 Rudolfo and sometimes R. M.?

19 A I respectfully decline to answer.

20 Q Do you know for a fact he has a business named
21 Benavides Implement and Hardware?

22 A I decline to answer.

23 Q There has been information -- we have received
24 information in the form of a check in the amount
25 of five hundred dollars made out to Oscar Carrillo.

1 Can you tell us whether or not on the 16th day of
2 April, 1971, you received a check for five
3 hundred dollars from Mr. Rudy Couling drawn on
4 his Benavides Implement and Hardware account?

5 A I respectfully decline to answer.

6 MR. ODAM: We object to that question
7 on the grounds that the purpose of the
8 question and the answer would be to impeach
9 Mr. Rudolfo Couling on questions raised on
10 R-192, which was raised on rebuttal.

11 Therefore, according to case law,
12 testimony on collateral matters is
13 inadmissible and irrelevant. We object
14 on the grounds of irrelevancy and I have a
15 number of cases whereby the witness cannot
16 be --

17 THE MASTER: You don't have to quote
18 the authority.

19 You can impeach on a collateral matter.

20 I will overrule the objection.

21 MR. ODAM: I would like to have the
22 same objection to each question of this type
23 asked.

24 THE MASTER: You may.

25 Q (By Mr. Mitchell) There's testimony in the

1 record by Mr. Couling that you and he had an
2 agreement or entered into a conspiracy whereby
3 monies would be paid to you from Benavides
4 Implement and Hardware. Did you have such an
5 agreement or understanding with Mr. Couling?

6 A I respectfully decline to answer.

7 Q Did you have such an agreement or understanding
8 with your brother Ramiro Carrillo?

9 A I respectfully decline to answer.

10 Q Did you have such an understanding or agreement
11 as regards taking monies from Duval County or
12 the water district or Duval School District
13 through the vehicle Benavides Implement and
14 Hardware?

15 A I respectfully decline to answer.

16 MR. MITCHELL: So the record is clear,
17 I have reference to E-192-1, a check to
18 Oscar Carrillo in the amount of five
19 hundred dollars dated 4-16-71.

20 Q (By Mr. Mitchell) I will ask you the same
21 question as regards checks from the Benavides
22 Implement and Hardware for the years 1971, '72,
23 '73, '74 and '75, Mr. Carrillo.

24 A I decline to answer.

25 Q There is, in Exhibit E-192-1 through and

1 including E-192-12, checks going from the
2 Benavides Implement and Hardware to R. Carrillo
3 and Brothers. I will ask you, do you own any
4 interest in the R. Carrillo and Brothers?

5 A I respectfully decline to answer.

6 Q Did you, as part owner or by having an interest
7 in the same, did you have anything to do with
8 respect and as regards the vehicle Benavides
9 Implement and Hardware, receiving monies and
10 paying them to R. Carrillo and Brothers?

11 A I respectfully decline to answer.

12 Q Did you have an understanding or agreement with
13 your brother Ramiro Carrillo, Mr. Carrillo, as
14 regards the use of equipment belonging to Duval
15 County, the water or school district?

16 A I respectfully decline to answer.

17 Q Did you engage with him in a conspiracy, sir, to
18 use the services of the county, water or school
19 district?

20 A I respectfully decline to answer.

21 Q Did you have an understanding with D. C. Chapa
22 and/or your brother Ramiro or O. P. as regards
23 the use of equipment belonging to Duval County
24 or the water or school district?

25 A I decline to answer.

1 Q I will ask you the same question as regards an
2 agreement between you and your brother, Ramiro,
3 C. P. and/or your father as regards the use of
4 services of the Duval County water district or
5 school district.

6 A Respectfully refuse to answer.

7 Q Is David Carrillo your son?

8 A Respectfully refuse to answer.

9 Q Did you have any agreement or understanding with
10 David Carrillo as regards the sums being paid to
11 him under the -- by the Benavides Implement and
12 Hardware accounts and specifically by Rudolfo
13 Couling from 4-16-71 through and including 12-3-74?

14 A I respectfully refuse to answer.

15 MR. MITCHELL: Judge Meyers, in order
16 that the record speak to the questions of
17 this witness, I have reference -- I would
18 like to make a reference at E-192-2 through
19 and including 12 and specifically out to the
20 witness questions as regards each and every
21 check that reflects on that Exhibit to him.

22 I have not covered them all specifically.
23 I have asked him about the one appearing at
24 4-16-71 and 5-13-71.

25 THE MASTER: No, I think 5-14-71.

1 MR. MITCHELL: 5-14-71, yes, Judge, and
2 6-17-71.

3 THE MASTER: Just ask him the question.
4 In fact, I will ask it if you wish.

5 MR. MITCHELL: I would appreciate it,
6 Your Honor.

7 THE MASTER: Mister Carrillo, would
8 your answer, that is, "I respectfully decline
9 to answer" be the same as to any question
10 concerning any check that was made out to
11 you that Mr. Mitchell might ask?

12 A Yes, sir.

13 MR. MITCHELL: No further questions.
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E X A M I N A T I O N

BY MR. ODAM:

21 Q Mr. Carrillo, have we ever met before today?

22 A I don't think so.

23 Q Have we even met today?

24 A I have seen you but I don't think we have met.

25 Q My name is John Odam and I work for the Attorney

1 General's office and I am an Examiner for the
2 Judicial Qualifications Commission. Are you a
3 former state senator?

4 A I refuse to answer.

5 Q Well, I believe you are so just out of respect to
6 you I will refer to you as Senator Carrillo.

7 Senator Carrillo, who is your counsel advising
8 you today to take the Fifth Amendment?

9 A I refuse to answer.

10 Q Is your counsel present in the courtroom with you
11 today?

12 A I refuse to answer.

13 Q Is your counsel sitting beside you today?

14 A I refuse to answer.

15 Q I notice that when you started taking the Fifth
16 Amendment today, you were reading from a piece
17 of paper. Who gave you the piece of paper that
18 had the Fifth Amendment written on it?

19 A I refuse to answer.

20 Q Did Mr. Mitchell give you the piece of paper?

21 A I refuse to answer.

22 Q Is Mr. Mitchell your attorney in this case?

23 A I refuse to answer.

24 Q Have you been indicted by the Grand Jury in Duval
25 County?

1 A I refuse to answer.

2 Q Did Judge O. P. Carrillo have an opponent in his
3 last race for District Judge?

4 A I refuse to answer.

5 Q Did he have an opponent in the first race, the
6 first time he ran for district judge?

7 A I refuse to answer.

8 MR. ODAM: Pass the witness.

9 MR. MITCHELL: No further questions,
10 Your Honor.

11 THE MASTER: Thank you, you may step
12 down, Mr. Carrillo.

13 (Discussion off the record.)

14 THE MASTER: Who is next?

15 (Discussion off the record.)

16 THE MASTER: Well, now, we can use Mr.
17 Don Lee if that is agreeable with you. I
18 understand Mr. Abarca is in the hospital.

19 MR. FLUSCHE: That is correct, sir.

20 THE MASTER: With you being fluent in
21 Spanish, it seems to me that that is a suffi-
22 cient check.
23

24 JUDGE CARRILLO: Yes, that is fine, there
25

1 is no problem, no problem.

2 THE MASTER: All right.

3
4 (Discussion off the record.)

5 THE MASTER: Mr. Lee, have you ever
6 been an interpreter before?

7 MR. LEE: Only very small manner.

8 THE MASTER: Well, I want you to act
9 as interpreter for Mr. D. C. Chapa. Mr.
10 Chapa has a good working knowledge with
11 English, I think, but he would prefer and
12 is more comfortable in Spanish so when a
13 question is asked, you translate it literally
14 and don't interpret it, just translate it
15 because I know phrases are different in the
16 two languages, but just do the best you can.

17 MR. LEE: Yes, sir.

18 THE MASTER: And then when Mr. Chapa
19 answers, give his answer. For example, if
20 he should say, "I don't understand", you don't
21 try to explain the question to him, you say,
22 "I don't understand."

23 MR. LEE: Yes, sir.

24 THE MASTER: And then the lawyer tries
25 to clear up the question.

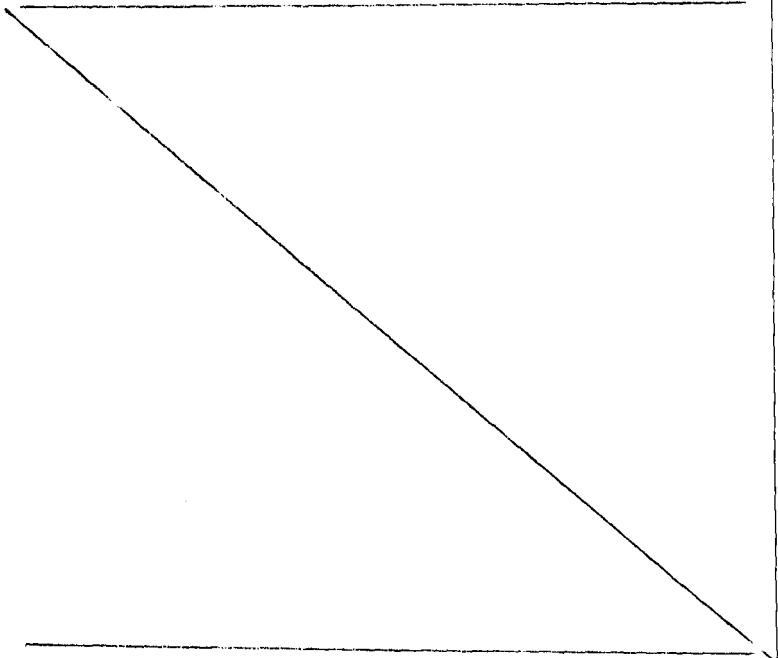
1 MR. LEE: Yes, sir.

