

INQUIRY CONCERNING A JUDGE
NO. 5

NOVEMBER 5, 1975

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BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

November 5 1975

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

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1 FRANK RANDALL NYE,
2 called as a witness on behalf of the Respondent, hav-
3 ing been first duly sworn, testified upon his oath
4 as follows, to-wit:

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8 E X A M I N A T I O N

9 BY MR. MITCHELL:

10
11 Q State your name for the record, please, sir.

12 A Frank Randall Nye, Junior.

13 Q Mr. Nye, your employment or occupation, please,
14 sir.

15 A I am an attorney.

16 Q And how long have you been an attorney, Mr. Nye?

17 A Since 1950 or 51.

18 Q All right, were you licensed in 1950?

19 A Yes, sir, I believe it was 1950.

20 Q And where do you reside, please, sir?

21 A In Rio Grande City, Texas.

22 Q And how long have you resided in Rio Grande City?

23 A Since 1951.

24 Q You are duly licensed?

25 A Yes, sir.

1 Q By the State of Texas?

2 A That is correct.

3 Q And have you ever held a position, an official
4 position, Mr. Nye, and if so, tell us when and
5 the position itself.

6 A All right, I was county attorney in Starr County,
7 Texas, from 1953, I believe, until 1968, and then
8 in 1968 I was county judge of Starr County for
9 about a year and then when the 229th Judicial
10 District Court was created, I was appointed the
11 district attorney and I served until January the
12 10th, 1974, in that position.

13 Q What other court --

14 MR. MITCHELL: Strike that.

15 Q Was there another court that predated the 229th
16 which that Starr County was a part of, Mr. Nye?

17 A Yes, sir, the 79th District Court.

18 Q And it was presided over by whom?

19 A By the Honorable Woodrow W. Laughlin.

20 Q Mr. Nye -- did you --

21 A Prior to that there were some other judges as
22 well.

23 Q I'm sorry, I didn't mean to interrupt you.

24 A That is perfectly all right.

25 Q Were you finished with your answer?

1 A Yes, sir.

2 Q You have been subpoenaed to testify today and I
3 will -- I don't believe I have ever talked to you
4 about what you were called to testify about. I
5 will make this statement to you, as I stated to
6 you here in the hearing room, this is a procedure
7 which is -- which involves Judge Number 5 design-
8 nated Judge Number 5 before the State Judicial
9 Qualifications Commission. Judge Number 5 it can
10 be revealed is Judge O. P. Carrillo, Judge of the
11 229th Judicial District. Do you know Judge
12 Carrillo?

13 A Yes, sir, I do.

14 Q When did you first become acquainted with Judge
15 Carrillo?

16 A I guess around the early 50's, 1952 or 3, or some-
17 thing like that.

18 Q And at that time was Judge Carrillo a licensed
19 attorney at the time you first met him practicing
20 law in the South Texas area?

21 A Yes, I believe he was.

22 Q All right, and have you known him continuously then
23 for, say, about twenty-five years?

24 A That is correct, sir.

25 Q Now, the nature of that relationship -- first,

1 first let me break it down: Have you visited in
2 his home, is it a personal relationship involved?

3 A Well, I know him as a friend, yes.

4 Q All right.

5 A Over many years.

6 Q How about a -- let me now move to professional,
7 and I want to break that into two categories if
8 I might: Do you have a professional relationship
9 being one prior to the time he became the judge?

10 A Yes, I believe that as county attorney I had had
11 occasion to visit with him about several matters
12 while I held a similar position in Starr County,
13 Texas.

14 Q Judge Carrillo was -- you indicated by your answer
15 county attorney at a given time?

16 A Yes, sir.

17 Q In Duval County?

18 A Yes, sir.

19 Q Do you recall about when that was, Mr. Nye?

20 A No, sir, I do not.

21 Q Did you have an occasion to visit with him and get
22 to know him as a fellow attorney being a member of
23 the Bar?

24 A Yes, sir. In that respect we would run across
25 each other occasionally.

1 Q All right.

2 A In the courtrooms.

3 Q And that acquaintanceship, would it -- state what
4 would be the basis, would it be in terms of your
5 county attorney business and his county attorney
6 business and would it include a business that was
7 not state business, that is the law enforcement
8 business?

9 A Well, I think I would see him primarily at law
10 enforcement occasions and then occasionally as a
11 practicing attorney I would see him in the court.

12 Q Let me ask you --

13 A We were never on the same case or anything, I
14 would just see him as a member of the Bar in
15 court.

16 Q Did you -- was that relationship such that that
17 is the personal knowledge you gathered through
18 the years such that you became acquainted with
19 Judge Carrillo as a practicing attorney?

20 A That is correct.

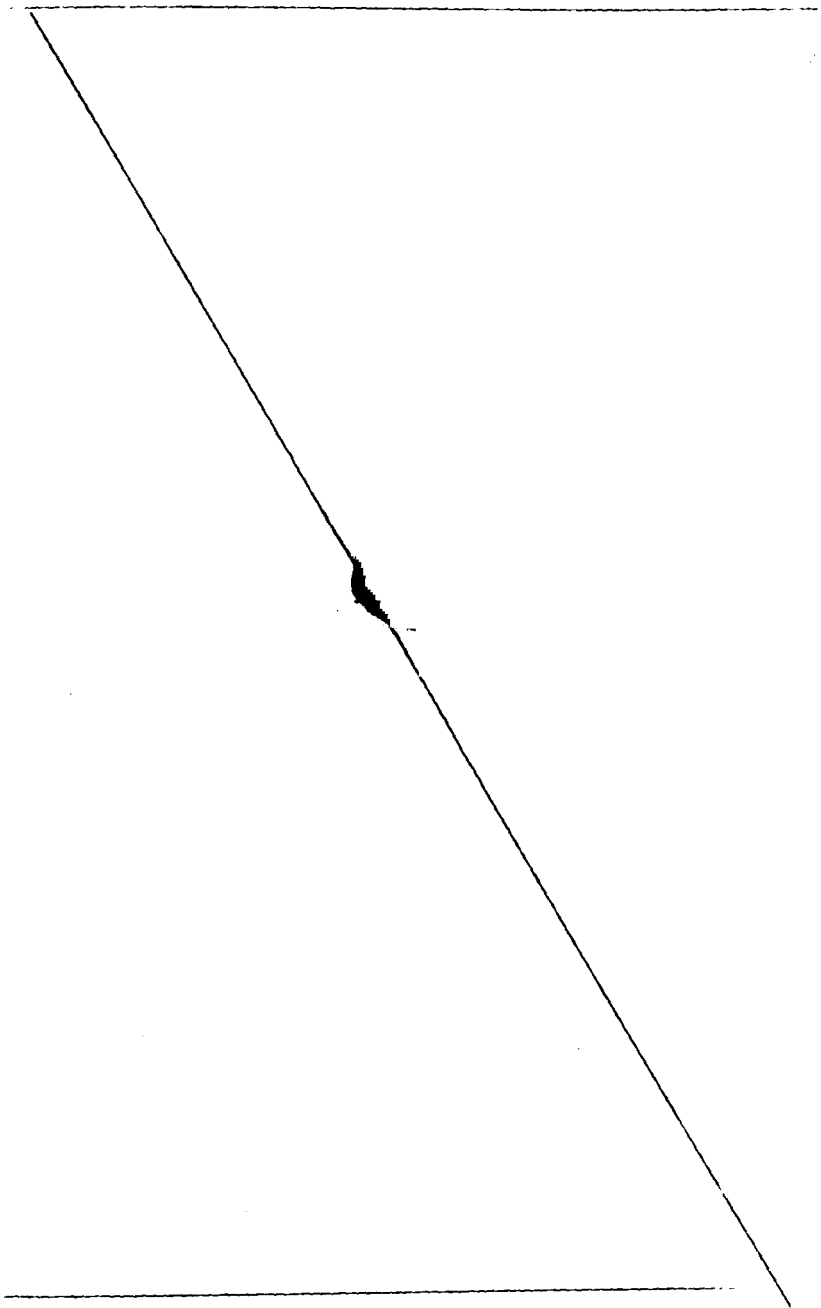
21 Q And his methods and how he used himself and
22 handled himself as a practicing lawyer?

23 A Yes.

24 Q Do you testify under oath that you have some
25 personal knowledge.

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A Yes, I do.



1 Q All right. Now, let me move, please, sir, to the
2 knowledge you have, it is also professional, as a
3 judge. Do you practice in Judge Carrillo's court?

4 A Yes, sir.

5 Q When were you there, Mr. Nye?

6 A I practiced from the inception of the court and
7 practiced before Judge Luna, who was the judge
8 who was first appointed and Judge Carrillo after
9 he was elected.

10 Q He was first elected to serve January, 1971, and
11 that term ended December 31st, 1974. I believe
12 the Certificate of Election was November 5th,
13 1974, and he took office some time the 1st of
14 January, 1975, does that serve your present
15 recollection as to when he was judge of the 229th
16 Judicial District?

17 A Yes, sir, that appears to be correct.

18 Q What counties are in the 229th Judicial District?

19 A Duval, Starr and Jim Hogg Counties.

20 Q You are a resident of Starr County?

21 A Correct, sir.

22 Q Does Judge Carrillo's court sit in Starr County?

23 A Yes, sir.

24 Q What city?

25 A Rio Grande City.

1 Q Have you gone before the judge in Rio Grande City,
2 that is the 229th District Court?

3 A Yes, sir, on many occasions.

4 Q Let's see if I can break that down.

5 Have you also -- I believe you testified
6 earlier you were district attorney of the same
7 district for a period of time, and I will ask you
8 whether or not, as district attorney, you had
9 occasion to go into all counties comprising the
10 229th Judicial District?

11 A Yes, sir, I did.

12 Q Let me see if I can break it down further.

13 I need for you to testify so the record stands
14 complete as to your personal knowledge.

15 Did you go before Judge Carrillo as a district
16 attorney, to begin with?

17 A Yes, sir, on many occasions.

18 Q Representing the State of Texas?

19 A Correct.

20 Q Tell us whether or not you had an occasion to
21 appear before him in criminal cases with and
22 without juries.

23 A Yes, I did.

24 Q In both instances?

25 A Yes.

1 Q Without a jury and with a jury?

2 A Yes, sir.

3 Q May I ask you, please, to give us the duration
4 and how long and how many cases, if you can give
5 us some idea, Mr. Nye, that you had an occasion
6 to represent the State of Texas before Judge
7 Carrillo's court where he was presiding with or
8 without juries?

9 A There were not many with juries. Most of the time
10 we would get up to that point and there were pleas
11 entered. I would say, I guess, a total of maybe
12 fifty or perhaps even a hundred cases. I don't
13 recall in numbers exactly, but throughout that
14 period of time, the records would be the best
15 evidence.

16 Q Your testimony would be, or opinion would be,
17 there were numerous occasions?

18 A Yes, sir, numerous. Well, we met, as a general
19 rule, once a week in each county. In other words,
20 we would have a session in Starr County one week
21 and the next week we would have a session in --
22 this is criminal cases -- a session in Starr
23 County and the next in Jim Hogg County and the
24 following week in Duval County. Then the court
25 would have an open week for civil matters, so at

1 least once a month we would be in attendance
2 before the court in each one of the three counties

3 Q And you had, because of your duties as district
4 attorney, and because you were an attorney
5 practicing before him, would you testify you had
6 a good basis to testify as to the nonworking or
7 type of working judge he was?

8 A Absolutely.

9 Q Had you been before Judge Carrillo where the
10 State was not a party, in other words, a civil
11 case?

12 A Yes, sir.

13 Q Would those cases be where juries sat?

14 A Yes, sir, nonjury and jury cases.

15 Q I will ask you, Mr. Nye, during the course of
16 representing the State and the cases you have
17 outlined and during the course of time you
18 represented private litigants, have you been able
19 to observe Judge Carrillo in his judicial
20 capacity, that is, sitting in charge of the
21 courtroom?

22 A Yes, sir. I have.

23 Q I will ask you some questions about Judge
24 Carrillo's relationship -- what kind of ship he
25 ran and so forth. I would appreciate it if you

1 would testify or give your opinion in these
2 regards.

3 A Surely.

4 Q Based on your personal knowledge, in both civil
5 and criminal cases, what has been the judge's
6 demeanor as regards his treatment of attorneys
7 appearing before him.

8 MR. ODAM: We would object to the
9 relevancy of this question to the proceedings
10 and as well the answer to it.

11 THE MASTER: Of course, that is the
12 problem of taking a witness out of turn. This
13 witness is really in essence a rebuttal
14 witness. I will have to reserve the ruling
15 on that objection until I see what your case
16 is.

17 Would you remind me?

18 MR. ODAM: Let me clarify for the Court
19 the purpose of my objection. I refer the
20 Court to the First Amended Notice.

21 THE MASTER: I am well aware there are
22 no specific allegations in the inability to
23 run a courtroom; is that what you are about
24 to say?

25 MR. ODAM: Correct, Your Honor.

1 THE MASTER: But encompassed within
2 some of the allegations, there may be some
3 evidence that might be rebutted by this sort
4 of testimony.

5 I do not think it is relevant
6 specifically to any of the allegations
7 contained in the Amended Notice of Formal
8 Proceedings. There are some things that
9 come in sort of in association with
10 allegations that sometimes need rebutting.

11 Your position is what, Mr. Mitchell?

12 MR. MITCHELL: My position is, it is
13 relevant. The preceding witness, Mr. Smith,
14 testified it was a controlled court and the
15 allegations are complete as to the conduct
16 as far as concerning this judge. On conduct,
17 now, clearly this is inconsistent with
18 performance of his duties. I say it is in
19 focus completely. With his first witness, he
20 has already solicited testimony --

21 THE MASTER: At this time I will over-
22 rule the objection subject to it being re-
23 urged at a later time.

24 MR. MITCHELL: All right. We will
25 proceed.

1 Q (By Mr. Mitchell) Do you remember the question?

2 A Yes.

3 Q All right. Have you been able to observe his
4 demeanor, as regards the attorneys appearing before
5 the judge?

6 A Yes, sir, I think he ran his courtroom with
7 excellent judicial demeanor.

8 Q Were you able to determine whether he leaned one
9 way or the other or did the judge appear to be
10 fair in all rulings and relationships in the
11 courtroom?

12 A From my opinion and from my observation, I
13 thought he was always as fair as possible.

14 Q Well, I will ask you if you have ever observed
15 any conduct by Judge Carrillo in relation to an
16 attorney that was clearly inconsistent with his
17 duties as a district judge?

18 MR. ODAM: I object to that question on --

19 THE MASTER: Sustained.

20 MR. MITCHELL: May I have a bill on it?

21 THE MASTER: Yes, sir.

22 Q (By Mr. Mitchell) Go ahead and answer the
23 question.

24 A I never saw him act other than as a fair and in a
25 judicious manner.

1 THE MASTER: That answer is admitted,
2 even though it is not for the question asked.

3 Q (By Mr. Mitchell) Let me ask you specifically,
4 have you ever, based upon the personal knowledge
5 that has been the input into your testimony,
6 observed any conduct upon the part of Judge
7 Carrillo that was anything other than credible to
8 the judge or would cause dispersion on him or
9 the bar?

10 A No, sir.

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1 Q Now, I will move from the attorney's class, as
2 they functioned under the judge and as they con-
3 ducted the court's business as officers of the
4 court to the litigants, both in civil and criminal
5 cases.

6 I will ask you, Mr. Nye, if during the years
7 of the experience, personal experience you testi-
8 fied to, appearing in the judge's court, both
9 in civil and criminal cases, you have been able
10 to observe his conduct as regards the litigants,
11 the defendants in criminal cases, plaintiffs
12 and defendants in civil cases, and can you say --
13 do you have such an observation, have you been
14 able to observe it?

15 A Yes, sir, I have, and I have an opinion as to the
16 manner in which he has demeaned himself and I
17 think it has always been fair and above board,
18 and the best of judicial manner as to the liti-
19 gants.

20 Q You have no --

21 MR. ODAM: Your Honor, I presume that
22 this testimony is also on the bill of
23 exceptions.

24 THE MASTER: No, I am admitting this.

25 MR. MITCHELL: No, no, I am sorry.

1 Judge. I don't mean to sit down, no, the
2 Court's observation is correct.

3 THE MASTER: I am admitting this
4 testimony.

5 MR. MITCHELL: I have now moved, Mr.
6 Odam, from opinions as regards the attorneys
7 to litigants, and I am following the same
8 format, I am going to get down to the one
9 you are going to object to about now.

10 MR. ODAM: I misunderstood then, I
11 understood or thought that the testimony
12 elicited was on the bill of exception.

13 THE MASTER: No.

14 MR. ODAM: And I would raise the objec-
15 tion that the opinion expressed by this
16 witness invades the province of the commis-
17 sion itself which calls for the commission
18 to make the determination of whether the
19 conduct is willful and persistent, not this
20 witness, that is what the commission is for
21 ultimately, and the Supreme Court.

22 THE MASTER: I will overrule the
23 objection.

24 Q I'll ask you whether Judge Carrillo, in the times
25 you have been before him, ever gave the appearance

1 from the bench while he was presiding over the
2 affairs of the 229th Judicial District of being
3 controlled by anyone?

4 A No, sir.

5 Q I will ask you again now referring specifically
6 to the litigants, whether or not based on your
7 personal knowledge that you have gathered from
8 the facts that you have testified to that the
9 conduct of Judge Carrillo and the conduct of his
10 official court business, as relates now to the
11 litigants, Mr. Nye, was inconsistent with the
12 proper performance of his duties as a judge.

13 MR. ODAM: Your Honor, we would object
14 to this question as to relevance and also
15 as to the points previously stated, it
16 invades the province of the jury.

17 THE MASTER: I will sustain that, you
18 are asking the ultimate conclusion.

19 MR. MITCHELL: I will ask the court
20 for the formal bill.

21 THE MASTER: Yes, sir.

22 Q Do you recall the question?

23 A Yes, I do, he has always acted fair and in a
24 judicious manner.

25 Q I will ask you, and I suppose you have answered

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1 this but I will ask it to you, have you ever
2 observed as regards his relationship now to liti-
3 gants, the conduct upon the part of the Judge that
4 would discredit or cast any aspersions or nega-
5 tive attitudes as regards to the judiciary?

6 A No, sir.

7 Q Now, I will move Mr. Nye to bailiffs and court
8 officials in the years that you have practiced
9 law under the Judge, have you been able to deter-
10 mine his conduct, his relationship as regards his
11 court officials, his bailiffs, the officials and
12 court employees?

13 A I have.

14 Q Can you tell this record and speak to this court
15 record as regards that how that conduct is as
16 regards fairness --

17 MR. ODAM: Your Honor, we would pose
18 again the objection of relevance and need
19 not do so if it is understood that the
20 objection for relevancy --

21 THE MASTER: What is the relevancy
22 as respects bailiffs and court reporters,
23 Mr. Mitchell. There is no allegation at
24 all --

25 MR. MITCHELL: It is part of the spectrum

1 of judicial behavior.

2 THE MASTER: I think I am going to
3 sustain the objection.

4 MR. MITCHELL: Well, may I have the
5 answer then, Judge, as a part of our bill?

6 THE MASTER: But now you've repre-
7 sented thirty minutes for three witnesses
8 and you have taken twenty on this one.

9 MR. MITCHELL: I am just about through
10 with him, Judge, I think maybe I can --

11 THE MASTER: You have got ten minutes
12 for the next two.

13 MR. MITCHELL: Well, Judge, I know how
14 the court is operating.

15 THE MASTER: Mr. Mitchell, I don't mean
16 to cut you off, but you are being somewhat
17 repetitious.

18 MR. MITCHELL: And I think, Your Honor,
19 what we might perhaps do in light of that,
20 we might excuse the other two and bring them
21 back. I don't want to be an imposition.

22 THE MASTER: No, I don't want to do
23 that. I do urge, it is my view that you
24 can make the point you are making in less
25 time. I do not mean to hurry you or unduly

1 cut you off but I really do believe that.

2 MR. MITCHELL: Well, Judge, maybe if
3 I am permitted to make a statement: I
4 have tried, in examining the California
5 cases, in determining the area in which
6 these other states, particularly California,
7 have looked to determine qualification, and
8 they are, it seems to me, the ultimate
9 issues in this case are the Judge's rela-
10 tionship to the attorneys, the Judge's rela-
11 tionship to the litigants, and the Judge's
12 relationship to the jurors and the Judge's
13 relationship to the bailiff.

14 THE MASTER: I just think you can do
15 it in less time, Mr. Mitchell, that is all.

16 MR. MITCHELL: Oh, all right. I don't
17 really remember where I was.

18 THE MASTER: You were asking him about
19 his relationship with the bailiffs and the
20 court reporters.

21 Q Was there anything in that conduct that indicated
22 any improper conduct as you understand the meaning
23 of that term, Mr. Nye?

24 A No, sir.

25 Q Has there been any relationship -- any conduct

1 that you have observed in relationship to Judge
2 Carrillo, his officials, that is his bailiffs,
3 his court reporter, that would suggest a discredit
4 upon the judiciary?

5 A No, sir, not that I know of personally.

6 Q Any conduct upon the part of the Judge inconsis-
7 tent with the performance of the duties as a
8 court, as that relates to his bailiffs and his
9 employees?

10 A No, sir.

11 MR. ODAM: Your Honor, again I would
12 like for the purposes of not interrupting,
13 object on the grounds of relevancy to this
14 question. As it should be understood a
15 running objection on relevancy to all of
16 his testimony.

17 THE MASTER: You have that objection
18 to all of this testimony of this witness and
19 every other witness similarly situated which
20 is Mr. Atlas and Mr. Cerda, you said?

21 MR. MITCHELL: Mr. Cerda, yes.

22 THE WITNESS: Mr. Cerda.

23 Q Mr. Nye, I now move to jurors. I understand your
24 testimony earlier you have had occasion to appear
25 before Judge Carrillo where a jury has been

1 empaneled to determine facts in cases that you
2 have personally represented litigants or have
3 been in the courtroom where you have been able
4 to observe Judge Carrillo's conduct as a judge
5 where jurors are sitting in the box, is that cor-
6 rect?

7 A That is right, sir.

8 Q And based upon that personal knowledge I will ask
9 you what has been your experience in determining
10 the Judge's relationship as to courtesy, as to
11 judicial treatment, judicious treatment of jurors
12 when cases have involved empaneling of jurors, Mr.
13 Nye.

14 A In my opinion it has always been at the highest
15 level, the highest standards.

16 Q Courteous?

17 A Yes, sir.

18 Q Judicious?

19 A Yes, sir.

20 Q Any conduct that would suggest discredit upon the
21 judiciary and his conduct of jurors?

22 A No, sir.

23 Q And the instruction of jurors?

24 A That is correct, none.

25 Q Empaneling of jurors?

1 A All also empaneling.

2 MR. MITCHELL: I have no further ques-
3 tions.
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7 E X A M I N A T I O N

8
9 BY MR. ODAM:

10 Q Mr. Nye, have we ever met before this morning?

11 A No, sir, not that I recall.

12 Q I believe it was your testimony that you served
13 for a period of time as county attorney?

14 A Yes, sir.

15 Q For Starr County?

16 A That's correct, sir.

17 Q And you served as district attorney for Starr
18 County?

19 A Yes, sir.

20 Q What were the circumstances under which you resigned
21 as district attorney of Starr County?

22 A I had an opportunity to go into the private sector
23 that I felt that economically I couldn't turn
24 down.

25 Q And who do you practice law with at the present

1 time?

2 A I practice alone.

3 Q You stated it was your testimony that Judge O. P.
4 Carrillo, to the best of your knowledge and opin-
5 ion, has not engaged in conduct that is inconsis-
6 tent with the proper performance of his duties as
7 district judge, is that your testimony?

8 A That is right, sir, from my experience with him,
9 acting as a district judge and in that capacity,
10 that is correct.

11 Q It is your testimony that he has not had such
12 conduct that is clearly of a nature to cast dis-
13 credit upon the judiciary, is this your testimony?

14 A As district judge, while he has been on the bench,
15 that is correct, sir.

16 Q Mr. Nye, for the purposes of this question, I
17 would like to assume a set of facts with you con-
18 sistent with the pleadings in this case.

19 I would like for you to assume that during
20 the period of time that Judge O. P. Carrillo
21 received goods and merchandise from the Cash store
22 at Benavides, Texas, and that these goods and mer-
23 chandise which Judge Carrillo received were of
24 value in the amount of three hundred dollars per
25 month.

1 And that these groceries which he received
2 from the Cash store were paid for at County expense,
3 from money of Duval County.

4 MR. MITCHELL: Pardon me, Judge, I
5 know what he's getting ready to do and I am
6 going to object to any question put to this
7 witness on a hypothetical basis on the "did
8 you know" or "you assume" as a matter of
9 fact type question. The opinions of this
10 witness having been limited to a judicial
11 quality, judicial characteristic and judi-
12 cial character, and the "did you hear" or
13 "have you heard" type question we are going
14 to object to or the assumption.

15 THE MASTER: The objection is over-
16 ruled.

17 Q Again, let me restate the hypothesis back down
18 to the point where we are now. Again, it was --
19 you have given your opinion, now I will pose this
20 hypothesis to you. I will again go through it
21 slowly and listen to it, I don't know if you have
22 heard it or not heard it before.

23 Assume for the moment that Judge Carrillo,
24 Judge O. P. Carrillo that sits here in this court-
25 room, conspired with his brother, Ramiro Carrillo,

1 and that the purpose of this conspiracy was to
2 take from the Duval County government, the sum of
3 three hundred dollars each and every month for a
4 period of time from --

5 MR. ODAM: Strike that question.

6 Q Assume that the conspiracy was to take from the
7 county of Duval, a period of -- an amount of three
8 hundred dollars a month, and that throughout the
9 period that he received from the Cash store from
10 Benavides, Texas, goods and merchandise of the
11 amount of three hundred dollars per month, these
12 goods and merchandise being paid for out of the
13 county treasury of Duval County, Texas, and that
14 assume further that the funds for the payment of
15 the goods and merchandise obtained by Judge
16 Carrillo from the Cash store were paid from Duval
17 County through a fraudulent scheme that involved
18 the use of non-existent or fictitious welfare
19 recipients.

20 Assume further that Judge O. P. Carrillo
21 participated in that fraudulent scheme: assume
22 further that the amount of time involved that
23 Judge O. P. Carrillo conspired to defraud the
24 county government was from January 1, 1971, until
25 May 1 of 1971 -- correction, May 1 of 1974.

1 Assume further that the total value of the
2 goods and merchandise that he received as a result
3 of this participation and fraudulent scheme was
4 an amount of approximately fifteen thousand six
5 hundred dollars.

6 Now, assume that to be a statement of fact,
7 is your testimony before this court that Judge
8 Carrillo, O. P. Carrillo, assume that to be true,
9 would not have been involved in conduct that is
10 clearly inconsistent with the performance of his
11 duties of a district judge.

12 A Assuming all of those facts to be true?

13 Q Yes, sir.

14 A Then I think he would have been involved in some-
15 thing that would not have been becoming of a
16 district judge.

17 Q Would you say that taking by way of fraud from
18 the county of Duval was such conduct that would
19 be consistent with the proper performance of his
20 duties as a district judge, assuming all of that
21 to be true?

22 A Assuming that all to be true, it certainly could
23 not have been compatible with his duties as a
24 district judge.

25 Q And assume that all to be true, would you still

1 hold your same opinion that that conduct would be
2 clearly of a nature to cast discredit upon the
3 judiciary or not to cast discredit upon the judi-
4 ciary? In other words, would that cast discredit
5 upon the judiciary, would that not be true?

6 A Assuming that to be true, I think it would cast
7 discredit upon the judiciary.

8 Q Are you familiar with the lawsuit styled Manges
9 versus Guerra?

10 A Yes, sir, generally.

11 Q And how are you familiar with that lawsuit?

12 A I was one of the attorneys for the receiver.

13 Q Is it a correct statement that you received a fee
14 in that case of approximately fourteen thousand
15 dollars?

16 A That is correct, sir.

17 Q So you have first hand knowledge of the case to
18 some extent?

19 A Yes, sir.

20 Q All right, again I would like to pose a hypothesis
21 to you for the basis of your testimony here today.

22 You are familiar with the case, and I would
23 like for you to assume as you know to be true
24 that the case styled M. A. Guerra or correction,
25 styled Clinton Manges versus M. A. Guerra --

1 THE MASTER: Excuse me, let me inter-
2 rupt for just a moment and I apologize for
3 the interruption, I think we better excuse
4 Mr. Atlas and Mr. Cerda.

5 MR. MITCHELL: I am sorry, Judge, I
6 didn't hear you.

7 THE MASTER: I think we had better
8 excuse Mr. Atlas and Mr. Cerda because this
9 witness is going to be on the stand thirty
10 or forty minutes alone and each one of them
11 are going to be thirty or forty minutes,
12 and that is simply an imposition.

13 MR. MITCHELL: All right, Judge, with
14 the understanding we will call them back
15 later.

16 THE MASTER: Of course, they are not
17 excused as witnesses, they are just released
18 from their subpoenas. Would you do it very
19 briefly so you can be back in the courtroom
20 very shortly?

21 MR. MITCHELL: Yes, I will, thank you,
22 Judge.

23 (Whereupon Mr. Mitchell left the court-
24 room for a brief period of time and upon his
25 return the following occurred.)

1 MR. MITCHELL: I am sorry, Judge.

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

3 Q (By Mr. Odam:) Mr. Nye, I have just posed a ques-
4 tion to you on a hypothesis assuming a set of facts
5 involving the defrauding or alleged defrauding
6 of Duval County government.

7 THE MASTER: Excuse me, your last ques-
8 tion to him --

9 MR. ODAM: I'm sorry.

10 THE MASTER: Concerned his familiarity --

11 MR. ODAM: With Manges versus Guerra.

12 THE MASTER: That's right, with Manges
13 versus Guerra. If you want to withdraw
14 that one and go back to the other one, you
15 may do so.

16 MR. ODAM: Yes, sir, I would like to
17 withdraw that question and go back for just
18 one other question to matters relating to
19 the Cash store, the last series of questions
20 I related to him on the hypothesis.

21 THE MASTER: All right.

22 Q Do you understand what I am saying?

23 A Yes, sir.

24 Q My question to you is do you have any first hand
25 knowledge of taking of groceries from the Cash

1 store by O. P. Carrillo and they were being paid
2 for by Duval County?

3 A I do not.

4 Q Have you ever heard of that taking place?

5 A Other than in the newspaper.

6 Q Okay. For the purposes of this question, I would
7 refer back to the lawsuit of Manges versus Guerra
8 in which you participated and, again, I would like
9 to pose a hypothesis to you which I will go through
10 slowly, and then pose the question to you.

11 I would like for you to assume that at the
12 time that Judge O. P. Carrillo assumed his duties
13 as judge of the 229th Judicial District that there
14 was pending on the docket of that court a lawsuit
15 styled Manges versus Guerra and that that case
16 had been pending on the docket of said court prior
17 to the time that Judge O. P. Carrillo assumed the
18 duties of district judge, and had been pending at
19 the time that he was elected to such office in
20 the general election held in November of 1970.

21 I would like for you to further assume that
22 on or about December the 10th of 1970 that O. P.
23 Carrillo accepted from the plaintiff in this law-
24 suit, Clinton Manges, ten shares of stock in the
25 First State Bank and Trust in Rio Grande City,

1 and assume further that at the time he received
2 such stock from Clinton Manges, the plaintiff in
3 that lawsuit, that the bank stock was included
4 within the property in dispute in a lawsuit and
5 was in custodia legis.

6 Assume further that on January the 29th,
7 1971, the plaintiff in this lawsuit caused to
8 be issued a check on his bank account in the
9 amount of six thousand nine hundred fifty-five
10 dollars payable to Rialto Cadillac Company, and
11 that such sum of money was applied to the purchase
12 price of an automobile that was ordered by O. P.
13 Carrillo and that the sum was credited to his
14 benefit.

15 Assume further that in the summer of 1971
16 that O. P. Carrillo entered into an open end lease
17 agreement with the plaintiff in that lawsuit, Mr.
18 Clinton Manges, and that further he had grazing
19 rights on some twelve to fifteen hundred acres of
20 land and that this land was included in the property
21 which was the subject of litigation in the cause
22 Manges versus Guerra, and assume further that at
23 about the time O. P. Carrillo entered into this
24 oral lease agreement with the plaintiff Clinton
25 Manges, under the terms he acquired grazing lease

1 rights on an additional five to six thousand
2 acres of land and that this land was also included
3 in the property which was the subject of litiga-
4 tion.

5 Assume further that O. P. Carrillo derived
6 from the Plaintiff in the lawsuit Clinton Manges
7 the appointment as director of the First State
8 Bank and Trust of Rio Grande City on December the
9 10th, 1970.

10 Assume further that after O. P. Carrillo was
11 elected, but not yet qualified to serve on the
12 bench, after he was elected judge on the date he
13 was appointed as director of the bank, and then
14 he continued to serve as director long after he
15 assumed the duties as district judge, and while
16 the aforementioned litigation was pending on the
17 docket of the court, and assume further that one
18 of the principal objects of the lawsuit was an
19 attempt to confirm the acquisition of bank stock
20 by the plaintiff, the ownership of which enabled
21 plaintiff to exercise sufficient control so as to
22 appoint O. P. Carrillo the director of this bank.

23 Assume further that it was the conclusion
24 of O. P. Carrillo to the State Judicial Qualifica-
25 tions Committee that the happening of all of these

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1 A All right.

2 MR. MITCHELL: Your Honor, normally I
3 would not, of course, object to a hypothet-
4 ical question requiring the witness to
5 assume facts. However, in this case, where
6 the facts have been already introduced into
7 evidence by the questioner from the witness
8 Mangus Smith, I am going to object --

9 THE MASTER: Garland Smith.

10 MR. MITCHELL: I am sorry, Judge, not
11 Mangus, but Garland Smith, where the testi-
12 mony has been elicited, I am going to object
13 to the hypothetical question in this form to
14 the extent that it requires the assumption of
15 facts contrary to the established facts by
16 the evidence, and one, the pendency of
17 Manges versus Guerra in 121070 Cause, the
18 evidence shows it was in the federal court,
19 it was not pending, it had been completely
20 abated by the federal action.