2 THE MASTER : Now, let me get you to
3 raise your right hand.

4 (Whereupon Mr. Don Lee was sworn by the
5 Master to act as the interpreter in this
6 cause.)
7

8 THE MASTER: All right, ask Mr. Chapa
9 to raise his right hand and I will administer
10 the oath to him.

11 (Discussion off the record.)
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1 D. C. CHAPA,
2 having been duly sworn, testified upon his oath as
3 follows, to-wit:
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5 E X A M I N A T I O N
6

7 BY MR. MITCHELL:

8 Q State your name for the record, please.

9 A D. C. Chapa.

10 Q Do you know O. P. Carrillo?

11 A I, with all respect to this Court, I am not going
12 to answer any questions that are asked of me
13 because they might incriminate me. I claim this
14 right under the rights that I have under the
15 Fifth Amendment of the Constitution of the United
16 States of America and Article 1, Section 10, of
17 the Constitution of the State of Texas.

18 MR. MITCHELL: Your Honor, may I request
19 that this witness be permitted in the short-
20 hand rendition to invoke that privilege if
21 he cares to in answer to further questions
22 by simply --

23 THE MASTER: Yes, Mr. Lee, would you
24 translate this for me. Mr. Chapa, in the
25 future, you may simply say, "I respectfully

1 decline to answer", and that will be a suffi-
2 cient statement invoking the Fifth Amendment
3 privilege.
4

5 (Discussion off the record.)

6 MR. MITCHELL: Thank you.

7 Q (By Mr. Mitchell:) Do you know -- Mr. Chana, do
8 you know Ramiro Carrillo?

9 A I respectfully decline to answer.

10 Q Do you know Oscar Carrillo?

11 A I respectfully decline to answer.

12 Q Do you know Eloy Carrillo?

13 A I respectfully request to not answer the question.

14 Q Do you know D. H. or David Carrillo?

15 A I respectfully request not to answer the question.

16 Q Do you know Mr. Rudolfo Couling?

17 A I respectfully request not to answer the question.

18 Q Do you know the partners in the business known as
19 Farm and Ranch?

20 A I respectfully request not to answer.

21 Q Do you know the Benavides -- the owner of the --

22 MR. MITCHELL: Strike that.

23 Q Do you know the location of the Benavides Implement
24 and Hardware?

25 A I respectfully decline to answer that.

1 Q Were you the president of the Benavides
2 Independent School District, Mr. Chapa, at any
3 time from January of 1971 to date?

4 A I respectfully request to decline to answer.

5 Q Were you a member of the board or an officer in
6 the Duval County Conservation and Reclamation
7 District in November, 1973?

8 A I respectfully request to decline to answer.

9 MR. MITCHELL: This concerns Roman
10 Number VI, Your Honor.

11 Q Did you conspire to wrongfully acquire monies --
12 did you conspire in November of 1973 to wrongfully
13 appropriate monies of the Duval County Water
14 Conservation and Reclamation District for the
15 benefit of your son O. P. Carrillo?

16 A I respectfully request to decline to answer.

17 Q Mr. Chapa, there has been testimony -- did you
18 conspire or agree with Rudolfo Couling to
19 receive monies illegally from Duval County, the
20 water or school district at any time beginning in
21 1971 to date?

22 A I respectfully request to decline to answer.

23 Q I will ask you -- did you conspire with Oscar or
24 O. P. or Ramiro or a combination of those persons
25 to receive money from the water or school district

1 or Duval County or anyone else?

2 A I respectfully request to decline the answer.

3 Q Did you have an agreement with your son, Ramiro
4 Carrillo or anyone as regards the use for private
5 purposes of equipment belonging to Duval County?

6 A I respectfully request to decline to answer.

7 Q The same question as regards services. Did you
8 have an agreement with O. P., Ramiro or Oscar as
9 regards the use of the services of Duval County
10 personnel for private purposes?

11 A I respectfully request to decline the answer.

12 Q Mr. Chapa, there is testimony as to checks paid
13 to you from Benavides Implement and Hardware. On
14 each and every check --

15 MR. MITCHELL: I refer to E-192-1.

16 THE MASTER: Remember you are asking
17 questions through an interpreter.

18 MR. MITCHELL: Yes, strike that
19 question and I will start it over.

20 Did you have an agreement with Rudolfo
21 Couling as regards the unlawful appropriation
22 of money from Duval County or the water or
23 school district through Benavides Implement
24 and Hardware?

25 THE WITNESS: I respectfully request to

1 decline to answer.

2 Q (By Mr. Mitchell) Would that be your same answer
3 if I asked you the same question from January 1st,
4 1971 to date?

5 A I respectfully request to decline the answer.

6 MR. MITCHELL: I have no further
7 questions.

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13 EXAMINATION

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15 BY MR. ODAM:

16
17 Q Mr. Chapa, my name is John Odam. I am with the
18 attorney general's office and I am an examiner
19 for the Judicial Qualifications Commission. I
20 too would like to ask you a few questions.

21 Who is your attorney advising you today?

22 A I respectfully decline to answer the question.

23 Q Have you retained an attorney to represent you
24 here today?

25 A I respectfully decline to answer the question.

- 1 Q Is Mr. Mitchell your attorney?
- 2 A I respectfully decline to answer the question.
- 3 Q Who gave you the piece of paper that has the
4 Fifth Amendment written on it?
- 5 A I respectfully request to decline to answer the
6 question.
- 7 Q Mr. Mitchell has asked you a number of questions
8 about money from the Benavides Implement and
9 Hardware Store to you. If I were to ask you
10 questions about the same matters, would you
11 invoke your Fifth Amendment privilege?
- 12 A I respectfully request to decline to answer the
13 question.
- 14 Q Are you aware of an arrangement whereby seven
15 hundred fifty dollars a month would be taken out
16 of the water district beginning in April, 1971?
- 17 A I respectfully request to decline to answer the
18 question.
- 19 Q Further assuming that the money was taken out,
20 that that money went to Benavides Implement and
21 Hardware and in turn you received some of that
22 money.
- 23 A I respectfully request to decline to answer the
24 question.
- 25 Q Have you ever received money from the checking

1 account of Ramiro -- from the checking account of
2 R. Carrillo and Brothers?

3 A I respectfully request to decline to answer the
4 question.

5 MR. ODAM: Pass the witness.

6 MR. MITCHELL: No further questions.

7 THE MASTER: Thank you, Mr. Chapa, you
8 may step down.

9 MR. MITCHELL: Judge, may I make a
10 statement for the record?

11 I probably have seen Mr. Chapa twice in
12 my lifetime.

13 THE MASTER: Yes, I know one time
14 because you introduced him to me at the
15 Ship Ahoy.

16 MR. MITCHELL: Yes, that is right, that
17 time and this morning. I have not had any
18 conversation with the gentleman as regards
19 this case or any other case, nor have I been
20 retained or employed by him in this matter
21 or any other matter.

22 Likewise, as regards the witness Oscar
23 Carrillo, I met him in connection with
24 another case; have not seen or talked to
25 him in perhaps ninety or one hundred twenty

1 days; have not been retained by him in this
2 matter and in this connection and as a
3 matter of fact, other than greeting him this
4 morning, I have had no conversation with him
5 in regard to this case.

6 I feel compelled, because of the nature
7 of this type of proceeding, to make this
8 statement to the Court.

9 MR. ODAM: I wonder if I might ask, it
10 would save me -- I would ask the same question
11 about Jose Saenz, Ramiro Carrillo, Rogelio
12 Guajardo, Roberto and Tomas Elizondo.

13 MR. MITCHELL: In connection with
14 Rogelio Guajardo, I was employed by him
15 three to five months ago, however, I have
16 not been able to do a good job in that case.
17 He employed me to defend him in connection
18 with a criminal case in Duval County. I
19 have not been employed as regards him here.

20 The same is true as regards Jose Saenz.
21 I have been employed by him in a criminal
22 case, but I have no connection with him in
23 this case as being employed.

24 This is also true with Ramiro Carrillo.
25 I have been employed by him in the past and

1 have withdrawn from that representation and
2 I have no representation with him in this
3 matter.