21 And number two, in the month of Decem-
22 ber, 1970, the ownership of the stock was
23 in dispute which, as a matter of fact, it
24 was not in dispute, it was totally and com-
25 pletely settled, and the settlement having

1 been reached by all parties by the end of
2 December, 1970.

3 And number three, the assumption of
4 the fact that the land upon which the graz-
5 ing lease was given was also a subject
6 matter in dispute in 1971, to the contrary
7 is that the evidence indicates that all of
8 the land in the Manges versus Guerra having
9 been settled as early as December, 1970.

10 In addition, the assumption of the
11 fact that Judge -- that Judge Carrillo's
12 conclusion that he was not disqualified is
13 contrary to the evidence. He made the con-
14 clusion that he was not disqualified and the
15 evidence being that he refused to pass upon
16 his own disqualification and referred it to
17 the head of the judicial administrative dis-
18 trict and that he referred it to a judge,
19 and we object, therefore, to the question
20 put to the witness on the ground that the
21 facts called for are contrary to the evidence
22 having been solicited from the previous
23 witnesses appears to be.

1 MR. ODAM: In response to that, it is
2 not contrary to the evidence; number two,
3 to the extent that it is contrary to this
4 witness, Mr. Mitchell has chosen to put this
5 witness on out of order.

6 THE MASTER: Yes, that evidence is not
7 closed with respect to the status of the
8 lands and so forth, so I must overrule that
9 objection at this time.

10 Q (By Mr. Odam) Would you like for me to go
11 through the question again?

12 A No, let's not go through it again.

13 Q All right.

14 A If I must assume that state of facts, without
15 anything else, I would say it must have some
16 impropriety to it. I must expound.

17 As I recall, in that particular case, the
18 only orders Judge Carrillo signed, and this is
19 my recollection, I believe, were agreed orders
20 by all parties.

21 Q Would you say the conduct, and my question was,
22 whether it was inconsistent with judicial duties
23 to not recuse himself, and your answer is there
24 does seem to be some impropriety on that, so I
25 will ask you this:

1 Without voluntarily recusing himself, would
2 this tend to be of a nature to discredit himself
3 with the judiciary?

4 A I would say each judge must make up his own mind
5 on whether to recuse himself or not.

6 Q I would suggest whether this would be a judgment
7 call as to how a judge could treat his bailiff
8 or the court reporter, that was the question
9 posed by Mr. Mitchell.

10 MR. MITCHELL: I asked how the evidence
11 showed he did act in that regard.

12 MR. ODAM: Okay. Strike the question.

13 Q (By Mr. Odam) Assuming all these facts to be
14 true, the failure of the judge to voluntarily
15 recuse himself, would you be of the opinion to
16 fail to recuse himself and submit this to a
17 hearing, and knowing all I suggested to you, that
18 failure would be clearly of a nature to cause
19 discredit on the judiciary?

20 A Assuming all those facts are true, it is my
21 opinion he should have recused himself. What the
22 facts are, however, I don't know.

23 Q All right. I certainly accept that answer. You
24 state your opinion that he should have recused
25 himself, assuming that is all the facts are true,

1 is that correct?

2 A Yes, but you asked me my opinion of what a judge
3 should do.

4 Q Yes, that is my next question.

5 My question is, since it is your opinion he
6 should have recused himself, would it be your
7 opinion further that the failure to recuse himself,
8 which you think he should have done, was of such
9 a nature to cause discredit on the judiciary?

10 A No, I would think he used his own judgment.

11 Q You think he should have recused himself, however?

12 A Assuming all those facts, as you put them,
13 without anything else, yes, sir.

14 Q I will ask the final question on this paragraph,
15 and that is for the benefit of the Master and the
16 State Judicial Qualifications Commission, do you
17 have any personal knowledge as to the truthfulness
18 or incorrectness of the hypothesis I just stated
19 to you? If there is any question in your mind,
20 I would go back for the benefit of the record to
21 expound upon those and take them point by point.

22 Do you have any personal knowledge as to
23 the Cadillac, the shares of stock or the grazing
24 leases?

25 A My impression was there was some buy and sell

1 agreement between the judge and Mr. Manges that
2 took this conduct out of the impropriety part.
3 In that, there was an arm's length transaction,
4 that in general, and the fact that I believe the
5 judge only executed agreed judgments, and all of
6 the parties signed them and it was presented to
7 him as a ministerial duty, and plus on the facts
8 of any question on his disqualification for the
9 first time, he stepped aside and had someone else
10 come in and judge that for him.

11 Q All right, sir. Let me ask you this question:
12 The first matter I related to you was the taking
13 of the groceries from the store in Benavides.

14 A Yes.

15 Q You reside in Starr County?

16 A Yes, some one hundred and thirty-five miles from
17 where I live.

18 Q I believe you testified further, to your knowledge,
19 O. P. Carrillo was elected in November, 1974, for
20 the present seat.

21 A Yes, I believe that is what the record indicates,
22 I believe that is correct.

23 Q Would it be your testimony, or would you be able
24 to answer the question as to whether or not these
25 matters of the taking of groceries by O. P.

1 Carrillo, and for his benefit, and the county
2 paying for them, was that well known in the
3 community at the time?

4 A No, sir, it was not.

5 MR. MITCHELL: And, of course, we
6 object to the extent the witness testified
7 he had no personal knowledge. The only
8 basis would be the newspaper, which he read
9 on that point. We highly deny it and we have
10 denied it and we think the evidence will be
11 otherwise. We don't want this to be assumed.

12 THE MASTER: The objection is overruled.
13 You had answered the question?

14 THE WITNESS: Yes, there was no knowledge
15 I had other than what I received from the
16 newspaper.

17 THE MASTER: When did you receive that
18 knowledge from the newspaper?

19 THE WITNESS: Judge, whenever this
20 matter --

21 THE MASTER: Well, what was the year?

22 THE WITNESS: It was in the last six or
23 eight months, whenever it became common
24 knowledge to everybody, whenever the
25 allegations were printed in the newspaper is

1 what I am trying to say.

2 Q (By Mr. Odam) When Judge O. P. Carrillo ran for
3 office in November, 1974, for the bench he now
4 holds, if I understand correctly, that would be
5 not just a vote that would be in Duval County,
6 but what other counties?

7 A Jim Hogg, Duval and Starr.

8 Q I might have limited my earlier question to
9 whether or not these things were common knowledge
10 in Benavides or Duval County. Would it be your
11 testimony, whether they were common knowledge in
12 Starr and Jim Hogg County as well?

13 A We had no knowledge of that or anything about that.

14 Q When Judge Carrillo ran for office in November,
15 1974, who was his opponent at that time?

16 A I don't recall that he had an opponent, I don't
17 believe he did.

18 MR. MITCHELL: I have no objection to
19 counsel going into these questions, however,
20 when I take the witness back to redirect,
21 I am going to pick up some of these matters.
22 I am pleased to engage in this other area,
23 but I want counsel to know I am going to go
24 extensively into the Guerra matter and the
25 pleadings in 1970 and '71, since this witness

1 has demonstrated a knowledge of those.

2 This is beyond my original direct and
3 I am not objecting, because I don't want
4 counsel to say that you are going to some-
5 thing else.

6 MR. ODAM: I would like, also, Your
7 Honor, to make clear to Mr. Mitchell, unless
8 he asked Mr. Atlas and Mr. Cerda -- I want
9 them to remain here.

10 THE MASTER: I had instructed
11 Mr. Mitchell to release those witnesses
12 insofar as today is concerned. They are
13 still under subpoena.

14 MR. MITCHELL: I followed the Court's
15 instruction. The Court told me that they
16 were to stand by for a telephone call.

17 THE MASTER: That is right. There is
18 no point in leaving them here for another
19 hour or so.

20 MR. MITCHELL: I don't have any
21 objection to the facts being solicited, but
22 I wanted counsel to know that it is for the
23 record, that it is going beyond that time
24 on my direct and counsel has raised matters
25 on cross that I need to clarify on redirect.

1 Q (By Mr. Odam) I believe my last question to you
2 was: That to the best of your knowledge, Judge
3 Carrillo did not have an opponent in 1974?

4 A That is the best of my recollection.

5 Q Would it be your testimony, then, that when he
6 ran for office and was elected, by whatever the
7 vote was, one or two, or whoever voted for him,
8 would it be your testimony that to the best of
9 your knowledge, that in casting those ballots,
10 that the electorate was in no way forgiving
11 these acts they had no prior knowledge of?

12 MR. MITCHELL: We object as to hearsay.
13 The question is improper.

14 THE MASTER: The objection is overruled.

15 THE WITNESS: I can't speak for the
16 electorates. They cast their ballots and
17 whatever that effect is, it is, but I can't
18 speak for them. I would not know how to do
19 it.

20 Q (By Mr. Odam) Since he had no opponent, he
21 didn't have any opponent who was disseminating
22 such knowledge at the time of the election?

23 A To the best of my knowledge, he didn't have an
24 opponent. That was two or three years ago and I
25 think that is correct.

1 Q It is your testimony that as far as you know,
2 the matters of the Cash Store were not known in
3 the community at the time, is that your testimony?

4 A Correct.

5 Q Assume that to be fact, those facts were not
6 known, do you believe at the time Judge Carrillo
7 was elected to office, they were therefore
8 forgiving him for these unknown acts?

9 MR. MITCHELL: Same objection.

10 THE WITNESS: I don't know how to answer
11 that, because it is my opinion, based on
12 something I don't know about.

13 Q (By Mr. Odam) Well, you personally did not know
14 about it at the time?

15 A No, sir, that is correct.

16 Q Did you vote in the election of November, 1974,
17 for Judge O. P. Carrillo?

18 MR. MITCHELL: That is improper, I
19 believe, Judge.

20 THE MASTER: You can ask him if he
21 voted in the election, but now how he voted.

22 MR. ODAM: The purpose of my question
23 is Mr. Mitchell has raised what is referred
24 to as a prior term doctrine.

25 THE MASTER: I followed you on that, but

1 to ask the question how he voted is not
2 proper and --

3 MR. MITCHELL: Yes, Your Honor, it is
4 very improper and I object to that.

5 MR. ODAM: I understand the problems
6 with asking a particular voter, Mr. Nye or
7 any other voter of Duval County how they
8 voted, but my purpose raises the very point,
9 because I can't find out. Judge Carrillo,
10 apparently, as far as the voters were
11 concerned, these were not facts known. It
12 is going to be difficult in light of not
13 having an opponent and not in knowledge to
14 prove either by Mr. Mitchell or myself that
15 they were forgiven at the election.

16 THE MASTER: I think you may be
17 misreading the opinion. It seems to me what
18 the cases hold is that if acts of impropriety,
19 or I don't know how well known, but if to
20 some extent were known by the voting public,
21 at the time they re-elect the wrongdoing
22 official, then as a matter of law, the fact
23 of his re-election constitutes condonation
24 of the misconduct. I don't believe there has
25 to be a conscious condonation. The fact that

1 he is re-elected, in light of existing
2 common knowledge, is condonation. You are
3 welcome to dispel me on that.

4 MR. ODAM: Well, the only difficulty
5 on that I have is assuming they are not
6 matters of public knowledge, and if that is
7 the case and if every witness I can put on
8 represents they were not matters of public
9 knowledge, that might ipso facto mean that
10 the doctrine would be such that he could be
11 removed from office for those reasons.

12 THE MASTER: My view is that if a
13 public official has committed acts of
14 misconduct that are to some extent publicly
15 know, and I don't know to what extent it has
16 to be known, but is returned to office in
17 light of that public knowledge, then the
18 doctrine applies.

19 What is your idea, Mr. Mitchell?

20 MR. MITCHELL: My notion, or knowledge
21 is, first of all, we are lumping all of the
22 misconduct in one ball. The acts must
23 relate to the man's judicial function, and
24 just because he beats his wife, for example,
25 doesn't mean he can't be a good judge. With

1 that distinction in mind, if the misconduct
2 relates to the conduct of the office and if
3 it is known and to what degree, then the
4 election certificate washes out.

5 THE MASTER: I think we are saying the
6 same thing. Assume a judge gets a D.W.I.
7 and is elected in spite of that. I think that
8 may reflect adversity on a judge.

9 MR. MITCHELL: Well, that is not my
10 point. Notwithstanding that it is washed,
11 out, a D.W.I. is, for example -- doesn't
12 directly relate to him in performance of
13 duties such as a bribe on the bench would.
14 That is the type of distinction.

15 THE MASTER: I understand and that is
16 a distinction that would be determined by
17 the Judicial Qualifications Commission. I
18 will find facts only.

19 If it is the sort of thing where a D.W.I.
20 could give rise to a disqualification and
21 he is elected after the newspaper said the
22 judge got a D.W.I., that washes it out.

23 MR. MITCHELL: That is right, unless it
24 is such a degree to disqualify. Let's
25 suppose it became a felony and it is a

1 final conviction. Let's say we have a
2 felony conviction and then we have a civil
3 disability. It doesn't make any difference
4 whether I condone or not condone, I am
5 disabled.

6 THE MASTER: That is another rule.

7 MR. MITCHELL: No, I suggest that is the
8 rule. I suggest that the affirmative
9 disqualification, in that area, we look to
10 other areas for guidance. If there is an
11 act of misconduct, which is a crime, fine,
12 it has to be a felony. That is what I am
13 suggesting. You can't lump it up under the
14 rules, that if he spits on the sidewalk, for
15 example, that is misconduct.

16 THE MASTER: I am not disputing that.
17 We were just discussing -- well, number one,
18 to what extent it must be public, and number
19 two -- well, I guess to what extent it must
20 be public is it.

21 MR. ODAM: Well, the law in point --

22 THE MASTER: Well, you had asked him
23 how he voted in this election. That gave
24 rise to the objection.

25 MR. ODAM: Yes, sir. Let me go back to

1 that point. The law says, when matters are
2 public record and forgiven, assuming the
3 first part of that phrase, the matter of
4 public record, they were not matters of
5 public record.

6 MR. MITCHELL: The stock transaction
7 was publicized.

8 THE MASTER: He was speaking on the
9 Cash Store transaction, I thought, weren't
10 you?

11 MR. ODAM: Yes, sir.

12 THE MASTER: All right. My comment was
13 that if a man is returned to office, despite
14 common knowledge of whatever it was he has
15 done, then it is condoned. You say there
16 has to be some mental process on the part of
17 the public to condone.

18 MR. ODAM: The problem is that it was an
19 uncontested race. We are going to see,
20 probably, some law developed on what is the
21 status when there is not an opponent.

22 For example, this is the situation --
23 let's go off the record.

24 THE MASTER: No, leave it on the record.
25 You are saying where the voter has no

1 choice, then the doctrine doesn't apply?

2 MR. MITCHELL: Then we look to the
3 election code.

4 MR. ODAM: That is where I disagree.

5 THE MASTER: I was just commenting.

6 MR. ODAM: Yes, sir, let's assume
7 whatever the conduct is, and let's assume for
8 the moment it directly relates to the bench.

9 THE MASTER: For example, where you hand
10 the judge a ten dollar bill at the bench.

11 MR. ODAM: Yes, sir, that is right.

12 MR. MITCHELL: And say sustain my
13 objection and the judge says it is sustained.

14 THE MASTER: Yes.

15 MR. ODAM: Assume further that this
16 took place and was held in the Astrodome and
17 everyone in the entire electorate observed
18 it, and assume further, everyone in town
19 observed it and assume further it is terrible
20 and gross, but for some reason no one runs
21 against this fellow, so he goes in and
22 everyone knows about it, and let's assume
23 further everyone of them stay away from the
24 polls because they think it is so gross. The
25 judge does cast his own vote and gets his

1 wife to vote and wins by two votes. According
2 to this theory, simply by matters of public
3 record, they were approved, but it bothers me
4 if we get to the point where we have a judge who
5 does not have an opponent, and assume they are
6 wildly known facts, but assume they were in
7 this case, then there is no opponent, the
8 question is how do you get to the other part of
9 the statement they were forgiven.

10 It seems to me, sanctioned or forgiven
11 doesn't mean the voters approved and forgave them.

12 THE MASTER: I am with you, but
13 certainly this is one voter. Whether he
14 knowingly sanctioned and approved misconduct
15 doesn't prevent it.

16 MR. ODAM: Assume that to be true.
17 Assume there is some situation where it is
18 uncontested as a race. My question is, how
19 do you -- how does one arrive at the point
20 of proving or disproving there was
21 sanctioned and forgiveness on the part of
22 the voter?

23 THE MASTER: I am sure there is a
24 point of law.

25 I will sustain the objection to asking

1 this individual witness how he voted in that
2 race.

3 MR. ODAM: Well, again, for explaining
4 the reason to ask the question, I don't, as
5 far as Mr. Nye is concerned, I don't care to
6 know how he voted, except to demonstrate not
7 only is it difficult to ask the question,
8 but assuming one person to say yes, I knew
9 about it, but I went ahead and forgave him,
10 but that is one person only.

11 All I am trying to demonstrate is the
12 difficulty in grappling with the test as set
13 out in the law. As many times we all know,
14 exceptions are carried out in Appellate
15 Courts.

16 THE MASTER: He has testified he didn't
17 know about it, so therefore, irrespective of
18 how he voted, he could not have sanctioned
19 it.