4 In one civil matter, I have filed an
5 answer, however, for him in another matter.

6 Who else, John?

7 MR. ODAM: D. H. Carrillo.

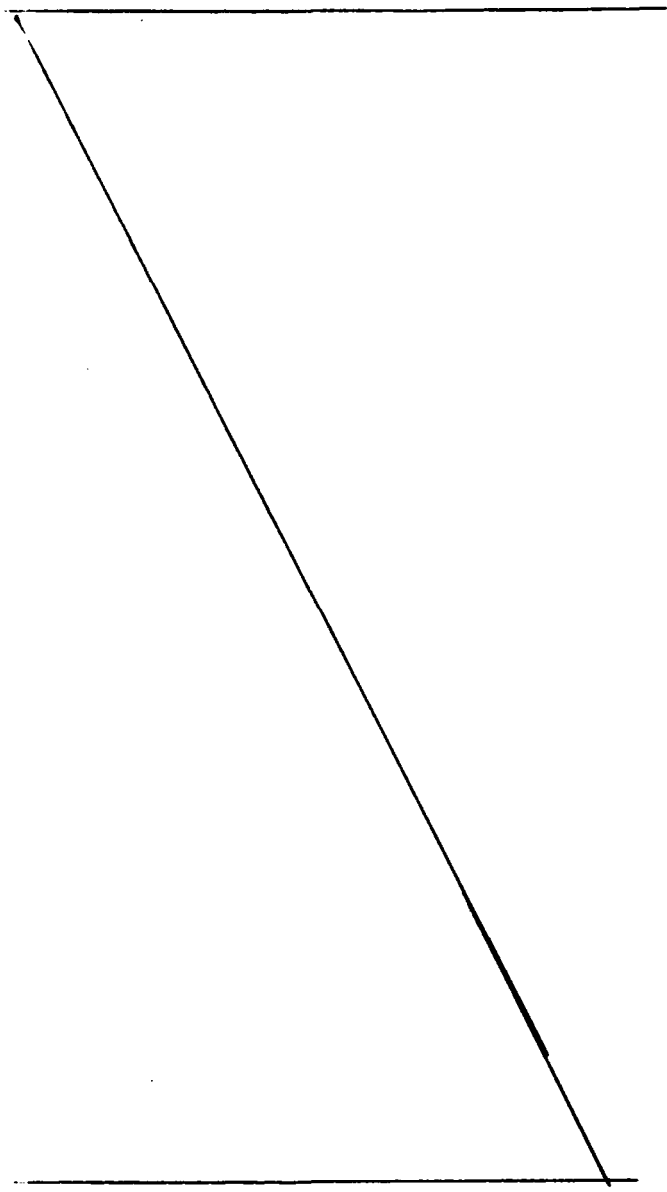
8 MR. MITCHELL: No, I barely know him.

9 MR. ODAM: Tomas and Roberto Elizondo.

10 MR. MITCHELL: No, I have consulted
11 with them, because they were used as witnesses
12 in this proceeding and I have not, however,
13 been employed nor did I prepare -- I think
14 Mr. Odam asked and I don't have an obligation
15 to make this statement, but I do want to
16 make it. The question as regards my arming
17 these gentlemen with their Fifth Amendment
18 rights, I have no knowledge of that, but I
19 am going to speak loudest and longest for
20 anybody to do just that up and down the
21 highway, but I think I should make that
22 statement to the record.

23 Actually, it has been communicated to
24 me that Mr. Chito Davila represented the
25 gentlemen here yesterday. I had known that

1 and that was communicated to me by him. He
2 had a commitment and could not be here, but
3 was their attorney.



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1 THE MASTER: Who is your next witness?

2 MR. MITCHELL: Let's see, I have D. H.
3 Carrillo.

4 THE MASTER: You will need Mr. Lee no
5 further?

6 MR. MITCHELL: That is right, Your
7 Honor.

8 THE MASTER: I appreciate your help,
9 Mr. Lee.

10 (Discussion off the record.)
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12 THE MASTER: Mister Carrillo, raise
13 your right hand please.
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1 D. H. CARRILLO,
2 called as a witness, having been duly sworn upon his
3 oath testified as follows, to-wit:
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5 E X A M I N A T I O N

6 BY MR. MITCHELL:

7
8 Q State your name, please, sir.

9 A David H. Carrillo.

10 Q Do you know O. P. Carrillo?

11 A I respectfully decline and refuse to answer the
12 questions put to me by the Commission on the
13 grounds that the answers might tend to incriminate
14 me. I claim this right under the provisions of
15 the Fifth Amendment of the Constitution of the
16 United States and Article 1, Section 10, of the
17 Constitution of Texas.

18 THE MASTER: In the future, Mister
19 Carrillo, you may simply say, " I respectfully
20 decline to answer", and we all agree that
21 that includes the entire statement.

22 Q Did you understand that, Mister Carrillo, that
23 you don't have to repeat the entire --

24 A Yes, sir.

25 Q I ask you the same question, do you know Ramiro

1 Carrillo?

2 A I respectfully decline to answer.

3 Q Do you know Oscar Carrillo?

4 A I respectfully decline to answer.

5 Q Do you know Eloy Carrillo?

6 A I decline to answer.

7 Q Do you know D. C. Chana?

8 A I decline to answer.

9 Q Do you know Mr. Rudolfo Couling?

10 A I decline to answer, sir.

11 Q Do you know the Benavides Implement and Hardware
12 that had a business there in Benavides, Texas?

13 A I decline to answer.

14 Q Do you know Rudolfo Couling?

15 A I decline to answer the question.

16 (Do you know Rudy Couling?

17 A I decline to answer.

18 Q Do you know the Farm and Ranch Supply Store?

19 A I respectfully decline to answer, sir.

20 Q Mister, Carrillo, I am going to ask you some
21 questions as regards checks that are in evidence
22 in the form of E-192-1 specifically, and I will
23 ask you did you receive from the Benavides Imple-
24 ment and Hardware a check in the amount of five
25 hundred dollars?

1 MR. MITCHELL: Which for the record,

2 Your Honor, is identified here as E-188-17--

3 Q On the 15th day of July, 1971?

4 A I respectfully decline to answer, sir.

5 Q I will ask you the same question as regards the
6 receipt of a check in the amount of five hundred
7 dollars on the 22nd day of September, 1971, being
8 check number 168 from the Benavides Implement and
9 Hardware payable to D. H. Carrillo?

10 A I decline to answer.

11 Q I will ask you whether or not you received on
12 or about the 12th day of November, 1971, a check
13 in the amount of five hundred dollars being check
14 number 207 from the Benavides Implement and Hard-
15 ware payable to you?

16 MR. MITCHELL: And, Your Honor, for the
17 record that is E-188-41.

18 Q Did you receive such a check from Mr. Couling,
19 Mr. Carrillo?

20 A I decline to answer, sir.

21 Q I will ask you whether or not on or about the
22 17th day of December, 1971, by check number 223
23 in the amount of five hundred dollars, Benavides
24 Implement and Hardware, payable to you, you
25 received the amount of five hundred dollars from

1 Benavides Implement and Hardware?

2 A I respectfully decline to answer.

3 Q I will ask you the same question as regards check
4 number 236 dated about the 14th day of January,
5 1972 from Benavides Implement and Hardware
6 payable to D. H. Carrillo, did you receive five
7 hundred dollars from Mr. Rudolfo Couling in behalf
8 of the Benavides Implement and Hardware, Mr.
9 Carrillo?

10 A I decline to answer.

11 Q I will ask you the same question as regards check
12 number 257 in the amount of five hundred dollars
13 on or about the 18th day of February, 1972, did
14 you receive that check from the Benavides Implement
15 and Hardware?

16 A I respectfully decline to answer, sir.

17 Q I'll ask you the same question as regards to a
18 check in the amount of a thousand dollars on or
19 about the 20th day of March, 1972.

20 MR. MITCHELL: That being check number
21 E-188-87 in this record, Your Honor.

22 Q And being check number 271, did you receive that
23 check for a thousand dollars from Benavides Imple-
24 ment and Hardware?

25 A I decline to answer.

1 Q I will ask you without going specifically into
2 each and every item, did you receive any checks
3 thereafter from Benavides Implement and Hardware,
4 Mr. Carrillo?

5 A I decline to answer.

6 Q Mr. Carrillo, did you have an agreement or an
7 understand with Oscar Carrillo and/or Ramiro
8 Carrillo and/or O. P. Carrillo and/or Rudolfo
9 Couling as regards the taking of sums illegally
10 and unlawfully belonging to the water district,
11 the county or the school district through the
12 vehicle of the Benavides Implement and Hardware?

13 A I decline to answer.

14 Q Did you either individually or in conspiracy with
15 or a combination with or in concert with Oscar
16 Carrillo, Ramiro Carrillo, O. P. Carrillo, D. C.
17 Chava, Rudolfo Couling, undertake to use equip-
18 ment belonging to the water district, Duval
19 County or the school district for personal pur-
20 poses?

21 A I decline to answer.

22 Q I will ask you the same questions as regards ser-
23 vices, that is, did you individually or in con-
24 spiracy with Mr. D. C. Chava, Mr. Oscar Carrillo,
25 Mr. Ramiro Carrillo, Mr. O. P. Carrillo or Mr.

1 Rudolfo Couling or any other persons, wrongfully
2 appropriate services for your own personal use
3 or for the personal use of other persons from the
4 water district, Duval County, or the school dis-
5 trict?

6 A I decline to answer.

7 MR. MITCHELL: No further questions.
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12 E X A M I N A T I O N
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14 BY MR. ODAM:

15 Q Mr. Carrillo, my name is John Odam and I work
16 for the Attorney General's office and I am here
17 today as an Examiner for the Judicial Qualifica-
18 tions Commission. I, too, would like to ask you
19 a few questions.