20 Is that right, Mr. Nye?

21 THE WITNESS: Yes.

22 MR. MITCHELL: What are you talking
23 about, the Cash Store or what?

24 THE MASTER: Cash Store.

25 MR. ODAM: He says he could not have

1 sanctioned it. I take the time to go into
2 this now, not particularly with this witness,
3 but also maybe others.

4 THE MASTER: It must be a matter of
5 law and not a matter of subjective feeling
6 of the individual voter as to whether he is
7 condoning or sanctioning misconduct by
8 voting for the official. You suggest, well,
9 where there is no opponent, the rule doesn't
10 apply, well, it may not, but that is a
11 question of law.

12 You may proceed.

13 Q (By Mr. Odam) Mr. Nye, dropping back to the
14 matters relating to the Cash Store, I have been
15 asking you questions pertaining to Manges versus
16 Guerra, and you gave your opinion as to acts of
17 impropriety.

18 My question is now, at the time that Judge
19 O. P. Carrillo was elected to the bench at the
20 November election in 1974, to hold the office of
21 the District Judge for the present term, my
22 question is: Assuming all the facts that I
23 related to you of Manges versus Guerra to be
24 true, my question is: Was it common knowledge in
25 the 229th Judicial District that, for example,

1 the Cadillac payment was made and the judge was
2 on the lease of the land in question and the
3 judge had obtained stock, were those matters of
4 common knowledge in the electorate in November,
5 1974?

6 A I don't know or don't remember when those
7 occurrences were supposed to have occurred. I
8 would say when they did occur, they became common
9 knowledge.

10 Q Now, take, for example, on January 29, 1971, the
11 Plaintiff issued a check in the amount of six
12 thousand dollars in 1971. Would you say that
13 was common knowledge in 1971?

14 A I don't think that became common knowledge until
15 later, but I don't remember at what point in
16 time. I don't recall when the hearing was before
17 Judge Mangus Smith, but at that time, I believe
18 all of those matters were pretty well thrashed
19 out.

20 Q Assuming they became a matter of public record by
21 way of a transcript introduced in evidence. This
22 is a hearing before Judge Smith. That is when
23 you are saying they became public knowledge, after
24 that date?

25 A It is entirely possible they might have become

1 common knowledge to individuals at times leading
2 up to that point and at that time they were
3 obviously common knowledge.

4 Q So at the time right after this hearing, they
5 became common knowledge?

6 A Yes.

7 Q How did they become common knowledge, if this
8 hearing was held -- well, I cannot state the
9 town.

10 A It was Rio Grande City.

11 Q How did they become common knowledge?

12 A There were a lot of people that attended the
13 hearing. I think it was reported in the
14 newspaper as well. It is my general impression
15 it was common knowledge. It would be hard to
16 say specifically how it became common knowledge,
17 but it is my feel of the situation that he was
18 serving on the board of the bank and so forth.

19 Q All right. I would like to ask you again on
20 another hypothesis, if you will, and again set
21 forth a set of facts and assume them to be true.

22 I would like for you to assume the period
23 from January 1st, 1972, through September, 1973,
24 that O. P. Carrillo conspired with his brother
25 Ramiro Carrillo and Roberto Elizondo to steal

1 two hundred and twenty-five dollars per month
2 from the Road and Bridge Fund from the county
3 and the object was to provide an income of two
4 hundred and twenty-five dollars a month to Robert
5 Elizondo during the period of time when Robert
6 was attending classes in a court reporting school
7 in Houston. During the same period of time that
8 O. P. Carrillo, in conjunction with his brother,
9 Ramiro Carrillo, authorized the expenditure of
10 these funds to show that Robert was an employee,
11 and assume the two hundred and twenty-five dollar
12 payments were made to Robert and such claims were
13 in fact forged by a person unknown; assume
14 further that as a result of this conspiracy, the
15 Road and Bridge Fund was deprived of four
16 thousand five hundred dollars to the said
17 Roberto Elizondo without authority of law; assume
18 further that without authorization to make such
19 payments that Judge Carrillo did so to deprive
20 the Road and Bridge Fund of such money.

21 Assuming all that to be true, for Robert
22 not doing work for the county and receiving that
23 money per month, assuming that O. P. Carrillo
24 participated in that conduct, in your opinion,
25 would such conduct be clearly inconsistent with

1 proper performance of his duties as a judge?

2 MR. MITCHELL: I would have to object.

3 I don't know how in the world Judge Carrillo
4 has anything to do with the Commissioner's
5 Court to conspire.

6 THE MASTER: The objection is overruled.

7 Q You may go ahead and answer.

8 A Assuming the facts that you say, I would say
9 that would be inconsistent with good judicial
10 knowledge.

11 Q Assuming that the inconsistency were improper
12 judicial action, would you be of an opinion that
13 is clearly of a nature to cast discredit on the
14 judiciary?

15 A Assuming all those facts, yes.

16 THE MASTER: Let's break for a short
17 recess at this point.

18
19 (Short recess taken.)
20
21
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23
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1 THE MASTER: Gentlemen, and Miss Fox,
2 I'm sorry about that, what do you want to
3 do about all of those folks out there?

4 JUDGE O. P. CARRILLO: That is what I
5 was doing, Judge, I am sorry.

6 MR. MITCHELL: We have sent them on,
7 Judge, with the admonition that they should
8 be on hand for a telephone call.

9 THE MASTER: And do you have some out
10 there also?

11 MR. ODAM: Oh, yes, sir, I have a
12 number, let me see --

13 MR. MITCHELL: I hope I haven't sent
14 any of yours off, Mr. Odam.

15 THE MASTER: We are imposing on people,
16 though, we may be some more time with Mr.
17 Nye and then we have got Garland Smith.

18 MR. ODAM: Yes, sir, this is off the
19 record.

20 (Discussion off the record.)

21
22 THE MASTER: You may proceed with your
23 examination now, Mr. Odam.

24 Q (By Mr. Odam:) Mr. Nye, the last question that
25 I posed to you, to refresh your memory and mine,

1 was with respect to whether or not the performance
2 regarding Roberto Elizando. I presume it would be
3 true, was of a nature to cast discredit, and we
4 will pick up at that point.

5 My next question to you is this, as you
6 recall the hypothesis or the assumption was that
7 the period of time involved was in January 1, 1972,
8 through September, 1973.

9 My question now, in your opinion, as a
10 public official, in the 229th Judicial District
11 at that time, assuming it to be true that all of
12 that took place with Roberto Elizando, was that
13 a matter of common knowledge in Duval County at
14 the time of the election in November of 1974?

15 THE MASTER: You said Duval County.

16 MR. ODAM: I am sorry, not just Duval
17 County.

18 Q Was that a matter of common knowledge in the 229th
19 Judicial District, in all three counties?

20 A I can't speak for Duval and Jim Hogg, but it was
21 not common knowledge in Starr County, if such a
22 conspiracy existed.

23 THE MASTER: Yes, sir.

24 Q Now, during this period of time, January 1 of
25 72 until September of 1973, you say it was not

1 known in your county, Starr County?

2 A That is correct, sir.

3 Q What was your capacity, and I'll refresh my memory
4 from your earlier testimony, what were you doing
5 during the period of January of 1972 to September
6 of 73?

7 A I was district attorney.

8 Q Now, would your district include Jim Hogg and
9 Duval Counties?

10 A That is correct, sir.

11 Q But even though you were district attorney, you
12 were not familiar enough with what was going on in
13 those two counties to form an opinion as to
14 whether or not it was common knowledge in the
15 other counties in your district?

16 A Let me preface it with this remark: Rio Grande
17 City is about ninety miles from Hebronville,
18 and Hebronville is about fifty or sixty miles
19 from San Diego. Those are the three county seats.
20 They are all sparsely populated, cattle-oriented
21 areas and we have very little communication other
22 than when we go to court.

23 During the time that I was in court, I had
24 no knowledge of it and it was never brought to
25 my attention so from my own personal knowledge, I

1 can say that it was not, but you do not know
2 whether that -- whether I was privy to things
3 that were common knowledge in the community being
4 the district attorney.

5 Q Now, Hebbronville is the county seat of which
6 county?

7 A Jim Hogg.

8 Q Rio Grande City is in Starr County?

9 A Yes, sir.

10 Q Again, as set forth, it was simply not matters of
11 common knowledge as you know in Starr County?

12 A That is correct.

13 Q Now, Mr. Nye, what I have done, in part thus far,
14 and you are a lawyer and very well know that I
15 have posed a hypothesis to you based upon our
16 pleading in the case.

17 As you can tell, one reason that it has
18 taken so long in doing this, is I tried to stick
19 very closely to the pleadings and read verbatim
20 what they are.

21 MR. ODAM: It is my intention, and I
22 am informing opposing counsel and the Master
23 at this time, to do so, with regard to --
24 I have gone through page -- the bottom of
25 page 5 and I would intend to go through

1 the matters contained in the remaining
2 pages. I can do this in one of two ways,
3 I can do it verbatim so I can stick to our
4 pleadings or I can refer to my notes and
5 do it by the overview that I gave the court
6 earlier.

7 For the purposes of saving time, I
8 think that my overview comments stick close
9 enough to the pleadings. As to whatever
10 the Master desires simply from a standpoint,
11 really.

12 THE MASTER: Why don't you try it from
13 an overview and see if there is objection
14 to the form of it as opposed to the sub-
15 stance.

16 MR. ODAM: All right, sir.

17 Q (By Mr. Odam:) Now, Mr. Nye --

18 MR. MITCHELL: Pardon me, Judge, I
19 understand now what the examiner has done
20 is undertaken with this witness is to make
21 him his own witness and a source of evidence
22 to prove this sur rebuttal, answers to the
23 pleadings by Judge Carrillo as regards the
24 prior term doctrine. I don't see any plead-
25 ings in sur rebuttal --

1 THE MASTER: I don't know what you
2 mean by sur rebuttal.

3 MR. MITCHELL: I mean he is offsetting
4 the prior term doctrine with the doctrine
5 that is announced in the cases, that it
6 wouldn't make any difference it occurred
7 prior to the time if it were not well known,
8 it would not constitute a defense.

9 All I'm saying is, Judge, in addition
10 to the objections we have previously made
11 it is apparent that counsel is going to do
12 is to go into the balance of the articles
13 or specifications contained in his amended
14 notice and we are going to object in that
15 there is no pleadings by the examiner that
16 the prior term doctrine is offset by the
17 non-public or non-common knowledge doctrine.

18 THE MASTER: The objection is over-
19 ruled. It is my view it is your burden to
20 prove the prior term doctrine and that is
21 that he was elected by the people who had
22 some degree of knowledge.

23 It is not his burden, it is your burden
24 to establish that affirmative defense.

25 MR. MITCHELL: On the face of the

1 pleadings then, Judge, I have pled the term
2 commencing January 1st of this year. His
3 article two doesn't go beyond 1971.

4 THE MASTER: That is right.

5 MR. MITCHELL: So, it is defective on
6 it's face. It doesn't raise prior term,
7 it doesn't raise anything. He doesn't say
8 anything occurred in 1975 in his article 2.
9 He doesn't say that anything occurred in 1975
10 in one or two of the others and as far as
11 I am concerned, and those are the judge's --
12 or as far as the judge is concerned, Your
13 Honor, in those specifications contained in
14 the original formal notice, we say nowhere
15 does he go into 1975.

16 THE MASTER: Well, your objection is
17 overruled and you may proceed.

18 MR. MITCHELL: Note our exception.
19 For example, Judge Meyers, look on Roman 3,
20 he says from the period January 1st, 72,
21 to September 3. Well, on it's face, it
22 doesn't touch January of 75, so I say in
23 order for him to come in now with proof
24 that will nevertheless -- this misconduct
25 wasn't washed out by the certificate of

1 election, he doesn't plead it.

2 THE MASTER: I overruled you.

3 MR. MITCHELL: Okay, thank you, Judge.

4 Q (By Mr. Odam:) Now, you understand, Mr. Nye, that
5 what I am going to do is not verbatim go by my
6 pleadings, but try to appropriately characterize
7 what is in the pleadings by way of summary, and
8 I am sure that if I do not home close enough to
9 the pleadings that I will brought back on to the
10 pleadings.

11 I would like to pose you the following hypo-
12 thesis and like for you to assume that the follow-
13 ing statement to be true and did, in fact, occur.

14 I would like for you to assume with regard
15 to an employee by the name of Francisco Ruiz, that
16 Francisco Ruiz, as a result of the actions of
17 one O. P. Carrillo did, during the period of
18 January 1, 1972, to June or July of 1974, that
19 Francisco Ruiz did work on the ranch belonging
20 to one O. P. Carrillo.

21 That while he did work on the ranch of
22 O. P. Carrillo, that Francisco Ruiz was an employee
23 of the county of Duval.

24 I will interject at this point, for the
25 purpose of my hypothesis, and ask you if you

1 know a gentleman by the name of Francisco Ruiz?

2 A I don't know.

3 Q All right, sir. Assume further that while he
4 was a county employee, that he received three
5 hundred and seventy-five dollars a month; while
6 he received that amount of money, that on many
7 occasions he performed labor on items of machinery
8 and equipment that belonged to Duval County, but
9 the work was done out at the ranch located in
10 Duval County.

11 In return for this labor that he did on the
12 equipment, and the property out on the Borjas
13 ranch, that Francisco Ruiz received no compensa-
14 tion from O. P. Carrillo, private money, but was,
15 in fact, paid from the public money belonging
16 to Duval County.

17 That as a result of the instructions of
18 O. P. Carrillo that this labor was performed
19 and that this was a wrongful appropriation of
20 both -- of the services of Francisco Ruiz, a
21 public employee, being paid by public money to
22 perform private services.

23 Now, my question, assuming all of that to
24 be true, what would be your testimony with respect
25 to an opinion as to whether or not Judge O. P.

1 Carrillo, causing that all to take place, would
2 be conduct that would be clearly inconsistent with
3 the performance of his duties as a district judge.

4 A Counsel, if he was a co-conspirator to that, I
5 think that would be against the conduct of a
6 person acting as a district judge.

7 In ~~that~~ respect, might I add this, that in
8 my opinion a district judge has to hold himself
9 in such a manner that he is not a party to any
10 breach of the law and any breach of the law on
11 his part, assuming that situation, would be improper.
12

13 So all of these questions that you are asking
14 on all of these charges, I would have to say that
15 anything that the Judge did that was improper,
16 that would be a breach of the law, would be
17 against any judicial position that he might have.

18 So, in trying to cut down my testimony, I
19 can say that, as a general rule, the things that
20 you have charged this gentlemen with, if they are,
21 in fact, breaches of the law, in my opinion it
22 would be breaches of his judicial position.

23 Q And when you say breaches of his judicial position --
24

25 A Conduct unbecoming a district judge.

1 Q And clearly inconsistent with the proper perform-
2 ance of his duties as a judge?

3 A Obviously, if it has to do with the malfeasance
4 of any kind of the laws of the State of Texas, yes.

5 Q And also, clearly of the nature to cast discredit
6 upon the judiciary?

7 A I think that is a basic premise, that all attor-
8 neys should espouse to.

9 Q Well, I appreciate your candor wholeheartedly.

10 THE MASTER: True, but occasionally
11 going over fifty-five is all right, isn't
12 it?

13 THE WITNESS: On occasion, Judge.

14 THE MASTER: All right.

15 THE WITNESS: Of course, we are speak-
16 in of very serious dereliction of the law.

17 THE MASTER: Yes.

18 Q We are not --

19 MR. ODAM: Strike that.

20 Q All right, then, I would pose this question to
21 you with respect to that area, and that is to
22 refresh your memory this occurred during the
23 period alleged from January 1 of 1971 until June
24 or July of 1974, in the allegedly prior to the
25 time of election in November of 1974.

1 My question to you is whether or not the
2 best of your knowledge, that it was a matter of
3 common knowledge in the 229th Judicial District
4 that O. P. Carrillo was having Francisco Ruiz
5 paid by the county to do work for him out on the
6 Borjas ranch. Was that a matter of common knowledge
7 or not?

8 A Again, sir, it was not to my knowledge. It was
9 not -- I can answer it was not common knowledge in
10 Starr County. As to the other two counties, I
11 can't answer with any degree of certainty.

12 Q All right, sir. I would like for you to assume
13 the following statement of fact to be true with
14 respect to an employee by the name of Oscar Sanchez.
15 Do you know Oscar Sanchez of Duval County?

16 A I don't think so, I don't think I do.

17 Q All right, sir. I would like for you to assume
18 that during the year 1971 that Ramiro Carrillo
19 conspired with O. P. Carrillo to wrongfully appro-
20 priate the value of the services and the benefits
21 of Oscar Sanchez on at least two occasions, and
22 that on these two occasions, Oscar Sanchez an
23 employee of the county, while being paid a salary
24 of two hundred and seventy-five dollars a month,
25 actually worked on a building -- on the building

1 of a reservoir on the ranch of O. P. Carrillo
2 located in Duval County.

3 Further, he did not only perform this labor
4 and services that he appropriated heavy equipment
5 that belonged to Duval County and fuel to operate
6 such heavy equipment that belonged to Duval
7 County to work on that reservoir.

8 Assume further that as a result of all
9 of this, this was a wrongful appropriation of
10 the property of Duval County and the services of
11 the county employees to personal use and benefit
12 of O. P. Carrillo.

13 My question to you, number one, is whether
14 or not you would consider that a conduct clearly
15 inconsistent with the proper performance of his
16 judicial duties.

17 MR. MITCHELL: Making all of those
18 assumptions, of course.

19 MR. ODAM: Yes.

20 A Well, making all of those assumptions, and making
21 him a conspirator, too -- as a practical matter
22 theft. I would say, yes, it would be inconsistent
23 with his judicial duties.

24 By the same token, I must state that in
25 all candor, that in the South Texas area, sometimes

1 a county commissioner might run a grader by a
2 private road for a period of an hour or two, or
3 something, and if that is what this is alluding
4 to, I don't know, I am not sure if that would
5 out that in that category.

6 But assuming the facts as you state them,
7 I think it would be inconsistent with his duties
8 as a district judge.

9 Q And would it further be your opinion that that
10 would be conduct clearly of the nature to cast
11 discredit upon the judiciary?

12 A Again, making that same assumption that such is
13 the situation, to where it would be considered
14 gross, you said it was on two occasions, and like
15 I say, I must in all candor advise the judge that
16 on occasion, just like -- like somebody would call
17 you as county judge and say, "We are going to have
18 a 4-H fair, send the county equipment out here
19 to blade a lot" or something for that you would
20 say, "Okay". I don't think that -- if it comes
21 under that category, I would say no.

22 But, if it was something akin to these
23 other matters where it would be a direct violation
24 of the law per se, as far as theft, I would say
25 that would also be inconsistent with good judicial

1 conduct.

2 Q And assuming that this hypothesis were true, that
3 occurred in 1971, was that a matter of common
4 knowledge that Francisco Ruiz did this work out
5 on the ranch, the Borjas ranch, was that a matter
6 of common knowledge at the time of the election
7 in 1974?

8 A Not in Starr County.

9 MR. MITCHELL: Pardon me, you have
10 gone back to the previous one, Counsel, I
11 am sorry.

12 MR. ODAM: I'm sorry, they all just
13 kind of run together, don't they?

14 Q Oscar Sanchez, which occurred in 1971.

15 A Not in Starr County.

16 Q You do not have an opinion as to whether it
17 would be a matter of common knowledge in the
18 other two counties, Jim Hogg and Duval?

19 A No, I do not.

20 Q The next hypothesis which I pose to you is as
21 follows: That during November of 1973 that
22 Judge Carrillo appropriated to his own personal
23 use and benefit a back hoe. Do you know what a
24 back hoe is?

25 A Yes, sir.

1 Q The property of the Duval County Conservation
2 and Reclamation District, the Water District,
3 and that he instructed Tomas Elizando, an employee
4 of the water district, to take the back hoe out
5 to the ranch by means of a truck and trailer,
6 and that upon arrival at the ranch that Tomas
7 Elizando, the water district employee, using the
8 water district property, then constructed a founda-
9 tion of the building that was built on the judge's
10 ranch.

11 That this did occur with the use of the
12 water district employee and equipment. My ques-
13 tion is whether or not that conduct in your
14 opinion would be conduct inconsistent with the
15 proper performance of his duties as a district
16 judge.

17 MR. MITCHELL: Assuming all of the
18 allegations are true.

19 THE MASTER: That is an assumption,
20 yes.

21 MR. ODAM: I am assuming that on every
22 hypothesis.

23 MR. MITCHELL: Judge, I just missed
24 him asking that.

25 A Yes, sir, providing those allegations -- I mean.

1 assuming that those facts are assumed, I think it
2 would improper.

3 Q And assuming them to be true, would it also be
4 your opinion that that would be conduct clearly
5 of a nature so as to cast discredit upon the
6 judiciary?

7 A Yes, sir, making the whole foundation.

8 Q All right, and my final question to you on that
9 aspect is with regard to whether or not that
10 conduct that occurred in November of 1973, whether
11 or not -- was that a matter of common knowledge
12 in the 229th Judicial District at the time of
13 the election in November of 1974?

14 A Not in Starr County, sir.

15 Q And you have no opinion as to whether it was
16 common knowledge in those two counties?

17 A No, sir, I do not.

18 Q All right, finally, I would relate to you in a
19 number of transactions that are -- that complete
20 our pleadings, and I will not go through each one
21 of them individually, but refer to them as a
22 situation something along the following lines.

23 That during 1971, and 1972 and up through
24 a period from 1972 until May of 1974, assume that
25 O. P. Carrillo participated in a scheme whereby a

1 conduit corporation was set up and that county
2 funds were funneled by way of a conspiracy from
3 the county treasury into this conduit, the corpora-
4 tion, and then on into the private use and benefit
5 of O. P. Carrillo.

6 In other words, in shorthand, the use of
7 private funds of approximately twenty-nine thou-
8 sand dollars over a two year period extending to
9 nearly a four year period, twenty-nine thousand
10 dollars of the county money for personal use and
11 benefit of O. P. Carrillo.

12 Assuming that to be true, my question is
13 would that conduct be of a nature that is clearly
14 inconsistent with the proper performance of his
15 duties as a district judge?

16 A In my opinion it would.

17 Q And would it also be your opinion that this would
18 be conduct that was clearly of a nature to cast
19 discredit upon the judiciary?

20 A In my opinion it would be.

21 Q And finally, my question to you is whether or
22 not this was a matter of common knowledge at the
23 time of the election in November of 1974, assuming
24 that there were a conduit set up to funnel off
25 twenty-nine thousand dollars, was that commonly

1 known in the 229th District?

2 A No, sir, it was not.

3 Q Mr. Nye, your questions on direct examination,
4 the reason that Mr. Mitchell called you as a wit-
5 ness, was to relate how O. P. Carrillo treated
6 the jurors and the bailiffs and attorneys in
7 court.

8 In your opinion, in considering whether or
9 not a judge is performing his duties as a district
10 judge should one consider only those things that
11 relate to the courtroom such as how he treats the
12 bailiffs, the jurors and the attorneys, or should
13 it relate to the matters such as I have described
14 to you this morning, assuming them to be true?

15 MR. MITCHELL: I am going to object
16 with the understanding I would like to ask
17 him one along the same line, Judge Meyers,
18 but it would be improper. I really won't
19 object to it, I'm going to ask him one like
20 it if I can get an agreement with Mr. Odam
21 where he won't object to mine.

22 THE MASTER: There is no objection,
23 Mr. Odam?

24 MR. ODAM: There is no objection posed.

25 A I think that not only should a judge demean himself

1 properly on the bench, but off the bench as well,
2 and particularly with respect to matters which are
3 clearly, say against the law, such as the hypo-
4 thesis that you have posed.

5 Q And my final question to you is in considering
6 whether or not a judge has been engaged in conduct
7 of a nature to cast discredit on the judiciary,
8 should one simply look to how he comports himself
9 on the bench and in the courtroom with respect to
10 matters that were particularly and specifically
11 related to litigation or should it be broader than
12 that, in your opinion?

13 A Well, Counsel, I think as an officer of the court,
14 I think that all of us would have to realize that
15 not only his comportment on the bench, not only
16 is that important or as to whether or not he has
17 violated any Texas statutes and that should cer-
18 tainly be taken into consideration.

19 Q Of course, now, I completely and sincerely appre-
20 ciate your putting up with me for this period of
21 time, and I know he intended to call you for
22 thirty minutes and I know that it is my fault the
23 reason for you being here for two hours, but I
24 am very glad you came in as a witness today. Thank
25 you very much.

R E - E X A M I N A T I O N

BY MR. MITCHELL:

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2
3
4 Q Mr. Nye, Mr. Odam, in putting the questions to
5 you has asked you to make numerous assumptions of
6 fact which, for the record and for your record,
7 are highly controverted by Judge Carrillo. You
8 recall that series of questions, do you not?

9 A Yes.

10 Q And at the end of each of these questions he
11 would ask you whether or not based on these facts
12 as being true, and assuming them to be true, and
13 I notice that you were very careful in prefacing
14 all of your answers preparatory to answering that
15 you were making that assumption whether that con-
16 duct was clearly inconsistent with the proper
17 performance of the duties of a district judge,
18 first, and whether or not the conduct was of
19 such a nature to cast discredit upon the judiciary.

20 I believe you testified in every instance,
21 assuming each and every fact to be true, that
22 certainly the conduct would be inconsistent with
23 the proper performance of the duties of a judge,
24 and certainly of a nature to cast discredit, am
25 I correct?

1 A That is correct.

2 Q Now let's set aside the hypothetical questions,
3 and let's set aside the assumptions and let's now
4 cast the answers to the questions I put to you
5 on the basis of personal knowledge and fact as you
6 know them. Do you understand that preparatory
7 remark?

8 A Yes, sir.

9 Q Have you, in all of your experience with Judge
10 Carrillo, either as a district attorney, as a
11 litigant representing the State of Texas, as a --
12 I'm sorry, as an attorney representing the State
13 of Texas or as an attorney representing private
14 individuals, have you ever observed conduct on
15 the part of the Judge in the courtroom or outside
16 of the courtroom that was clearly inconsistent
17 with the proper performance of -- by Judge
18 Carrillo, of his duties of a district judge?

19 A No, sir, I have not.

20 Q Secondly, setting aside hypothetical questions,
21 setting aside assumptions, suppositions, guesswork,
22 I will ask you, and using that as instruction
23 please, Mr. Nye, to answer my question have you
24 ever in all of your years of experience with
25 Judge Carrillo, either as district attorney represent

1 the State of Texas, county attorney or any other
2 capacity, an attorney representing litigants,
3 have you ever observed any conduct that is --
4 personally now, Mr. Nye, any conduct upon the
5 part of Judge Carrillo which was willful and
6 persistent, clearly of a nature to cast discredit
7 upon the judiciary of the State of Texas?

8 A I have no such personal knowledge.

9 Q All right. now, setting aside the hypothets, et
10 cetera, let me direct your attention specifically
11 Mr. Nye, to the case of Manges versus Guerra,
12 that being Cause Number 3953 on the docket of
13 the 229th Judicial District Court of Texas. I
14 believe you have testified in answer to questions
15 put to you by counsel representing the examiner,
16 that you were actually a party to that -- an
17 attorney in that case were you not?

18 A That is correct, sir.

19 Q And I believe you testified, did you not, in
20 connection with the motion to disqualify Judge
21 Carrillo in that case?

22 A You know I don't recall.

23 Q Well, out of fairness to you, Mr. Nye, let me
24 hand you the record that has been introduced.

25 To refresh your recollection E-25 reflects

1 that there were actually about four or five hear-
2 ings. Let me hand that to you, and let me get
3 into that for a few questions.

4 THE MASTER: Excuse me, Mr. Mitchell,
5 again for the purpose of the record, there
6 is evidence in this cause that Manges against
7 Guerra was originally filed in the 79th
8 District Court.

9 MR. MITCHELL: That is correct, Judge.

10 THE MASTER: I take it that when the
11 229th District Court was created that cause
12 of action was automatically transferred to
13 that court, and if not, I think it ought
14 to be cleared up, either by stipulation or
15 testimony.

16 MR. MITCHELL: Judge, I had intended
17 at the cross-examination of Mr. Garland
18 Smith to introduce the order of dismissal
19 of the federal and the transfer, but perhaps
20 I can address those questions --

21 THE MASTER: It doesn't matter to me.

22 MR. MITCHELL: That is correct.

23 THE MASTER: But the record is not
24 clear on it.

25 MR. MITCHELL: All right, Judge.

1 Q (By Mr. Mitchell:) Mr. Nye, you heard the Court's
2 inquiry, let me summarize, if I can briefly, the
3 Manges V Guerra litigation. Initially if you
4 will recall, and that is a part of the record here,
5 the initial suit was filed in 1956. December the
6 13th, 1956, filed by Mr. Manges against certain
7 of the partners in the Guerra and Son partnership,
8 which was, I believe, previously identified as
9 a limited partnership composed of five general
10 partners and one limited, and I believe that is
11 Exhibit E-13.

12 That suit was thereafter, on motion filed
13 by the attorneys representing the Guerra --that
14 wasn't a motion actually, an action for a reorgani-
15 zation, moved over to Federal District Court for
16 the Southern District, and therefore abated, do
17 you recall that, please, sir?

18 A Yes, I recall a general fact that the matter was
19 taken to federal court, and then something happened
20 over there.

21 Q Yes, sir.

22 A But Judge, this is a very complicated lawsuit.

23 Q Yes.

24 A I don't wish to put myself in a position of meeting
25 myself on the way back, and on any of these things.

1 they are all a matter of record.

2 MR. MITCHELL: Perhaps I can reserve
3 those questions for Mr. Smith, Your Honor.

4 THE MASTER: Yes.

5 Q At any rate now, let me move -- I believe the
6 record will reflect, Mr. Nye, and if I am making
7 a misstatement of it, I will be corrected, that
8 the case was thereafter, Mr. Garland Smith there-
9 after came into the case, after the case had been
10 transferred to the federal court by reason of an
11 application for reorganization, the case was
12 settled essentially in 1970 and finally brought
13 back to the district court, the 229th District
14 Court, sometime in January of 1971. Does that
15 serve your recollection?

16 A Generally that is correct. All I remember -- I
17 primarily remember that it was always in the
18 process of settlement.

19 Q All right.

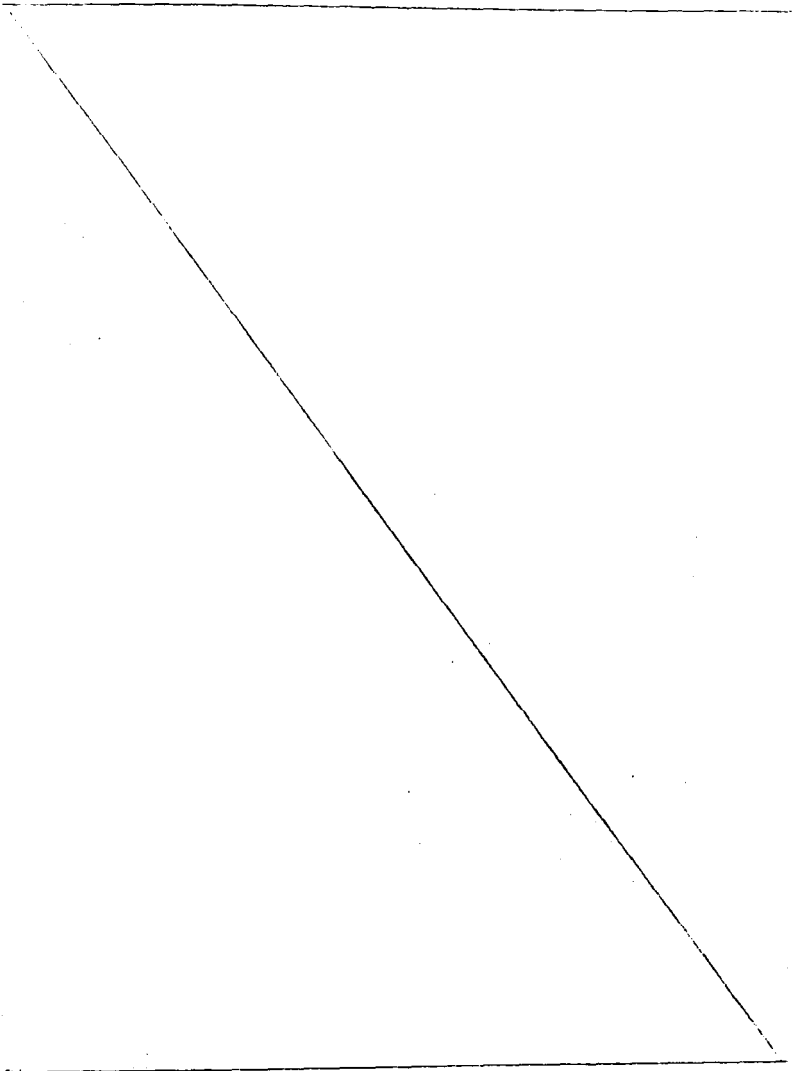
20 A And it was settled at one point, I think, in the
21 federal court and then it was settled at another
22 point in the state court.

23 Q Right, and these questions are actually preparatory
24 questions put to you in connection with certain
25 questions I will ask you, and also in connection

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with your answers to a question put to you by
counsel for the examiner and that is that in
1971 Judge Carrillo took his oath of office and
was the judge of the 229th Judicial District?

A I think that is correct.



1 Q And that the record will reflect that there were
2 about two orders entered by the judge, and I
3 believe your earlier testimony is that those
4 orders were signed by the judge on the basis of
5 the litigants consenting to those?

6 A I don't remember the number of orders, but I
7 remember that a number of orders had been signed
8 by the judge by agreement of all parties.

9 Q Then there was, as I recall, in the latter part
10 of 1972, an application received by Mr. Bates
11 for a final accounting?

12 A Yes.

13 Q Do you recall that?

14 A Yes.

15 Q I believe the record reflects that was filed
16 November 17, 1972. It was at that point that
17 Mr. Garland Smith came back in the case. I
18 believe you were noticed at that time to secure
19 complete discharge. The record indicates further
20 that a motion was thereafter filed to disqualify
21 the judge and that motion being a first motion
22 in disqualification and recusation and was in
23 fact heard on January 15, 1973.

24 A I recall that such a motion was made and I
25 believe that Judge Carrillo recused himself from

1 hearing the motion.