20 Could you state whether or not in view of
21 Mr. Mitchell's questions in 1971 you received
22 a total of two thousand five hundred dollars from
23 the Benavides Implement and Hardware?

24 A I respectfully decline to answer.

25 Q Will you please state whether or not in 1972 you

1 received a total of six thousand five hundred
2 dollars from the Benavides Implement and Hardware?

3 A I respectfully refuse to answer.

4 Q What is -- what was your position with respect
5 to the water district in 1971?

6 A I decline to answer the question, sir.

7 Q Do you know of the arrangement whereby seven hun-
8 dred and fifty dollars was taken out of the water
9 district each month for a period of time and from
10 that you received five hundred dollars on a
11 monthly basis?

12 A I respectfully decline to answer.

13 Q Do you know of the arrangement whereby the other
14 two hundred and fifty dollars of that seven hun-
15 dred and fifty dollars went to R. Carrillo and
16 Brothers?

17 A I respectfully decline to answer.

18 Q Have you been indicted by the Duval County Grand
19 Jury?

20 A I respectfully decline to answer.

21 Q Who represents you here today?

22 A I decline to answer.

23 Q Is your attorney present with you today?

24 A I decline to answer.

25 Q Have you been advised by counsel to take the Fifth

1 Amendment today?

2 A I decline to answer that, sir.

3 Q I believe Mr. Mitchell asked you this question,
4 do you know Mr. Rudolfo Colding?

5 A I decline to answer, sir.

6 Q Do you have any knowledge of the arrangement
7 whereby money was taken from the water district
8 and in turn you received a portion of that money
9 through Benavides Implement and Hardware?

10 A I decline to answer, sir.

11 Q Did you ever rent any equipment to Benavides
12 Implement and Hardware?

13 A I decline to answer that question, sir.

14 Q Do you know whether or not any equipment was
15 ever rented to Benavides Implement and Hardware?

16 A I decline to answer, sir.

17 Q Do you know whether or not Judge O. P. Carrillo
18 has any equipment that was rented to Benavides
19 Implement and Hardware?

20 A I decline to answer, sir.

21 MR. ODAM: Pass the witness.

22 MR. MITCHELL: No further questions,
23 Judge Meyers.

24 THE MASTER: You may step down, thank
25 you.

1 MR. MITCHELL: We call Tomas Elizondo,
2 please, Judge Meyers.

3 THE MASTER: All right, he has been
4 previously sworn.

5 Mr. Elizondo, you were here some weeks
6 ago and were sworn, were you not?

7 MR. ELIZONDO: Yes, sir.

8 THE MASTER: You are reminded you are
9 still under oath and you may have a seat.
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1 TOMAS ELIZONDO,
2 called as a witness, having been previously sworn,
3 testified upon his oath as follows, to-wit:
4

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

7 BY MR. MITCHELL:

8 Q State your name for the record.

9 A Tomas Elizondo.

10 Q Tomas Elizondo?

11 A Right.

12 Q Mr. Elizondo, I will ask you do you know O. P.
13 Carrillo?

14 A I respectfully decline and refuse to answer the
15 questions put to me on the grounds that the
16 answers might tend to incriminate me. I claim
17 this right under the provisions of the Fifth
18 Amendment of the Constitution of the United States
19 and Article 1, Section 10, of the Texas Constitu-
20 tion.

21 MR. MITCHELL: Your Honor, may we have
22 the same understanding with this witness
23 to obviate the necessity of having him repeat
24 the entire claim?

25 THE MASTER: Yes, Mr. Elizondo, in the

1 future all you have to say is, "I respectfully
2 decline to answer", and that will be under-
3 stood by all to include the full statement
4 you just made.

5 A All right.

6 Q Do you know Mr. D. C. Chapa?

7 A Decline to answer.

8 Q Do you know Mr. Oscar Carrillo?

9 A I decline to answer.

10 Q Do you know Mr. Ramiro Carrillo?

11 A I decline to answer.

12 Q Do you know Roberto Elizondo?

13 A I decline to answer.

14 Q Do you know Rogelio Guajardo?

15 A I decline to answer.

16 Q Eloy Carrillo?

17 A I decline to answer.

18 Q David Carrillo?

19 A I decline to answer.

20 Q Jose Saenz?

21 A I decline to answer.

22 MR. MITCHELL: This question, Your

23 Honor, is put to the witness in connection
24 with Roman VI.

25 Q I ask you, Mr. --

1 MR. ODAM: Pardon me, I would object
2 to questions put to this witness on Roman VI
3 because it has both been examined and cross-
4 examined by Judge Carrillo and the Examiners
5 and, therefore, I would object on the grounds
6 of relevancy as not relative to the sur-
7 rebuttal at which stage we are in this pro-
8 ceedings, Your Honor. Both the Examiner and
9 Judge Carrillo have rested and this would
10 be repetitious of other matters.

11 MR. MITCHELL: I think he is correct.

12 THE MASTER: I think perhaps he is.

13 MR. MITCHELL: I have been reminded by
14 my client that I have questioned him and I
15 withdraw the question.

16 THE MASTER: All right. Go ahead.

17 Q (By Mr. Mitchell:) Do you know Rudolfo Couling?

18 A I decline to answer.

19 Q Do you know the Benavides Implement and Hardware?

20 A I decline to answer.

21 Q Do you know the Farm and Ranch Supply?

22 A I decline to answer.

23 Q Did you have any understanding or agreement with
24 either D. C. Chaps or O. P. Carrillo or Oscar
25 Carrillo or Ramiro Carrillo or Rogelio Guajardo

1 to appropriate monies belonging to Duval County,
2 the water district or the school district, Mr.
3 Elizondo?

4 A I decline to answer.

5 Q Did you have any understanding or agreement or
6 did you enter into a conspiracy with D. C. Chapa,
7 O. P. Carrillo, Oscar Carrillo, Ramiro Carrillo,
8 David Carrillo, Eloy Carrillo, or Jose Saenz for
9 the appropriation of services belonging to Duval
10 County, the water district or the school district?

11 I decline --

12 MR. ODAM: Before the witness gives his
13 answer, I object on the grounds of relevancy
14 to the case put on by the Examiner: at no
15 time during our case was Tomas Elizondo ever
16 mentioned in connection with these other
17 gentlemen and at no point on E-192 does his
18 name appear as a payee.

19 Therefore, it is irrelevant to the case
20 thus far put on, it would make no more differ-
21 ence -- there has not been any allegations
22 that if we put on one of the secretaries in
23 here to ask her the same questions. I say
24 it is irrelevant to our case thus far.

25 MR. MITCHELL: The reason for this case,

1 Your Honor, I believe Mr. Odam's observations
2 are on their face valid, but for one thing,
3 as Mr. Couling, in answer to a question I
4 put to him on several occasions, never would
5 say that these were all of the checks and
6 then he said there might be some more out of --
7 I just want to find out if this man knows
8 any more about them other than --

9 MR. ODAM: Well, I -- this might not
10 satisfy you on that, but the clarification
11 Mr. Couling stated the E-192 was an attempt
12 to obtain every original copy of every check,
13 every original check plus every xeroxed copy
14 through Mr. Karl Williams' testimony to
15 totally reproduce the entire bank account
16 and to the extent that this stands for that
17 purpose, it is there, and I think that Mr.
18 Couling testified somewhere along those
19 lines.

20 All I am saying is I don't think it is
21 relevant to go into further checks based on
22 even the question posed to Mr. Couling. It
23 would unduly burden this record.

24 THE MASTER: Not in view of the answer,
25 I overrule the objection.

1 MR. MITCHELL: Has the witness answered?

2 THE MASTER: No, he has not.

3 MR. MITCHELL: May he answer, Your
4 Honor?

5 A I decline to answer.

6 THE MASTER: His answer was -- go ahead
7 and answer the question.

8 A I decline to answer.

9 MR. MITCHELL: No further questions.
10

E X A M I N A T I O N

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2
3 BY MR. ODAM:
4

5 Q My name is John Odam and I saw you here several
6 weeks ago when you testified before. I would
7 also like to ask you a few questions.

8 Who is your attorney representing you here
9 today?

10 A I decline to answer.

11 Q Who is the attorney that advised you to take the
12 Fifth Amendment when you testified before?

13 A I decline to answer.

14 Q Is your attorney present in the courtroom today?

15 A I decline to answer.

16 Q Who gave you the slip of paper off of which you
17 read the Fifth Amendment privilege?

18 A I decline to answer.

19 Q Did you ever -- strike that.

20 How much money did you receive from the
21 water district through Benavides Implement and
22 Hardware?

23 A I decline to answer.

24 Q How much money did you receive from the school
25 district that was funneled to you through the

1 Benavides Implement and Hardware?

2 A I decline to answer.

3 Q How much did you receive through the water
4 district?

5 A I decline to answer.

6 Q What type of arrangements did you have with
7 Mr. Couling to get money from these three
8 entities?

9 A I decline to answer.

10 MR. ODAM: I pass the witness.

11 MR. MITCHELL: No further questions.

12 THE MASTER: You may step down.

13 MR. MITCHELL: We will call Roberto
14 Elizondo.

15 THE MASTER: Mr. Elizondo, you were
16 sworn before, were you not?

17 ROBERTO ELIZONDO: Yes, sir.

18 THE MASTER: You are reminded that you
19 are still under oath in this proceeding
20 today.

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25

1 ROBERTO ELIZONDO,
2 recalled as a witness, having been previously sworn,
3 testified as follows, to-wit:
4

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

7 BY MR. MITCHELL:
8

9 Q Your name, please, sir.

10 A Roberto Elizondo.

11 Q Do you know Mr. D. C. Chapa?

12 A I refuse to answer the question on the grounds
13 that the answer might tend to incriminate me. I
14 claim this right under the provisions of the
15 Fifth Amendment to the Constitution of the United
16 States and Article 1, Section 10 of the
17 Constitution of the State of Texas.