2 Q Right.

3 A And it was heard by Judge Mangus Smith.

4 Q Exhibit 25 appears to be the testimony that was
5 adduced on the motion to disqualify, filed by
6 Mr. Smith on behalf of his client.

7 A Yes, I think that is correct.

8 Q And it appears to be a hearing on February 20,
9 1973, March 30, 1973, am I correct?

10 A Yes.

11 Q And April 23rd, 1973, am I correct?

12 A Yes.

13 Q May 18, 1973, am I correct?

14 A Yes, that appears from the record.

15 Q Do you know, first of all, that as a matter of
16 fact, that Mr. Smith had filed a motion to
17 disqualify and recuse back in the early part of
18 1973, and thereafter this was supplemented later
19 on and brought to the attention of Judge Mangus
20 Smith, do you know that?

21 A No, sir.

22 Q Do you know, for example, that Judge Carrillo
23 was -- that the first and second supplemental
24 motions to disqualify were never called to his
25 attention?

1 A I have no knowledge of that.

2 Q Do you know, at the same time, that Mr. Smith
3 was in contact with the Judicial Qualifications
4 Commission?

5 A No, sir, I don't know that.

6 Q You don't know, for example, that during these
7 hearings before Judge Mangus Smith, that Mr. Garland
8 Smith wrote the Judicial Qualifications Commission
9 in April, 1973, covering the same matters, do you
10 know that or not?

11 A No, sir.

12 MR. ODAM: I object to this line of
13 testimony. We could almost stipulate
14 Mr. Smith -- I don't see the relevancy as
15 to what is pled in Paragraph 2. The motion
16 was filed to recuse himself and the record
17 speaks for itself as to what took place.

18 THE MASTER: What is the point, whether
19 he knows it or not?

20 MR. MITCHELL: I am trying to establish
21 the familiarity of this witness with the
22 record.

23 MR. ODAM: I don't see that is in the
24 proceedings.

25 MR. MITCHELL: It becomes important.

1 First of all, the judge does not have a duty
2 to disqualify himself unless the bank is a
3 litigant and he doesn't have to. Unless
4 that landlord was a litigant, the grazing
5 leases do not come into play on the land and
6 the Cadillac situation either. I am going
7 to establish with the posture of the case,
8 what it is, and the fact that he solicited
9 the answer to this and opened this up, and
10 that is where I am going. He has opened the
11 door on it and I need to ask the questions
12 to establish this witness' personal knowledge
13 before I asked him these questions.

14 THE MASTER: It sounds like to me you
15 are arguing the case through this witness.

16 MR. MITCHELL: Well, I will withdraw
17 it.

18 THE MASTER: All right.

19 Q (By Mr. Mitchell) Let's take January, 1973.

20 On a hearing on First Motion to Disqualify, let
21 me direct your attention to that period of time.

22 First of all, was the First State Bank and
23 Trust Company of Rio Grande City a party to
24 Manges versus Guerra?

25 A No, sir.

1 Q All right. Number two, was there any dispute
2 over the title to land previously owned by the
3 Guerra and Sons partnership in January, 1973,
4 Mr. Nye?

5 A I was of the impression those matters had been
6 resolved.

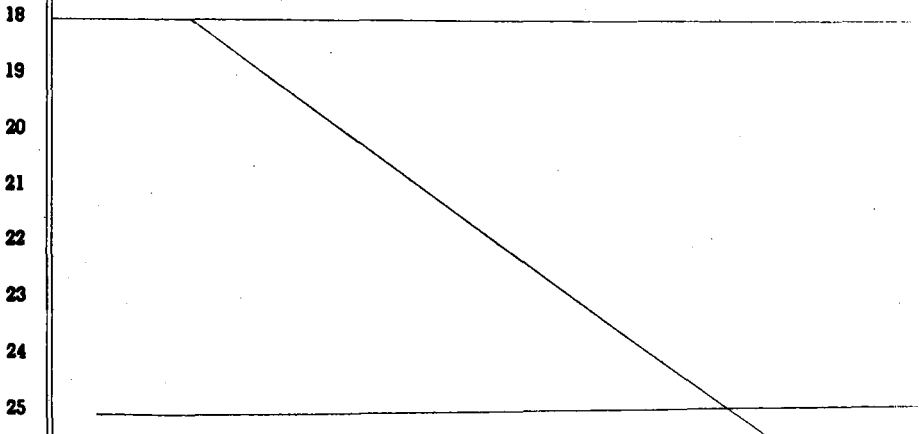
7 Q That is right. Your answer would be there was
8 not?

9 A That is right.

10 MR. ODAM: If I could take the witness
11 on voir dire to establish in my own mind
12 the witness' knowledge of this case. I know
13 he testified --

14 THE MASTER: You may.

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

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3 BY MR. ODAM:
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5 Q By whom were you employed at that time, Mr. Nye,
6 in the Cause of Manges versus Guerra?

7 A By the receiver.

8 Q Were you an attorney for the receiver in Manges
9 versus Guerra?

10 A Yes.

11 Q What was your function?

12 A We gave notice for the various creditors and to
13 marshall the assets and put it all into context
14 to finally close the receivership.

15 Q Were you acting as an attorney for the receiver
16 Attorney Jim Bates?

17 A Yes.

18 Q Were you acting at Senator Bates' instructions
19 on those matters?

20 A Yes, I would suggest to him or he to me as the
21 case may be.

22 MR. MITCHELL: I believe the question
23 has been answered.

24 THE MASTER: I am going to let him go
25 a little further. This is not recross,

1 however.

2 MR. ODAM: Yes, I understand.

3 Q (By Mr. Odam) As attorney for the receiver, were
4 you actually participating in the preparation of
5 pleadings the receiver was filing? In other
6 words, --

7 A Yes, sir, I was assisting in the preparation of
8 pleadings. You see, up to this point, everyone
9 had agreed to the receiver. Like I say, this
10 whole case, at all times, was always in the
11 process of being settled and a step would be
12 taken in the right direction for settlement and
13 before dark there may be some question and some
14 other conversation between the parties, but then
15 that step would be taken forward. It seemed like
16 that was the way it went.

17 MR. ODAM: It appears the witness has
18 some familiarity with the lawsuit. I think
19 in his last response to Mr. Mitchell's
20 question, it appears his closeness and
21 ability to answer the question should be
22 taken into consideration. It appears he is
23 not as familiar with the case, however, as
24 Mr. Smith was.

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E X A M I N A T I O N

(CONTINUED)

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4 BY MR. MITCHELL:
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6 Q You helped prepare the final report, did you not?

7 A Yes.

8 Q And Mr. Smith had been not hired at that time --

9 MR. FLUSCHE: That is an assumption,
10 contrary to the evidence.

11 THE MASTER: Objection is sustained.
12 That is argumentative. This witness cannot
13 know what some other lawyer knows.

14 MR. MITCHELL: I will withdraw that.

15 Q (By Mr. Mitchell) In October, 1972, do you know
16 whether Garland Smith had been retained to come
17 back in for Ruben Guerra?

18 A I recall that at that time, Mr. Ruben Guerra was
19 represented by Mr. Skaggs and thereafter he was
20 represented by Mr. Smith, but I don't recall
21 exactly at what point in time it took place.

22 Q Let's go back to this final report draft of the
23 receiver. Let's put it this way. Was this a
24 standard and usual breed of Texas receivers that
25 was appointed?

1 A I think the receivership initially was a
2 standard receivership.

3 Q It alleged the ownership of Mr. Manges at that
4 time?

5 A Correct.

6 Q And it alleged the danger of destruction and
7 withholding and so forth and it was on that
8 basis?

9 A Yes, as I recall.

10 Q And as of that time, your memory serves you, and
11 I am talking about 1972, that the Guerras
12 themselves with Mr. Manges settled out the land
13 and stock and all the aspects of the subject
14 matter on the receivership, is that your
15 recollection?

16 A Yes. It is also my recollection that the
17 receiver was appointed by Judge Laughlin upon
18 their concurrent approval. Everybody was in
19 agreement that the receiver be appointed and that
20 the receiver be Senator Bates.

21 Q Excuse me, Your Honor, but I would like to get
22 the letters introduced by Mr. Smith.

23 THE MASTER: Which letter, there is a
24 letter from Mr. Pipkin -- well, that was
25 entered on your initial motions, pleas in

1 abatement and so forth.

2 MR. MITCHELL: I want the letters,
3 Exhibits 9 and 10, I believe.

4 Q (By Mr. Mitchell) I hand you Exhibit 10, which
5 has been previously introduced. It appears that
6 back in April, 1973, Mr. Smith wrote Mr. Pipkin
7 setting out certain significant items, as regards
8 conduct on Judge Carrillo, one being a Cadillac
9 and one bank stock and property and grazing leases
10 on certain real property. Am I correctly stating
11 what is on Exhibit 10?

12 A I presume so, Counsel. This is the first time
13 I have seen this letter.

14 Q With that in mind, let me ask you this: In
15 October, 1973, was there any dispute whatsoever
16 as to real property owned by Guerra and Son?

17 A My impression was that all of those matters had
18 been settled.

19 Q Any bank stock anywhere?

20 A My impression was Mr. Manges paid the receiver
21 for the stock and that was no longer an issue.

22 Q Was there any other property the subject matter
23 of controversy in October, November, December or
24 January of 1973 that you recall?

25 A That is a very broad question, Counsel, but that

1 I can recall, no.

2 Q Now, using that answer and your knowledge to
3 form the basis and input of that answer, let me
4 ask you this: If an application was made to a
5 judge before whom that report is pending to
6 disqualify and recuse himself, and you have been
7 read the specifications contained here, I will
8 ask you whether or not you have an opinion as to
9 whether the judge had any real or direct interest
10 in the subject matter of that litigation if he
11 owned ten shares of stock in a bank that was not
12 a party to the suit? Would he own such a direct
13 interest that would disqualify him?

14 A If the Court please, it is my opinion, he did not.

15 Q I will ask you, if he did own grazing leases that
16 were made by the judge on the land that had
17 previously been within the jurisdiction of the
18 Court, but was not at the time --

19 MR. FLUSCHE: These are contrary to the
20 allegations of the amended notice of formal
21 proceedings. We are alleging he took these
22 things as a bribe. We are not alleging
23 because of his ownership of bank stock --

24 MR. MITCHELL: There is no where in this
25 formal notice, and I looked at it very

1 carefully, that it says anything about a
2 bribe, but Mr. Smith says that. The Court
3 is aware I have raised this question. There
4 is nothing in two that suggests a bribe of
5 O. P. Carrillo by anybody, nothing in the
6 facts, either, that suggest it. On the
7 bottom of Page 3, if the Court recalls, there
8 was a discussion that he should disqualify
9 himself ipso facto and that is the thrust of
10 our questions at this point, and that is that
11 the judge should not actively take part in
12 a proceeding to --

13 THE MASTER: Where does it say bribe?

14 MR. FLUSCHE: I am alleging that he
15 accepted these gifts. I never used the word
16 bribe.

17 THE MASTER: And that he did not
18 disqualify himself?

19 MR. FLUSCHE: That is an additional
20 allegation. It is the allegation in terms of
21 a bribe, that is what I am trying to say.

22 MR. MITCHELL: I will take it from there,
23 Judge, if I might be permitted to go right
24 on.

25 THE MASTER: Well, in essence, what

1 counsel said was that they were not
2 contending -- well, I am not sure what you
3 said.

4 MR. FLUSCHE: I am not contending
5 because he owned ten shares of bank stock,
6 this disqualified him.

7 MR. MITCHELL: He said -- I wrote it
8 down here -- I said they are charging in two,
9 and I went to the books and found the rule
10 that the judge should never have an active
11 part in determining whether he was
12 disqualified, but that he should let somebody
13 else do it for him and that is what we are
14 saying here.

15 MR. FLUSCHE: We are saying it is a
16 gift.

17 THE MASTER: You are saying you should
18 not have accepted what would be gratuities
19 from a litigant while sitting on the case?

20 MR. FLUSCHE: Correct, sir.

21 THE MASTER: And you interrupted --

22 MR. FLUSCHE: If he should disqualify
23 himself just because he owns bank stock.

24 THE MASTER: Well, you can see he
25 should not have because of that.

1 MR. FLUSCHE: That is right.

2 THE MASTER: You have a concession,
3 Mr. Mitchell.

4 MR. MITCHELL: I caught that.

5 Q (By Mr. Mitchell) All right. Mr. Nye, in
6 November of 1972, can you tell us anything that
7 was left in the receivership other than winding
8 up?

9 A As I recall, there were primary debts and somebody
10 had to come up with a certain or a great deal of
11 money to see that all of the debts were properly
12 attended to.

13 Q And that was one of the things Garland Smith was
14 hollering about and also having to sell one-half
15 interest in oil properties and the three hundred
16 thousand price throwback?

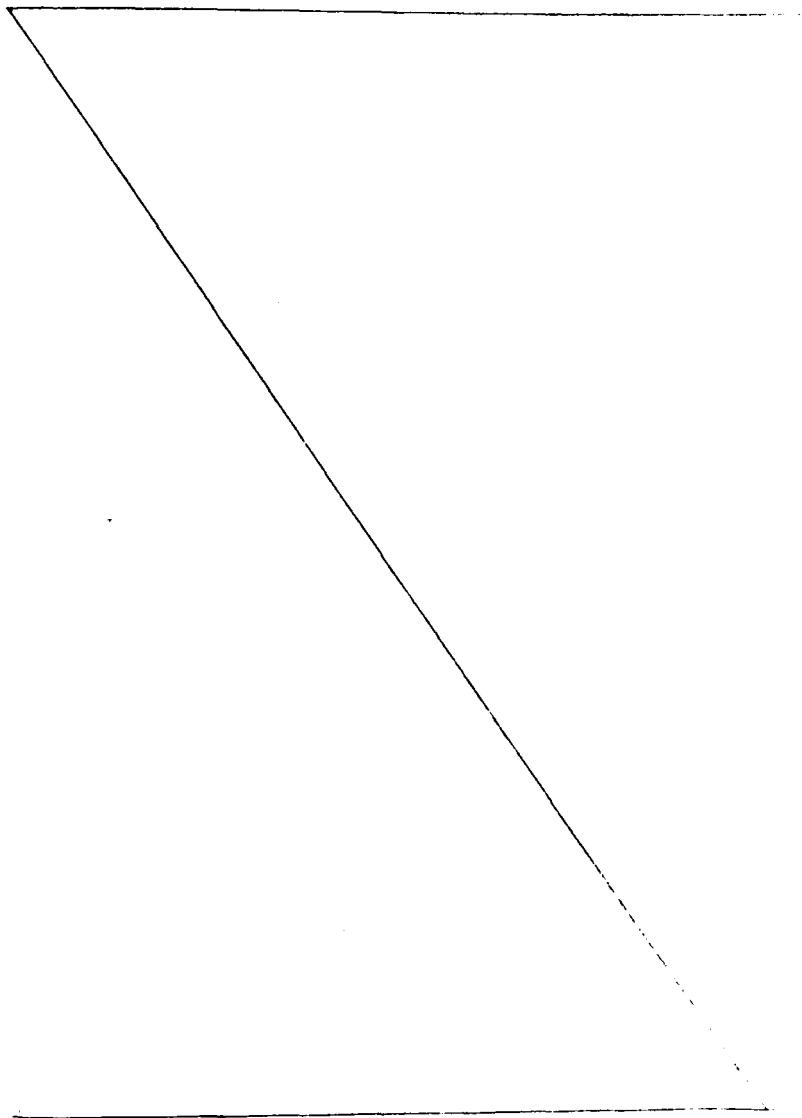
17 A Yes.

18 Q Was there anything else pending in that
19 receivership and in that case but to wind it up
20 as per the general outline you have given us that
21 you can recall?

22 A I believe not, other than the fact there was
23 a question as to whether a complete accounting of
24 all the partnership matters should actually be
25 entered into as to properly terminate the

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receivership and it was determined that rather than to go to all that expense, they should go ahead and terminate by agreement, which was done.



1 Q All right, now, I think that the examiner has
2 introduced into evidence E-16 17 and 18 which
3 appear to be orders entered in Cause Number 3953
4 based upon application which appear to be, and
5 I think the testimony is that they were all con-
6 sent applications and consent orders and I will
7 hand them to you to examine.

8 A Counsel, do you have the applications? Here it
9 is -- I believe that all of these applications
10 were agreed to by the parties and the applications
11 would show that. However, I notice here that --
12 here is the application, yes, it was joined by
13 all of the parties in which they had any question
14 on the matter.

15 Q As a matter of fact, part of those applications
16 and orders, Mr. Nye, were, I believe the testimony
17 shows, and I believe it is a fact, designed to
18 carry out three settlements that occurred in 1970
19 between Mr. Manges and the various litigants, that
20 is that the parties had already settled out their
21 case, H. P. Guerra, Junior, M. A. Guerra and
22 Ruben Guerra all having settled with Mr. Manges
23 in 70 and these applications or at least one of
24 them was to carry out that settlement and trans-
25 fer lands and stock, et cetera, in accordance

1 with the settlement, the preexisting settlement
2 with the parties.

3 A With respect to each one of the parties, I am
4 sure the records would be the best evidence,
5 Counsel, but as I recall everything to that point
6 was always by agreement.