18 THE MASTER: In the future, you can
19 simply say "I respectfully decline to answer,"
20 and that will be agreeable with all parties.

21 MR. MITCHELL: Thank you, Judge Meyers.

22 Q (By Mr. Mitchell) Do you know O. P. Carrillo?

23 A I respectfully decline to answer.

24 Q Do you know Oscar Carrillo?

25 A I respectfully decline to answer.

- 1 Q Do you know Ramiro Carrillo?
- 2 A I respectfully decline to answer.
- 3 Q Do you know Rogelio Guajardo?
- 4 A I respectfully decline to answer.
- 5 Q Do you know Jose Saenz?
- 6 A I respectfully decline to answer.
- 7 Q Do you know Rudolfo Couling?
- 8 A I respectfully decline to answer.
- 9 Q Benavides Implement and Hardware?
- 10 A I respectfully decline to answer.
- 11 Q Do you know the business of the Farm and Ranch
12 Store?
- 13 A I respectfully decline to answer.
- 14 Q Did you receive monies from the Benavides
15 Implement and Hardware account from 4-16-71
16 through and including 12-31-74, Mr. Elizondo?
- 17 A I respectfully decline to answer.
- 18 Q Did you have an understanding or agreement with
19 Mr. Couling or Rudolfo Couling or D. C. Chapa as
20 regards wrongfully appropriating monies from
21 the Duval County Water District or School
22 District or Duval County through the vehicle
23 Benavides Implement and Hardware?
- 24 A I respectfully decline to answer.
- 25 Q Did you have an agreement with anyone as regards

1 services of individuals from the water district
2 or school district or Duval County?

3 A I decline to answer.

4 MR. MITCHELL: Pass the witness.
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10 E X A M I N A T I O N
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12 BY MR. ODAM:
13

14 Q Mr. Elizondo, my name is John Odam. I believe
15 you were not examined by me earlier, but by
16 Mr. Flusche before. I would like to ask you a
17 few questions.

18 When you were here before and you testified
19 at that time, and as the record indicates, you
20 invoked, as you have a right to invoke, the
21 Fifth Amendment privilege at that time. Who
22 was your attorney?

23 A I decline to answer.

24 Q Was Arthur Mitchell your attorney?

25 A I decline to answer.

1 Q At the time you are here today, who is your
2 attorney?

3 A I decline to answer.

4 Q Have you retained counsel to advise you today?

5 A I respectfully decline to answer.

6 Q Has an attorney given you the sheet of paper
7 that has the Fifth Amendment privilege written
8 on it?

9 A I respectfully decline to answer.

10 Q Are you acquainted with Judge O. P. Carrillo?

11 A I respectfully decline to answer.

12 Q Are you a court reporter for Judge O. P. Carrillo?

13 A I respectfully decline to answer.

14 Q How long have you been a court reporter?

15 A I decline to answer.

16 MR. ODAM: Pass the witness.

17 MR. MITCHELL: No further questions.

18 THE MASTER: You may step down.

19 MR. MITCHELL: Your Honor, we have no
20 further witnesses or testimony. I do have
21 a motion, or petition would be the proper
22 denomination of the document, that I would
23 like to call to the attention of the Master
24 and with the Master's permission, I would
25 like to read off the petition and its

1 relevancy and file it with the proper
2 repository for such filing.

3 THE MASTER: Well, deliver it to me and
4 I will deliver it to Mr. Pipkin, who will be
5 its custodian, but I see no point in reading
6 it.

7 MR. MITCHELL: All right, sir.

8 THE MASTER: Do you want to recess in
9 order to get the answers of the witnesses
10 this morning attached to those motions?

11 MR. MITCHELL: Yes, I have the
12 petitions and attached to them are the
13 extracts from the testimony produced at our
14 request by the court reporter, along with an
15 order we would like to deliver to the Master.

16 THE MASTER: That is of the witnesses
17 yesterday?

18 MR. MITCHELL: Yes, that is true.

19 I have today the petition prepared
20 for the following, Tomas Elizondo, Roberto
21 Elizondo --

22 THE MASTER: But you don't want to file
23 them yet, do you? Don't you want to attach
24 the excerpts of their testimony?

25 MR. MITCHELL: Yes, but I wanted to make

1 a complete rundown.

2 THE MASTER: All right.

3 MR. MITCHELL: I have the petitions of
4 Tomas and Roberto Elizondo, David H.
5 Carrillo, D. C. Chapa, Oscar Carrillo, Sr.;
6 I do not have the transcriptions of that
7 testimony as the Court has observed, and I
8 would like to have a recess to have the
9 reporter transcribe those and I will attach
10 those to each petition and denominate it to
11 and attach it to the petition.

12 I have in addition, Ramiro Carrillo,
13 Jose Saenz, and should have Rogelio Guajardo,
14 which I have the testimony of, Your Honor,
15 and I deliver the original of that testimony
16 to the Court, that beginning at Page 4297
17 through and including 4327, along with a
18 prototype of an order on each and every
19 petition.

20 I would like to have permission to
21 withdraw these petitions and duplicate them
22 and give a copy to Mr. Odam. I don't have
23 an original at this point.

24 Perhaps at that time the reporter can
25 deliver the transcripts we have taken this

1 morning of the witnesses.

2 MR. ODAM: Your Honor, as Mr. Mitchell
3 indicated, he just got these from
4 Mr. Chatham and I am not being critical, but
5 with regard to the petitions, are those to
6 be filed in district court and a proposed
7 order to be entered?

8 MR. MITCHELL: I have a solution to all
9 of this.

10 I suggest you do withdraw them at this
11 time, get them reproduced and deliver them
12 to counsel. I take it they are all the same
13 form and then let's meet back -- you won't
14 have the testimony of these last one, two,
15 three, four, five witnesses for a while, so
16 let's be in recess until that is available
17 to you and then come back and take that up.

18 I do urge you to get the attachments to
19 the motions that you do have available and
20 make the copies during this recess.

21 We will be in recess.

22 MR. MITCHELL: May we have the same rule
23 as regards excusing the witnesses and calling
24 them on an hourly notice, just in case that
25 it becomes necessary to have them as

1 witnesses, so I can get them on a phone in
2 a matter of three or four hours and have
3 them back here?

4 THE MASTER: Well, let's see, we have
5 got -- does this need to be on the record,
6 Mr. Mitchell?

7 MR. MITCHELL: No.

8 THE MASTER: You are excused, Mr. Vernon,
9 so you can start dictating the testimony.

10
11 (Whereupon, at the hour of 9:30 a.m.
12 a recess was taken.)
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1 THE MASTER: Mr. Mitchell, do you
2 wish to state -- make a statement
3 concerning these petitions now filed and
4 there are one, two, three, four, five, six,
5 seven, eight of them, if I count correctly.

6 MR. MITCHELL: Yes, sir.

7 Judge, I request a joinder in the
8 petition by the attorney for the Examiner,
9 Your Honor, and so that the matter can be
10 expedited, I have checked the California
11 statutes and there is no comparable section
12 under the California statute as compared to
13 the Texas statute and I don't have any cases
14 in my file on the Judicial Qualifications
15 Commission statute at all.

16 The right seems to be clearcut, because
17 throughout the proceeding, we have had 5966a,
18 Sections 8 and 14, and with that brief
19 statement, I believe we have shown a right.

20 I might state this. There is no
21 provision of the statute which authorizes
22 a filing of a petition as done here, but
23 there is ample room in the statute for me to
24 make the request.

25 THE MASTER: Irrespective, the rules

1 of the Supreme Court indicate this is to
2 be tried as a civil case. You called it a
3 petition and I am calling it a motion.

4 You are asking me to petition a district
5 court to compel these witnesses to testify.

6 Let me ask your position. Is it your
7 position -- what is your position with
8 respect to my discretion?

9 MR. MITCHELL: Of course, the statute,
10 Section 14 uses the permissive "may" is
11 permissive as versus must, "Any person
12 refusing to testify on the grounds of
13 incrimination may be required to testify."

14 Under Section 8, of his proper claim of
15 his proper claim of privilege, and I think
16 it is permissive, and I think the Court is
17 well aware, having had experience in
18 judicial discretion, that is not unfettered.

19 THE MASTER: There is no question about
20 that. I am inclined to think it is
21 discretionary and it can be abused, however.

22 MR. MITCHELL: I believe that is right
23 and the factors we can consider at this
24 termination in favor of the petition would
25 deal with the basic objects sought to be

1 accomplished by the testimony or requiring
2 these witnesses to testify. The acquisition
3 has been made, or I called it acquisition,
4 but the specification has been made, but I
5 prefer acquisition, in Exhibit 192-1, as
6 regards some character of -- strike that.

7 My basic problem has been with this
8 case all along that number one, within the
9 formal notice of hearing, and specifically
10 now, I am referring to those dealing with
11 Roman VII, VIII, IX and X, those are direct
12 allegations that Judge Carrillo wrongfully
13 appropriated sums of money. There is no
14 proof he appropriated one thousand eight
15 dollars or one thousand eighteen dollars.

16 The Examiner has relied on some
17 character of relationship between the man
18 who really appropriated the money, which
19 is Mr. Couling. It has been tried for a
20 month now and there is no need to review
21 that.

22 Finally, 191-1 through 191-12 and the
23 accompanying testimony, which indicates to
24 me still another way he is seeking to
25 establish the ultimate truth of Romans VIII

1 through XII, so that we have actually --
2 his case is in trouble, because he has had
3 a difficult time in proving his partnership
4 relationship with Mr. Couling. I don't
5 believe anyone would believe that. His
6 ox is in the ditch on that score.

7 His ox is in the ditch also on the
8 conspiracy. I don't believe anyone is going
9 to believe there was a conspiracy as regards
10 the sums set out in Romans VIII through
11 XII involving Judge Carrillo. There are
12 several reasons, no evidence and insufficient
13 evidence, Your Honor, and it becomes
14 critical, in my opinion, to negate further
15 the inferences that might be left by E-192
16 and the collateral testimony that there is
17 still no connection between those sums
18 shown by E-192-1 and 7, 8, 9, 10, 11 and 12.

19 I would like to have that opportunity
20 by these witnesses to show without a doubt,
21 and once I do that, I don't think there is
22 anything in this case to justify the censure
23 of Judge Carrillo. If there is some doubt,
24 and if there is, I would like to resolve it.
25 I would like to call the people listed in
that exhibit and hear the deal.

1 THE MASTER: All right, Mr. Odam.

2 MR. ODAM: I jotted down some notes,
3 and could I use this podium to put my notes
4 on?

5 THE MASTER: Certainly.

6 MR. ODAM: I do not intend to make a
7 closing argument on the case, and will not
8 do so and will not speak to what the proof
9 has been or not been and limit myself simply
10 whether or not the Master should file a peti-
11 tion in district court.

12 It seems to me, and we have discussed
13 this yesterday and before, it is a scenario
14 on the witnesses we are faced with that is
15 something like this: First of all, the
16 witness is subpoenaed and has been subpoenaed
17 and they come in and they refuse to testify
18 on the grounds that the testimony might tend
19 to incriminate them.

20 Then, we move to the next step, that is,
21 that the Master may, and underline the word
22 may, petition for an order compelling. We
23 would urge and implore as I will state later
24 on that the Master not petition and that the
25 discretion that be exercised, be exercised in

1 such a manner as not to petition for this
2 testimony and in fact will urge as I will
3 argue in a moment, and to so petition will
4 be an abuse of the discretion if the Master
5 were to petition at this point.

6 A third step would be to assume that
7 the petition were filed with the district
8 court and then we would go upstairs to the
9 district court as the statute says and there
10 would be a hearing, and it appears from the
11 statute that it might possibly be mandatory,
12 assuming that the subpoenas were regularly
13 issued, that there would be an order compelling
14 testimony and in effect the district
15 court will be granting immunity.

16 Therefore, I think we are at a very
17 crucial step because if it were mandatory
18 upstairs, it would be granted, we are at the
19 discretionary stage right now in determining
20 whether or not these eight men are granted
21 immunity.

22 Thus, the discretion in the Master as
23 to whether or not the petition is filed is
24 very, very crucial and it is really not at
25 the stage, perhaps, upstairs in the district

1 court, but it is at this stage that we must
2 examine the record and whether or not it
3 should be exercised in such a manner as to
4 compel the taking of the testimony.

5 Let me examine very briefly the reasons
6 why it appears to me that the petition should
7 not be filed and there are at least six
8 reasons that I have counted.

9 Number one, and I alluded to it earlier,
10 that is the inability to impeach on a
11 collateral matter.

12 Number two, it was our position that
13 Judge Carrillo has no standing to seek immunity
14 for these witnesses.

15 Number three, Judge Carrillo is not
16 being denied the right of confrontation under
17 the Sixth Amendment.

18 Number four, there has been no showing
19 as to what the testimony would be if these
20 witnesses were to testify.

21 THE MASTER: But now that is -- that
22 is not sound, Mr. Odam, is it? How can he
23 show what the testimony would be when the
24 witnesses will not indicate what it would be.

25 MR. ODAM: Well, Your Honor, I do not

1 have authority for this proposition but it
2 would appear to me that on a Fifth Amendment
3 case such as we have here, that in this
4 particular -- and again, we are dealing with
5 a very unusual proceeding.

6 THE MASTER : Yes, sir.

7 MR. ODAM: That without waiving the
8 Fifth Amendment right, that very possibly
9 these eight men, without waiving that right,
10 could testify as to what the facts would be
11 and, therefore have a showing as to what it
12 would be.

13 Again, that would be extraordinary, but
14 again we are faced with a very extraordinary
15 proceeding, therefore, of a showing of what
16 that testimony would be. That has not been
17 done or even attempted and that would be a
18 possible way. But again, that would only be
19 one of at least six reasons that I will men-
20 tion.

21 THE MASTER: All right.

22 MR. ODAM: Number five, I think that the
23 Court must consider the balancing of the
24 benefit of this testimony against the grant
25 of immunity.

1 And finally, number six, to petition
2 a district court would be fatal to any possible
3 criminal prosecution, either state or federal,
4 while to decline to petition would not be
5 fatal to Judge Carrillo because the rules of
6 Texas Supreme Court that have been promulgated
7 provide for additional testimony being received
8 at a later time.

9 First of all, I will not dwell in light
10 of the Court's comments this morning, on the
11 collateral matter. I simply will restate
12 the rule to be in Texas it is clear as we
13 know that a witness may not be impeached
14 with the testimony sought to be contradicted,
15 that is collateral to the issue being tried.
16 The issue being tried will not -- let me
17 cite them since we are on the record, for
18 that proposition. Merrifield versus Seyfert,
19 which is at 408 Southwestern Second, 558,
20 Dallas Court of Civil Appeals case, 556.
21 I do not have the writ history, it is dis-
22 cussed at page 562. Also, there are cases
23 cited at page 562.

24 I also refer the Court to McRay --
25 excuse me, to McCormick and Ray, Volume 1,

1 Section 683 and Section 690 at pages 526
2 and 535.

3 Also, refer to the Texas General
4 Indemnity case versus Hicks, which is found
5 at page -- at 472 Southwestern Second, page
6 547, which is a Tyler court civil appeals
7 case, 1971.

8 Finally, Hanover Insurance Company
9 versus Johnson, at 397 Southwestern Second,
10 page 904, it is a Waco court of civil
11 appeals case where Judge Frank Wilson wrote
12 the opinion.

13 Also, citing cases there at page 906 --

14 MR. MITCHELL: Pardon me, may I ask
15 him a question? Are you quoting these for
16 the issue that you cannot impeach on a
17 collateral matter?

18 MR. ODAM: Yes.

19 MR. MITCHELL: I will concede that.

20 MR. ODAM: Again, simply for the benefit
21 of this record, I want to cite those cases.

22 MR. MITCHELL: That is a point of law,
23 Judge, but it is not appropriate.

24 THE MASTER: Your concession is simply
25 that that is the law in Texas?

1 MR. MITCHELL: That is the rule, yes.

2 MR. ODAM: In the cases cited there it
3 states that for determining whether impeachment
4 evidence relates to a collateral matter so
5 as to justify it's exclusion, the test is
6 whether or not the parties seeking to intro-
7 duce it would be entitled to prove it is a
8 part of his own case.

9 And this particular case, Judge Carrillo
10 apparently is seeking to impeach the credi-
11 bility of Mr. Couling regarding his statements
12 concerning the witnesses Ramiro Carrillo,
13 Rogelio Guajardo, D. C. Chana, D. H. Carrillo,
14 among others. This testimony is clearly
15 collateral to the issues in this case involv-
16 ing Judge Carrillo.

17 Applying the test that Judge Wilson
18 discusses in the Hanover case would be as
19 follows: Certainly Judge Carrillo would not
20 have been entitled back on the case in chief
21 or even on defense to have called those wit-
22 nesses as his own witnesses. Thus, clearly
23 the testimony that is sought, if it were
24 not for the privilege invoked, would be
25 irrelevant, immaterial and therefore that

1 testimony itself as I stated this morning
2 would be inadmissible, thus, since the testi-
3 mony is inadmissible, the Master should not
4 seek to compel inadmissible testimony.

5 Second, and while not intending to
6 waive that first point, is the inability to
7 impeach. The Examiners contend that Judge
8 Carrillo has no standing to seek immunity for
9 those members of his family and these
10 employees. The Examiners cannot stress what
11 a serious issue it is that faces the Master.

12 Thus far, it has been the Master's
13 function to hear and to make -- correction,
14 to hear the evidence and to make findings
15 of fact at some point later on. These find-
16 ings of fact go to the Judicial Qualifications
17 Commission. This has been a very, very long
18 hearing, twenty-eight days of testimony,
19 a study of over four thousand pages of written
20 testimony plus examination of at least a
21 thousand pages of documentation.