7 Q So that really those applications and the functions
8 of the court in January of 1971 is merely directory
9 in carrying out, ordering the receiver to carry
10 out what the partners have, in effect, consummated
11 by their personal and private agreements in 1970.
12 isn't that a fact, Mr. Nye?

13 A Well, like I said before, the records speak for
14 themselves, but they were all by agreement.

15 Q All right, now, in assuming, we used the terms
16 and expressions for the examiner there wasn't
17 anything to bribe anybody about in January of
18 1971, was there, in that case?

19 A Counsel, that is another hypothetical question
20 that you haven't given me any facts on, but --

21 Q Well, the only thing called upon for Judge Carrillo
22 thereafter, and that is after the filing of these
23 applications was the final accounting, and the
24 evidence shows it was filed in November and the
25 motion to disqualify was filed and Judge Carrillo,

1 after hearing the preliminary motions on the
2 17th day of -- I mean the 15th day of January,
3 1973, turned the matter over to his administrative
4 judge who appointed a judge and who heard the
5 matter as per the record.

6 THE MASTER: Now, Mr. Mitchell --

7 Q Isn't that correct?

8 THE MASTER: That is correct, it is
9 established and it is repetition. Now,
10 let's get on. Mr. Garland Smith established
11 that, these gentlemen established that,
12 why establish it with this witness? You
13 are just arguing your case and there is no
14 jury.

15 MR. MITCHELL: Well, Judge, I had
16 thought I had it established, too, I really
17 did.

18 THE MASTER: Is there any dispute about
19 that?

20 MR. FLUSCHE: No, sir.

21 MR. MITCHELL: Mr. Max Flusche got
22 up and stated to this court that Article 2
23 doesn't mean now what it meant yesterday,
24 it means a bribe. I had to go back in and
25 establish that there wasn't anything to

1 bribe anybody about. I didn't want to,
2 Judge Meyers.

3 THE MASTER: That you may be entitled
4 to go into, I don't know, but there is
5 absolutely no point in having this witness
6 again talk about the fact that Judge Carrillo
7 did not hear his own disqualification motion,
8 but called Judge Alamia to appoint a judge
9 to hear it and Judge Mangus Smith did hear
10 it.

11 MR. MITCHELL: Okay, if I have estab-
12 lished it to that extent --

13 THE MASTER: You haven't, your opponent
14 did.

15 MR. MITCHELL: Well, then, Your Honor,
16 I would like to ask one other question.

17 Q Do you have an opinion as to whether or not a
18 judge before whom an application for disqualifica-
19 tion is filed should actively participate and
20 take part in the proceedings to determine his
21 own disqualification, Mr. Nye?

22 A Yes, I have an opinion, I don't think he should.

23 Q And precisely what Judge Carrillo did here, he
24 did not participate in making that judgment, but
25 turned the matter over to -- as Judge Meyers has

1 just stated, and the record is unambiguous about
2 it, to another judge to make a determination,
3 am I correct?

4 A I think the record so reflects, Judge.

5 Q Now, you touched on a matter in answer to a
6 question put to you by counsel for the examiner
7 that I want to mention, or I want to go back into.

8 First of all, Mr. Nye, you talked in terms
9 about a custom, particularly in that area or that
10 district, to assist persons -- commissioners to
11 assist persons within the county, within a permis-
12 sive boundary and perimeters with the use of
13 county equipment. Do you recall that testimony,
14 please?

15 A Yes, I do.

16 Q I did not, by the form of my question, indicate
17 or intimate that it was limited to that county,
18 but I believe would you testify that it is common
19 knowledge that this is quite a common occurrence
20 where persons in the county, particularly a given
21 precinct, use on an infrequent basis, equipment
22 belonging to the county for use in connection with
23 rural lands, particularly within those counties
24 and precincts within those counties?

25 A I think I will just fall back on the common

1 knowledge of everyone that sometimes that
2 happens. I have no specific recollection as to
3 any specific matters.

4 MR. ODAM: Your Honor I would object
5 to this question in the line of the question-
6 ing as Mr. Mitchell knows, to use an analogy
7 of whether or not other crimes are committed
8 by other people, or whatever the general
9 character of use by other people is not the
10 issue in this case. It is not the issue in
11 this case as to whether or not every individual
12 in Duval County were to use county employees.

13 It is irrelevant to the issues that
14 are involved in the case, the extent to
15 which it is used by other people, by county
16 commissioners referred to earlier. It is
17 totally irrelevant to the proceedings and
18 it is going to take undue time of the Master
19 to hear what all might be going on in South
20 Texas with respect to these types of proceed-
21 ings.

22 THE MASTER: But the witness testified
23 that it was common knowledge, that on occa-
24 sions county equipment was used at the
25 directions of the -- well, you didn't say

1 that, but I assumed that, at the direction
2 of the commissioners of that precinct to
3 grade a private road or to do certain pri-
4 vate work.

5 MR. ODAM: And I pose the objection
6 to the relevancy of the matter.

7 THE MASTER: It seems to me that bears
8 on whether or not if Judge Carrillo per-
9 mitted that to be done on his property,
10 to no greater extent than other private
11 citizens, whether that conduct was clearly
12 of a nature to discredit -- to cast dis-
13 credit upon the judiciary.

14 MR. MITCHELL: That's right.

15 MR. ODAM: Whether it is -- well, I
16 still pose the same objection, it is irrele-
17 vant to the extent that the Master or the
18 Supreme Court should consider whether or
19 not every county commissioner did it or
20 not. It is as to whether or not it cast
21 discredit when it is done by the state
22 district judge.

23 I think it is irrelevant the extent
24 to which it is done by other people. As
25 to whether or not this district judge did

1 it, we are not trying all of the rest of
2 the county commissioners.

3 THE MASTER: Well, that is correct,
4 but practices can grow up in localities
5 that are accepted although under the strict
6 letter of the law may be illegal. This may
7 be one of them, it is in my view illegal
8 to use county equipment for private purposes.

9 It certainly was common knowledge in
10 Travis County, for example from where I
11 come, that until a district judge entered
12 an injunction enjoining the county commis-
13 sioners from doing that, it was common
14 practice in Travis County.

15 MR. MITCHELL: I am not willing to
16 concede it being a violation of the law.
17 Counsel said it was a violation of the law.

18 THE MASTER: I expressed the private
19 opinion and not the opinion of the Judicial
20 Qualifications Commission.

21 MR. MITCHELL: Yes.

22 THE MASTER: But you are familiar with
23 the case to which I address myself?

24 MR. MITCHELL: Yes, Your Honor.

25 THE MASTER: And so the practice, in

1 this community, I think is relevant and I
2 overrule the objection.

3 Q (By Mr. Mitchell:) Keeping the court's observa-
4 tions in mind, Mr. Nye, I will ask you, keeping
5 those observations in mind, whether or not, say,
6 assuming that it is true that Judge Carrillo
7 caused to be used a back hoe for an hour or two
8 with Tomas Elizando operating it and did nothing
9 more than follow the custom of the community,
10 would that conduct be inconsistent with the
11 proper performance of his duties as a district
12 judge.

13 A Mr. Mitchell, I think everything is relative and
14 if it was just for a couple of hours, I don't
15 think there would be any stigma attached to that
16 at all.

17 Q All right, I will ask you the same question as
18 to whether or not such conduct was of a nature
19 to cast discredit upon the judiciary assuming he
20 did nothing more than was the custom in the county.

21 A I will answer it in the same manner, everything
22 being relative, no.

23 Q I will ask you with regard to the use of any
24 equipment or services of an employee, assuming
25 for the purposes of the question, a custom and

1 use within that custom, Mr. Nye?

2 A Well, I think that is too broad a question, Mr.
3 Mitchell, and I don't think that I can answer
4 that that broadly.

5 MR. MITCHELL: Then I withdraw the
6 question. Thank you, Mr. Nye.

7 Q Mr. Nye, the question has arisen as to whether
8 or not certain facts were common knowledge in the
9 area or the community. I don't want to get into
10 a discussion of common knowledge or constructive
11 notice or knowledge, but if there were a transfer
12 of real property between, say, Judge Carrillo,
13 and Mr. Manges and that transfer were evidenced
14 by a deed and that the deed filed of record, say,
15 in 1969 or 1970.

16 If there were a transfer or purchase of
17 stock and that stock were in a bank regulated by
18 the national banking statutes and regulations and
19 declared publicly and received widespread atten-
20 tion, if, as a matter of fact all of those matters
21 were testified to --

22 MR. MITCHELL: And, Judge, I can point
23 to the page and paragraph if the Court wants
24 me to, I would rather try to do it this
25 way and expedite.

1 THE MASTER: Well, you are referring
2 to Examiner's Exhibit 25.

3 MR. MITCHELL: That's right.

4 THE MASTER: And it contains the full
5 transcript of the testimony as to whether
6 it is there or not.

7 MR. MITCHELL: Yes, sir.

8 THE MASTER: It can be determined by
9 looking at it.

10 MR. FLUSCHE: If I may interpose an
11 objection, Your Honor. First of all, all
12 of this calls for a conclusion and, second
13 of all, he misread the allegations again.
14 It is not the transfer of the house in
15 question, it is not the making of the deed,
16 that is the subject of this inquiry. It
17 is the acceptance of these things or the
18 use of these things to facilitate the
19 Judge's getting a gift and it is that
20 matter, the getting of the gift, which is
21 the subject of the inquiry.

22 THE MASTER: Yes, of course, I say I
23 accept that, for this purpose, but he is
24 now turning to the proposition, as I under-
25 stand it, that in January and February and

1 March and finally ending the 18th of May
2 these events were testified to, apparently
3 in open court with public participation,
4 that is spectators, and according to this
5 witness with press coverage.

6 MR. MITCHELL: Right.

7 THE MASTER: Now, that was before the
8 election in November of 1974.

9 MR. MITCHELL: Right.

10 THE MASTER: And that is what he is
11 getting to and that seems to me is quite
12 relevant to this inquiry.

13 MR. FLUSCHE: Of course, this witness
14 has already testified there was wide cover-
15 age of that.

16 THE MASTER: You didn't object that it
17 was repetitious.

18 MR. FLUSCHE: It is repetitious.

19 THE MASTER: I am not sure it is all
20 that repetitious but I am sure to ask you
21 to remember his previous testimony, he said
22 that you may want to develop it some.

23 MR. MITCHELL: Yes.

24 THE MASTER: I can appreciate counsel
25 wanting to do that.

1 MR. MITCHELL: I would go one step
2 further.

3 Q (By Mr. Mitchell:) And Mr. Nye, keeping in mind
4 the objection and the Court's instruction, let me
5 go a step further. Your testimony was that it
6 was not notoriety or wide notoriety given because
7 of reasons you have previously assigned, but assume
8 that there was documentation, open declarations
9 and documentation and no concealment, open declara-
10 tions as regards the sale, deeds filed of record,
11 would that lend credence that there was notoriety?

12 A I think that antedated the inquiry as to disquali-
13 fication and was -- with respect to the bank stock,
14 and what not, and was common knowledge in Starr
15 County and as to some of the other transactions
16 that are put on record.

17 Q All right, now I move --

18 A But I can't speak for Duval County and Jim Hogg.

19 Q All right, now I move, Mr. Nye, to the question
20 there were hypothetical questions put to you as
21 regards conspiracies between Judge Carrillo
22 and the commissioners court and payment by monies
23 from the commissioners court, that is invoices --
24 not invoices, not invoices but vouchers --

25 MR. MITCHELL: Strike that again.

1 Q There were warrants, county warrants, going from
2 the county, that is as coming out of the commis-
3 sioner's court to Tomas Elizando, Ruiz Sanchez,
4 various and sundry other persons.

5 Now, I am going to ask you some questions
6 about those allegations.

7 A All right.

8 Q Again, preparatory remarks, I don't think, are
9 necessary but that, of course, Judge Carrillo
10 has denied each and every one of these allegations.

11 Now, I believe -- you were a county judge,
12 were you not?

13 A I have been county judge, yes, sir.

14 Q You are acquainted with the functions of commis-
15 sioners court in Starr, Duval and these various
16 counties and any county for that matter in the
17 State of Texas, are you not?

18 A As county judge, I guess everybody else does
19 more or less the same thing.

20 Q Presides over the commissioners court, am I right,
21 Mr. Nye?

22 A Yes, sir.

23 Q And the commissioners court is made up with a
24 commissioner elected from each commissioners pre-
25 cinct, in the county, is that correct?

1 A That is correct.

2 MR. ODAM: Your Honor, I would object
3 at this point to the relevance of this tes-
4 timony. I know what is going to be elicited
5 in light of the previous questions on this
6 ground, but we have not began to put on our
7 case yet as to how there was a conspiracy
8 on the part of O.P. Carrillo and Ramiro
9 Carrillo to obtain these finds.

10 MR. MITCHELL: By asking the witness
11 questions with respect to how it might
12 have been done, with respect to county
13 commissioners court, et cetera, is irrele-
14 vant and our pleadings thus far are to the
15 evidence which we have not even put on,
16 and it is simply going into a line of
17 defense that we have not yet raised by
18 trying to prove the conspiracy.

19 THE MASTER: That is true, and that
20 is the problem of putting the witness on
21 out of turn, which was a mistake in this
22 instance, that I now acknowledge. But
23 the alternative is to let Mr. Nye go.

24 MR. MITCHELL: And call him back?

25 THE MASTER: With the threat that we

1 will have to bring him back, and I don't
2 know -- you are correct in your objection.

3 MR. ODAM: Well, Your Honor, again the
4 series of questions I think that Mr. Mitchell
5 intends to propound are in line with his
6 responses. I believe, in his answer.

7 My position is as previously stated
8 and for that reason, I would prefer, although
9 it is an imposition I know to Mr. Nye, but
10 it looks to me like in light of the court's
11 statement in recognizing the potentiality
12 of the irrelevancy of it, I would prefer
13 to not go into these matters based upon
14 hypothesis or legal situations that is
15 simply not reflected yet in the record, even
16 to go to the point of excusing Mr. Nye at
17 this point and letting Mr. Mitchell bring
18 him on as a defense at some later point.

19 He is now a defense -- a witness on
20 defensive matters and it seems to me that
21 we are -- we have already broken up the
22 train of the proceedings thus far and to
23 interpose this witness' testimony about
24 this would do so further.

25 What I'm suggesting is I would prefer

1 to excuse Mr. Nye on these questions and
2 recall him or let Mr. Mitchell recall him
3 at a later point because he is going into
4 matters that simply do not pertain to the
5 way that we intend to put on our case.

6 MR. MITCHELL: Judge Meyers, that is
7 precisely the reason that I made the state-
8 ment I did when Mr. Odam took this witness
9 beyond the legitimate cross. I knew he
10 was going to get up here and say wait a
11 minute, you can't go back here and clear
12 this business up, send him off, maybe we
13 can launch him like a rocket and he will
14 never come back.

15 I knew I was going to go into the
16 public notice of these conspiracies and he
17 testified he was a county judge and sat on
18 the county court and I am going to publish
19 all of these checks or vouchers, that is
20 exactly --

21 THE MASTER: No, I'm going to cut it
22 off, Mr. Mitchell, and excuse -- not entirely,
23 but until the examiner has gone into the
24 check matter, we are simply in an upsidedown
25 configuration. Mr. Nye will not be excused

1 as a witness, I am sorry, but he will be
2 subject to -- yes, sir.

3 MR. NYE: Judge, I might state I have
4 no knowledge of any of these other matters
5 and I am strictly a hypothetical type of --

6 THE MASTER: That is correct, that is
7 what Mr. Mitchell intends to do, I think,
8 is to show how --

9 MR. MITCHELL: As a matter of the
10 statutes, everything a commissioners court
11 does is public information, Judge Meyers.

12 THE MASTER: That is correct.

13 MR. MITCHELL: And the only reason
14 I am going into it, Judge Meyers, is I don't
15 want to quarrel with the Court, and certainly
16 don't want to step on the Judge's ruling,
17 but because of the questions put to him by
18 the examiner I didn't intend to get into it,
19 but I will, of course, abide by the Court's
20 ruling.

21 THE MASTER: The Court's ruling is
22 that until the examiner puts on evidence,
23 if he does, as to the manner in which the
24 alleged misappropriation of funds from the
25 county occurred, I am not going to permit

1 you to go into the matter in which the
2 statute or the statutes authorize the com-
3 missioners court to pay bills but that
4 doesn't cut you off from doing it later.

5 MR. MITCHELL: All right, Judge.

6 THE MASTER: I am sorry.

7 THE WITNESS: Judge, I wish to say
8 that I think that I would be happy to
9 cooperate with the commissioners or the
10 court in any manner.

11 THE MASTER: Thank you very much.

12 THE WITNESS: I will be up here.

13 THE MASTER: It may be that you won't
14 have to come back.

15 THE WITNESS: Yes, sir.

16 MR. MITCHELL: May I take just one
17 minute then?

18 THE MASTER: Yes, there may be other
19 things you want to go into, sir, certainly.

20 MR. MITCHELL: Pass the witness, Judge
21 Meyers.

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

1
2
3 BY MR. ODAM:
4

5 Q You participated in the hearing on the
6 disqualification?

7 A Yes, sir.

8 Q As I count, approximately three hundred and some
9 odd pages of testimony, ranging over a number of
10 days were held. Do you have an opinion, from
11 your participation as an attorney for the
12 receiver, why it was such a contested matter, as
13 to whether or not Judge Carrillo should be
14 disqualified or recused from hearing the case?