22 It is not the Master's function to
23 determine guilt or innocence, not to determine
24 whether the action -- what action, if any,
25 should be taken, with Judge Carrillo. As a

1 matter of fact. It is not even the function
2 of the Judicial Qualifications Commission to
3 ultimately make the decision. It is not
4 their responsibility. It may and I stress
5 it may be ultimately up to our Texas Supreme
6 Court to consider the evidence and make
7 these decisions.

8 But what task does Judge Carrillo wish
9 the Master to perform? He, in effect, wants
10 the Master to make his family and to make
11 his friends immune from any and all criminal
12 prosecution that may arise out of the matters
13 that were raised on rebuttal. There is
14 authority for the proposition that immunity
15 is for the benefit of the prosecution and
16 not for the defendant.

17 I refer the Court to Corpus Juris
18 Secundum on witnesses, section 439, also
19 the case of United States versus Barrigan,
20 which is found at 428 Federal Second, page
21 171, 1973, 3rd Circuit Case.

22 Also, the case of United States versus
23 Smith at 426 Fed Second, page 787, Fifth
24 Circuit Case.

25 On an identical point, our own Texas

1 Court of Criminal Appeals stated in the case
2 of Ross versus State, which is found at
3 486 Southwest Second, page 323, 1972, case,
4 that the trial court could not, as was
5 argued in that case by the appellants, the
6 trial court could not have granted immunity
7 without the joinder of the state.

8 Also, stating there, Wallace versus
9 State 145 Texas Criminal Reports, pages 625,
10 also 170, Southwestern Second, page 762 at
11 present under our Texas Code of Criminal
12 Procedure in Texas, a court cannot dismiss
13 a case without the agreement of the prosecu-
14 tion. Here we have no agreement with
15 respect to these witnesses, and in fact
16 very specific objection by the Examiners.

17 Furthermore, the Master would be in
18 effect dismissing criminal cases without
19 the joinder of the appropriate district
20 attorney or the United States attorney.

21 I doubt that Judge Carrillo could even
22 find a case that is reported where a defen-
23 dant has sought and obtained immunity for
24 witnesses who he has called in his own
25 behalf. As a matter of fact, the case of

1 State versus Huff, which is a civil case
2 found at 491 Southwest Second, page 216,
3 an Amarillo court of civil appeals case in
4 1971, states in that case that the -- where
5 there was no joinder by the prosecuting attorney,
6 the Court could not grant immunity.

7 It states, and I quote, "it is elementary
8 that only the prosecuting attorney and
9 the Court can grant immunity from criminal
10 prosecution." No immunity was granted to
11 the defendants in this case.

12 Not only do we say that such is the
13 state of the law generally with regard to
14 the grant of immunity but more importantly,
15 we would say that is the law with respect
16 to judicial qualification matters in Texas.
17 We submit that the discretionary right of
18 the Master to petition a district court can
19 only be invoked with the Examiners have
20 called witnesses and those witnesses have
21 taken the Fifth Amendment because Examiners --
22 where the Examiners have requested a petition
23 be filed, certainly in this case, as well as
24 all other cases, the Examiners are in a
25 better position because of their relation to

1 other state and federal governmental agen-
2 cies, to know whether immunity should or
3 should not be granted, rather than the judge
4 in question.

5 Now, if Mr. Mitchell, or whoever repre-
6 sents these men, has reached some agreement
7 with the appropriate state district attorney
8 in Duval County, Mr. Arnulfo Guerra, or has
9 reached some agreement with the Attorney
10 General's staff, or has reached some agree-
11 ment with the Internal Revenue Service, or
12 with the United States Attorney, I would
13 certainly like to know about it, and I
14 assume that that has not been done.

15 My point is, Your Honor, that immunity
16 from possible state and federal criminal
17 prosecution is a most important and most
18 serious error that we have in our quiver of
19 legal procedure. We also know what has been
20 said or written about immunity over the past
21 few years. I submit that it would, in effect,
22 be a travesty of justice if these eight
23 men who have been called as witnesses by
24 Judge Carrillo, when the state has very
25 vigorously and continuously opposed the

1 grant of immunity, would be given immunity.

2 Neither this Judge nor any other Judge
3 has the authority in our judgment in these
4 types of proceedings to seek such favors
5 for witnesses they call.

6 Third, the Examiners submit that Judge
7 Carrillo is not being denied his Sixth
8 Amendment rights of confrontation of wit-
9 nesses by the failure of the Master to peti-
10 tion, to compel this testimony. We submit
11 that the right of confrontation of witnesses
12 extends only to witnesses for the prosecu-
13 tion, not for the defendant's own witnesses
14 and we would refer the Master to Corpus Juris
15 Secundum on criminal law, Section 999.

16 Furthermore, even the right to cross-
17 examine and the right to confrontation of
18 the prosecution of witnesses is a rule that
19 is bounded by constitutionality, that is
20 that the witnesses have the right to invoke
21 their Fifth Amendment rights, just as Justice
22 Stewart points out in McCray versus State of
23 Illinois in 87 Supreme Court Reporter, page
24 1056 at page 1064. He states that the United
25 States Supreme Court has never so construed

1 the Sixth Amendment right to mean that a
2 witness on cross-examination could not con-
3 stitutionally assert his privileges against
4 self-incrimination.

5 In other words, why should Judge
6 Carrillo's Sixth Amendment rights outweigh
7 the rights of witnesses to maintain and
8 invoke the Fifth Amendment privilege.

9 Certainly, it does not, they had their
10 Fifth Amendment privileges and the Examiners
11 say they should not be compelled over that
12 assertion of the Fifth Amendment privilege
13 to go ahead and testify.

14 Fourth, as I stated earlier, there has
15 been no showing to the Master as to what
16 the testimony might be. For all we know
17 these witnesses, if called to testify, might
18 in fact support Judge Carrillo. Then, in
19 effect, they would be granted immunity
20 nevertheless.

21 Clearly the Master should not compel
22 testimony without a showing of what that
23 testimony might be.

24 Fifth, and perhaps most important, is
25 examination of what the quid pro quo is

1 involved in this grant of immunity by the
2 Court. These eight persons are possibly
3 made immune from federal and state criminal
4 prosecutions on matters that were raised on
5 rebuttal. It would be improper for me to
6 comment on the evidence adduced on rebuttal
7 with respect to possible criminal violations.
8 I will not do so. The record speaks clearly
9 and loudly for itself as to what that might
10 be.

11 What we -- what do we get in turn for
12 their absolution, however, presumably the
13 rebuttal of the testimony of one witness
14 called by the Examiners on this very narrow
15 point, to rebut one witness out of nearly
16 thirty is not worth it, even if it were to
17 be totally and to absolutely to rebut Mr.
18 Couling's testimony, what do we get in return.

19 We submit that the judgment of the Master
20 should be that a denial of immunity far
21 outweighs the benefits of even the most
22 favorable testimony for Judge Carrillo.

23 Sixth and finally, this major decision
24 need not rest with the Master at this point,
25 to seek an order compelling testimony at this

1 point would be totally fatal to any possible
2 state or federal criminal prosecutions, but
3 to not compel the testimony would not be
4 fatal to Judge Carrillo.

5 Now, why is that? Because under the
6 rules promulgated by the Texas Supreme Court,
7 specifically Rule 16, the Judicial Qualifi-
8 cations Commission may order a hearing for
9 taking of additional testimony at any time:
10 that hearing might be before the Master or
11 even the Judicial Qualifications Commission.

12 Further, if the Master were to -- if
13 that matter were to reach the Texas Supreme
14 Court under Rule 21D the Texas Supreme Court
15 may, for good cause shown, permit the intro-
16 duction of additional evidence to be taken
17 before it or the Qualifications Commission
18 or the Master.

19 In other words, all is not lost, if
20 the testimony is not taken at this point,
21 but all would be lost, as far as criminal
22 prosecutions or possible criminal prosecution
23 of these eight men, if there were the dis-
24 cretion exercised in the petition filed.

25 In sum, Your Honor, I cannot think in

1 this, or really any other Judicial Qualifi-
2 cation Commission proceeding where the rules
3 as set forth by our Texas Legislature in
4 Article 5966A ever intended by any means for
5 any judge, I don't mean Judge Carrillo, but
6 taking the statute itself, never intended
7 to be construed in such a manner that a
8 judge could call in witnesses and those wit-
9 nesses be granted immunity from cases where
10 we are dealing with other counties, with
11 other prosecutors, with the federal govern-
12 ment, for that testimony. I cannot find it
13 in similar civil cases nor criminal cases
14 and as I stated before, when I referred to
15 it again, it would be a travesty of justice
16 for these eight men to come in here and be
17 granted immunity in return for that testimony,
18 particularly where the Examiners, we think,
19 have the only standing, vigorously object
20 to that immunity being granted.

21 THE MASTER: All right, Mr. Mitchell.
22
23
24
25

1 MR. MITCHELL: Your Honor, I am
2 appalled at the position taken by Mr. Odam.
3 A man who would come before this Court with
4 a Mr. Rudolfo Couling, who had contractual
5 immunity when he walked into this door, who
6 was the only witness that this Examiner used
7 time and time again and under a written
8 agreement or written deal of immunity. For
9 the Examiner to take the position before this
10 Court, because now we are exercising our
11 constitutional right to do the same thing
12 he has done, I am unimpressed by the
13 Examiner's outrage at the suggestion that
14 this judge avail himself of the statute when
15 his whole case is bottomed on a deal spawned
16 through Mr. Couling and the district
17 attorney and the attorney general's office.
18 It is incredible that this procedure has
19 now turned itself into one where we are
20 going to gag and we are going to obscure,
21 we are going to prevent, we are going to
22 preclude and actually hide behind the word
23 "may" in the statute.

24 I would say perhaps, Your Honor, if
25 this Examiner would come into this Court

1 with clean hands, I would say that is a
2 great way to handle this case, but that is
3 not what happened.

4 This Court knows full well the
5 Examiner called these witnesses to begin
6 with. He called these witnesses, Judge,
7 and he in fact called the witnesses listed
8 on E-192-1. I warned him, I said if you
9 are going to bring those witnesses in this
10 case, I am going to rebut that testimony.
11 That is what I did exactly, I warned him,
12 and that is what I did exactly.

13 I think in the final analysis, the
14 Examiner wants to make a qualitative cut
15 across the rights of the judge on immunity.
16 There is no question and there are whole
17 cases based on a deal or contractual
18 immunity and whole cases based on rights
19 not under this statute. They would not
20 have a case without Rudolfo Couling and I
21 am not impressed by this spilling out of
22 something against this judge who has a
23 right to be heard and for them to take a
24 man I have called in a federal court a
25 prostitute as a witness, a common

1 prostitute, and -- I am not going to
2 compare a Rudolfo Couling with a member
3 of the judiciary, I am not going to.

4 I didn't call these witnesses. They
5 called -- he gave these reasons and the
6 Examiner takes the position -- he says,
7 number one, he has prepared the petition
8 for Mr. Saenz and for one or two of the
9 others and said well, I am not going to do
10 it. He was the one that initiated the
11 process and then backed out and said we will
12 wait until a more favorable occasion.

13 He asked questions on cross-examination
14 of these witnesses and he put them in the
15 case and with me protesting and saying don't
16 do it. He proceeded to cross-examine each
17 and every one. Finally he wants the record
18 now to remain silent as to what these people
19 would testify to, to leave hopefully a bad
20 impression where Judge Carrillo is concerned.

21 I said no, I don't know what they are
22 going to testify to and I represent to this
23 Court that and I will take the chance and
24 they will testify, I am sure, that Judge
25 Carrillo was not a part of that situation,

1 and they will testify that Judge Carrillo
2 didn't have a thing to do with E-192. He
3 says, I am now faced with the last residual
4 remnant and I thought it was an effort in
5 this case to hopefully obscure the fact
6 that there was no direct evidence on 7, 8,
7 9, 10, 11 or 12.

8 Now, I don't know really what he is
9 talking about when he talks about impeachment
10 on a collateral issue. If that is what he
11 is talking about, I will concede.

12 Frank Wilson taught me for years, and
13 if Frank Wilson and McCormick said it, then
14 I am willing to concede that. I say, if
15 that is the stipulation he wants to enter of
16 record and the testimony of 192 is
17 collateral impeachment and we abide by the
18 corresponding rule, I will buy his deal and
19 I will withdraw my petition.

20 The Court knows the rule when you
21 seek to impeach a witness and it constitutes --
22 if he wants to make that concession with
23 192 and all testimony in connection with
24 that, I will withdraw. I am not willing to
25 take half a loaf and say yes, E-192 --

1 number one, we are going to say it is
2 impeachment, but for the other, we are
3 going to hope somebody uses it for an
4 affirmative vehicle.

5 I don't think under Article 5, Section
6 1-A, Subsection 11, they have a
7 constitutional overtone. He spoke to that,
8 but how about due process and fair notice.

9 If you are going to rely on a
10 conspiracy or partnership or vicarious
11 basis of liability against Judge Carrillo,
12 I need to know it. I still say that the
13 petition here, the Court should exercise
14 his discretion, the Master should, and in
15 petitioning the Court here, because of the
16 waiver and the massive overtones -- well, he
17 has been asking these cross-examination
18 questions and that is why I put it in my
19 petition. I thought he would join, but at
20 any rate, I say here, Judge Meyers, that
21 the right of Judge Carrillo to call these
22 witnesses is a right that is not only
23 protected by the statute, but the over-
24 umbrella to the procedure.

25 Those cases he quotes, where you have

1 grants of immunity on a question-to-question
2 basis are not applicable. We have several
3 cases that deal with statutory grants of
4 immunity and the State of Texas has their
5 own attitude of the immunity situation.

6 We have a statutory grant. We don't
7 have a case where a judge has the discretion,
8 but we have a case where the prosecutor and
9 judge agree to dismiss. We certainly --
10 where the judge disagrees and the prosecutor
11 disagrees, that is not what we are talking
12 about. This is clearcut. This is statutory.
13 If a man refuses to testify about a matter
14 upon which he is called in these procedures,
15 then to get to the truth, we may order him
16 to so testify and to be sure he is not going
17 to have qualms about telling the whole truth
18 and the whole story, he is granted immunity.

19 We, Judge Meyers, the petitions are
20 here and the district court is next door and
21 the matter would be expedited by the filing
22 and setting of a time to set the testimony,
23 which we will pattern after our exhibits. I
24 want to know was there a deal and what the
25 deal was and what, if anything, Judge O. P.

1 Carrillo had to do with it.

2 I say his cases are not appropriate.
3 The posture is incongruous and with the
4 total posture of his whole case.

5 Finally, Your Honor, I feel in my own
6 mind, had there been some basis for a
7 meeting of the grounds, whether we could
8 have had that meeting at the outset, but
9 suddenly for reasons I don't know, there
10 seems to be a fear in the background that
11 he may be giving up something in the
12 testimony that they might want to or have
13 to give up something in Duval County. That
14 is the price you have to pay for the truth
15 and we are prepared to pay that price,
16 Your Honor.

17 THE MASTER: All right.

18 Mr. Odam.

19 MR. ODAM: First, with regard to the
20 calling of these witnesses, D. C. Chapa or
21 Oscar Carrillo or Ramiro Carrillo to have
22 them testify there was not a deal with
23 Judge O. P. Carrillo and with the money he
24 received. It was never our position and it
25 was not the testimony of Mr. Couling that

1 Judge Carrillo participated in that deal.
2 It was not our position he did. As a matter
3 of fact, Mr. Couling stated to Mr. Mitchell
4 he did not. Why call them as witnesses and
5 wash them with immunity and say something
6 we have never said. That again should not
7 be a ground for having them come in.

8 Second, with a deal, a deal was made
9 with Arnulfo Guerra and it is signed by an
10 assistant attorney general.

11 Because the state district attorney
12 made a deal with a witness which Mr. Mitchell
13 alludes to, because that deal was made with
14 that man regarding his testimony there and
15 in no means has any relationship to what
16 the assistant attorney general is doing, or
17 the position I take here.

18 There in that particular case, with
19 Mr. Couling, you have the proper -- the
20 state D.A. saying yes, we will grant
21 immunity. We have the Examiner to say no,
22 don't do it. I can't imagine what the
23 headlines or Arnulfo Guerra's reaction would
24 be or the attorney general's reaction would
25 be if the headlines were "Former State

1 Senator Granted Immunity." "All The
2 Carrillos Granted Immunity," by the Master --

3 THE MASTER: No, that is not the case,
4 it is a judge here in this case.

5 MR. ODAM: I say that in the filing
6 of that petition, then that would be
7 automatic, that the judge upstairs would
8 say I didn't have any choice. That is why
9 I refer to it being done here.

10 All I am saying is you weigh the
11 testimony of these men and what would be
12 gained in relationship of granting them
13 immunity, and it would be, as I have said
14 before, a travesty of justice.

15 This case and all of the other cases
16 we might have there, not that much would be
17 gained for Judge Carrillo, and, in my
18 opinion, on the other side, much would be
19 lost.

20 We need not reach that point today.
21 If the Master were to exercise discretion
22 today, it would be just about gone. If he
23 did not, so what, the Texas Supreme Court
24 might decide, and the Judicial Qualifications
25 Commission might decide, we will get going

1 on that another day.

2 THE MASTER: I am going to deny the
3 petitions, Mr. Mitchell. I do so knowing
4 that it creates a point of error, that you
5 will maintain, but I do so with greater
6 comfort than I would in a case, because if
7 I am wrong, Judge Carrillo will not be
8 denied that testimony, because the Supreme
9 Court, if it gets that far, can send it back
10 and correct that. I deny it because I am
11 doubtful that the evidence is admissible,
12 because I am somewhat persuaded that it is
13 impeachment on a collateral matter and you,
14 of course, take exception to my ruling
15 which is noted in the record.

16 MR. MITCHELL: Thank you, Judge.

17 THE MASTER: Is there anything further
18 to be presented in this hearing?

19 MR. MITCHELL: We have no more testimony.
20 We rest.

21 THE MASTER: And close?

22 MR. MITCHELL: And close.

23 MR. ODAM: We have rested.

24 THE MASTER: The hearing is closed.
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