15 A No, sir, I do not. I sort of wondered myself.

16 Q I believe it is your testimony that you were of
17 the opinion that in light of the assumed facts
18 to be true, that the judge should have recused
19 himself?

20 MR. MITCHELL: He testified that the
21 judge should not actively have taken part
22 in the proceedings to determine his own
23 disqualification.

24 MR. ODAM: Let me rephrase the
25 question.

1 THE WITNESS: If I may, assuming all of
2 these facts under the assumptions put to me
3 at that time per se, without anything else
4 added to it, I said that he should be
5 disqualified initially when you first asked
6 me. That is assuming all of those set of
7 circumstances.

8 THE MASTER: It is my recollection that
9 you said, assuming all of the circumstances
10 he gave you with respect to the Manges versus
11 Guerra case, assuming the truth of the facts
12 about the stock, the Cadillac transaction
13 and the grazing lease, I understood you to
14 say two things, that you thought he should
15 voluntarily recuse himself --

16 MR. MITCHELL: I don't think you did.

17 THE MASTER: I am asking.

18 THE WITNESS: I think without anything
19 else, I think that is correct.

20 THE MASTER: And you said you thought
21 he acted properly in not hearing his own
22 disqualification?

23 THE WITNESS: Yes, sir.

24 Q (By Mr. Odam) All right, sir. In respect to the
25 first item where you thought he should have

1 recused himself --

2 A As to the set of facts you asked me, it was a
3 hypothetical, yes.

4 Q Your opinion that he should have voluntarily
5 recused himself was not from the hearing of the
6 motion, but to have voluntarily recused himself
7 from the case?

8 A Based on your hypothetical question, yes.

9 Q And he should have recused himself from the case,
10 not from the motion pending -- I am making the
11 distinction.

12 A Yes, I understand what you are doing.

13 I am saying, based on the hypothetical
14 question you put to me, I would think, yes, he
15 should have recused himself.

16 Q And if he had voluntarily recused himself, then
17 there would have been -- from the case itself,
18 then there would be no necessity for this
19 hearing, correct?

20 A Possibly not. You see, Judge, in all candor --
21 this is merely an opinion.

22 THE MASTER: I understand and I think
23 that is a superfluous question.

24 MR. ODAM: The reason I went into it,
25 Mr. Mitchell says that is one aspect. I

1 simply want to clarify, and the reason I
2 asked the question of the witness, is, that
3 he understood that I am not talking about
4 just recuse himself from the motion, but
5 from the case. I think that is clarified
6 now and I will pass the witness.

7 MR. MITCHELL: That is all right with
8 me.

9
10
11 - - - - -

12
13
14 REDIRECT EXAMINATION

15
16 BY MR. MITCHELL:

17
18 Q When Mr. Smith filed in behalf of his client the
19 motion of recusation, do you recall Mr. Church,
20 the attorney for Mr. Manges, joined issue with
21 that motion?

22 A Yes, I believe so.

23 Q The fact remains that Mr. Manges, through his
24 attorney, had the lawful right to join issue with
25 the motion for disqualification and the hearing

1 was held on the joinder on behalf of Clinton
2 Manges, is that what it was all about?

3 A I don't recall the niceties of the situation at
4 that time. I want to get something clear.

5 Counsel asked me whether on my opinion,
6 based on a given set of facts, whether I thought
7 Judge Carrillo should recuse himself. Based on
8 that set of facts, my answer is yes. Based on
9 the facts in this particular Guerra case, my
10 answer could be different, because it was my
11 opinion all of these matters were behind them.

12 I do want to make that matter clear to the
13 Court.

14 THE MASTER: You are saying that
15 based on the hypothet posed by Mr. Odam,
16 you think the judge should voluntarily take
17 himself out, but you don't necessarily
18 agree those are the fact?

19 THE WITNESS: Yes, sir. When I told
20 the Court I didn't think Judge Carrillo did
21 anything wrong or improper, I think when this
22 matter came up for the first time, because
23 up to that time, all orders had been agreed
24 to. The fact that he stepped down and had
25 another judge hear the matter was in accord

1 with judicial fairness to all parties.

2 THE MASTER: Go ahead, Mr. Mitchell.

3 Q (By Mr. Mitchell) The record reflects the only
4 pleading filed by Mr. Garland Smith in behalf of
5 his client, and after contest to that motion was
6 filed by Mr. Church, and after admissions were
7 served on Judge Carrillo by Garland Smith, do
8 you know of any other action that was taken by
9 Judge Carrillo?

10 A I believe the record speaks for itself and I have
11 no personal knowledge of anything else.

12 Q Now, assuming certain facts, as Mr. Odam has put
13 them to you, it is your opinion that the judge
14 was disqualified? That was the original answer
15 that raised a necessity of my asking you questions
16 as to the parties in January, 1971. We have
17 established that the Rio Grande City bank was not
18 a party, is that correct?

19 A That is, as I recall, true.

20 Q And you know a judge is not disqualified when
21 the bank is not a party to the suit?

22 A Correct.

23 Q Therefore, if the First State Bank and Trust
24 Company was not a party to the suit, and assuming
25 Judge Carrillo owned even one million shares, he

1 would not be, as a matter of law, disqualified,
2 is that correct?

3 A I presume so.

4 Q Assuming further, he had a grazing lease on land
5 owned by all the Guerras and assuming that grazing
6 lease was executed by Mr. Manges, who acquired it
7 by paying for it in 1970, the fact that the judge
8 sat on the bench holding a lease on land that was
9 no longer in controversy would not be a
10 disqualification as a matter of law?

11 A That was my impression at that time.

12 Q And although it may be improper and although it
13 may violate some of the old biblical statements,
14 assume that the car was bought for him by
15 Mr. Manges, if the case was not before him and he
16 had recused himself, that would not be a matter
17 of disqualification?

18 A As far as I know, the judge did only ministerial
19 acts before him. If he had some economic dealings
20 with a party at arm's length, that was up to him.
21 The first time the matter was brought up, he
22 stepped down and the judicial process went on.

23 Q Now, you heard counsel state that Article 2
24 involved a bribery. We all know there was none,
25 but you have been practicing long enough to know

1 generally a bribe is a payment of money to
2 exercise judicial discretion, is that correct?

3 A I would suppose so.

4 Q Do you know, Mr. Nye, and I am talking about
5 Article 2, do you know any judicial discretion
6 to be exercised by Judge Carrillo in connection
7 with this case, and if you do, I want you to
8 tell us.

9 A To my recollection, everything was agreed upon.

10 Q Right. And if there was a slightest --

11 MR. MITCHELL: Well, I will pass the
12 witness.

13 MR. ODAM: No further questions.

14 THE MASTER: You may step down.

15 We will be in recess until 12:00 o'clock.

16

17 (Short recess taken.)

18

19 THE MASTER: I understand some
20 stipulations were reached.

21 Would you state those for the record.

22 MR. FLUSCHE: We need, first of all,
23 to have these documents marked.

24 THE MASTER: Fine.

25

1 (Whereupon, the above-mentioned
2 documents were marked as Examiner's
3 Exhibits 32 through Examiner's Exhibit 39
4 for identification.)

5
6 MR. FLUSCHE: I will propose the
7 following stipulation.

8 Exhibit E-38 is a true and correct
9 copy of the check issued by Mr. Clinton
10 Manges on January 27, 1971 --

11 THE MASTER: Excuse me. That, I take
12 it, is the last marked exhibit?

13 MR. FLUSCHE: Next to the last.

14 THE MASTER: Let's do them in order.

15 MR. FLUSCHE: Okay.

16 All right. It is hereby stipulated
17 and agreed that Exhibit 32, E-32, is a true
18 and correct copy of the minutes of the
19 stockholders meeting held on January 14,
20 1971, for the First State Bank and Trust of
21 Rio Grande City, Texas.

22 THE MASTER: The date again?

23 MR. FLUSCHE: January 14, 1971.

24 E-33 is a true and correct copy of the
25 minutes of the annual stockholders meeting

1 of the First State Bank and Trust held on
2 January 13, 1972; E-34 is a true and
3 correct copy of the minutes of the annual
4 stockholders meeting held on January 11,
5 1973, of the First State Bank and Trust
6 Company; Exhibit No. E-35 is a true and
7 correct copy of the stock certificate No.
8 53-72 of the First State Bank and Trust
9 indicating O. P. Carrillo is owner of ten
10 shares of capital stock of the First State
11 Bank and Trust Company; E-36 is a correct
12 copy of two pages kept from the stockholders
13 ledgers evidencing stock transfers by O. P.
14 Carrillo; E-37 is a true and correct copy
15 of a summary of all changes of ownership of
16 the changes in stock of the First State Bank
17 and Trust Company, which was prepared by
18 Mr. Anderson, president of the First State
19 Bank and Trust Company; Exhibit E-38 is a
20 true and correct copy of the check issued by
21 Mr. Clinton Manges on January 7, 1971, in
22 the amount of six thousand nine hundred
23 fifteen dollars fifty-five cents payable to
24 Rialto Cadillac Company of San Antonio;
25 Exhibit E-39 is a true and correct copy of

1 a check drawn by Mr. Manges in the amount
2 of twelve thousand five hundred dollars,
3 dated April 4, 1975, and payable to O. P.
4 Carrillo.

5 THE MASTER: Now, the stipulation was,
6 as I understand it, that these were authentic
7 copies of those instruments, is that right?

8 MR. MITCHELL: Yes, Your Honor, and we
9 do not intend to waive --

10 THE MASTER: You don't stipulate to the
11 admissibility, but admit to the authenticity?

12 MR. MITCHELL: Yes, sir, that is
13 correct.

14 For the record, we will renew all of
15 our objections to Exhibits E-32 through E-39.

16 THE MASTER: They have not been offered,
17 just identified and authenticated.

18 MR. MITCHELL: Okay. My objection is
19 premature.

20 THE MASTER: Mr. Manges, come up and be
21 sworn.

22 Is there any objection to Mr. Manges'
23 counsel being present, Mr. James S. Bates?

24 MR. MITCHELL: None.

25 MR. ODAM: At this time, Your Honor, we

1 offer in evidence the exhibits that were
2 just marked, Exhibits E-32 through E-39.

3 MR. MITCHELL: We object to that on the
4 grounds previously stated.

5 THE MASTER: State them, please.

6 MR. MITCHELL: Those would be hearsay
7 in the fact that they go beyond the Articles
8 of the specifications.

9 THE MASTER: By stipulating to the
10 authenticity, there may be some other hearsay
11 aspects of them. They are authentic.

12 MR. MITCHELL: That is right.

13 I say hearsay, because they don't come
14 in hearsay for the truth of the matters
15 contained herein, however, I did stipulate
16 to the authenticity. They go beyond the
17 scope of the specifications and in addition,
18 they relate to matters of a nonjudicial
19 capacity and therefore would be irrelevant
20 and immaterial; they relate to transactions
21 in the prior term rule which was one of the
22 objections we previously made. We reassert
23 that in the offer of the exhibits.

24 I believe that pretty well covers our
25 objection.

1 THE MASTER: Those objections are
2 overruled and you may proceed, Mr. Odam.
3 The exhibits are admitted.
4

5 (Examiner's Exhibits 32 through 39,
6 inclusive, were admitted into evidence.)
7

8 MR. MITCHELL: Note our exception to
9 the admission of those exhibits.
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1 CLINTON MANGES,
2 called as a witness, having been first duly sworn
3 upon his oath to tell the truth, the whole truth and
4 nothing but the truth, then testified as follows,
5 to-wit:

6
7 E X A M I N A T I O N
8

9 BY MR. ODAM:
10

11 Q Would you state your name?

12 A Clinton Manges.

13 Q Where do you reside?

14 A Freer, Texas.

15 Q What is the nature of your employment?

16 A Rancher and self-employed.

17 Q How long have you resided in Freer, Texas?

18 A Three or four years.

19 Q Where did you live prior to that?

20 A San Antonio.

21 Q Freer, Texas is what county?

22 A Duval County.

23 Q Mr. Manges, did you have occasion to have your
24 deposition taken in this proceeding at an earlier
25 date on October 22nd, 1975?

1 A Yes, sir.

2 MR. ODAM: Your Honor, at this time,
3 we offer in evidence the deposition of
4 Mr. Manges taken on October 2nd, 1975, which
5 is marked by the reporter as E-40.

6 MR. MITCHELL: We object to the
7 admission of the deposition on the grounds
8 the witness is here and it is irrelevant
9 and immaterial and would be hearsay. It is
10 in rare instances which he has not demonstrated
11 his admissibility and --

12 THE MASTER: I am not sure what you are
13 doing, Mr. Odam.

14 I agree basically with what Mr. Mitchell
15 has said. You can use the deposition for any
16 purpose, but why call the witness in if you
17 intend to rely on his deposition?

18 MR. ODAM: We intend to use the
19 deposition and the statements herein to ask
20 the witness questions from.

21 THE MASTER: The deposition is on file
22 and you can do that.

23 MR. ODAM: At this time, we will not
24 ask the reporter then to mark it as Exhibit
25 40.

1 THE MASTER: It is properly filed with
2 the Judicial Qualifications Commission, is
3 it not?

4 MR. ODAM: Your Honor, counsel delivered
5 it to me today and I consider it to be filed
6 as of the time he brought it back to us,
7 unless Mr. Mitchell has some notion to the
8 contrary.

9 MR. MITCHELL: No, it should be filed
10 as a part of the record.

11 THE MASTER: I don't know, does the
12 Commission have a stamp or not?

13 MR. PIPKIN: Not here, Judge.

14 THE MASTER: It may deemed filed by
15 Mr. Pipkin, may it not?

16 MR. MITCHELL: Yes, sir, and maintained
17 with the papers in the case.

18 THE MASTER: All right. You may
19 continue.

20 Q (By Mr. Odam) Mr. Manges, you stated that you
21 were in the ranching business. Are you acquainted
22 with the Duval County Ranch Company?

23 A Yes, sir.

24 Q What is your relationship with that?

25 A I own the Duval County Ranch Company.

1 Q This is a Texas corporation?

2 A Yes, sir.

3 Q What is your position with that entity?

4 A Chairman and president.

5 Q I show you at this time what is a part of the
6 official records in these proceedings, which is a
7 copy of your deposition signed by you and tendered
8 to the record by your counsel, Mr. Bates, and ask
9 you if you can identify it?

10 A Yes, sir.

11 Q For the benefit of the record in this case, would
12 you agree that in the taking of your deposition,
13 the previous questions I have asked you today were
14 also asked you, which you answered, and after I
15 asked you as to your familiarity of the Manges and
16 Guerra cause, that all times thereafter you
17 invoke your privilege to take the Fifth Amendment?

18 A That is right.

19 Q I would intend to pose, for the purpose of this
20 record today, in the event you were to change
21 your mind, the same questions and more with
22 respect to the proceedings here.

23 First of all, with respect to the questions
24 that were asked and answered in this deposition,
25 if I asked you every question that was in here

1 today, would your answers still be the same,
2 whether you did or not invoke the Fifth Amendment?

3 A Yes.

4 THE MASTER: I don't think that question
5 was clear.

6 MR. ODAM: Let me clarify it.

7 Q (By Mr. Odam) At that time of taking your deposition,
8 you invoked the Fifth Amendment?

9 A Yes, sir.

10 Q Today you may or may not invoke the Fifth
11 Amendment as to those questions or other questions?

12 A I don't know.

13 Q Not knowing that, I would proceed to ask you a
14 number of questions, and the first questions would
15 be identical to those asked on your deposition.

16 You have the right to invoke the Fifth
17 Amendment or you could not.

18 A I would answer the same as I did on the deposition.
19 I would invoke the Fifth Amendment.

20 Q And whatever answer you would give, that would
21 be your testimony you would put forth here today?

22 A Yes, sir.

23 MR. ODAM: Your Honor, this witness has
24 established himself to be a resident of
25 Duval County, which is in the 229th Judicial

1 District. It would be my intention to ask
2 this witness questions as to whether he had
3 an opinion as to whether matters were common
4 knowledge that are in the pleadings.

5 I will proceed to do that and I am saying
6 this to the Master and the witness and counsel.

7 My question is: And you have not been
8 here for previous testimony, but would the
9 witness also invoke the Fifth Amendment --

10 MR. MITCHELL: In view of counsel's
11 statement of what he intends to do, and there
12 is nothing showing that this witness is
13 qualified, it is irrelevant and immaterial
14 to this case.

15 THE MASTER: The questions must be asked.
16 I agree that there has not, at this time,
17 been a predicate as to his knowledge of the
18 community as of a certain date. You must
19 qualify him further.

20 Q (By Mr. Odam) Did you reside in Duval County in
21 November, 1974?

22 A Yes.

23 Q You were aware an election took place on that
24 date?

25 A I don't recall that offhand. I am sure it did

1 if you say so.

2 Q You resided in the county in November, 1974?

3 A Yes.

4 MR. ODAM: Your Honor, I don't exactly --
5 the witness stated he lived in the county
6 for the last four years and he was living
7 in the county at the time. I can go on to
8 be more specific as we did with previous
9 witnesses, if the Master feels I have not
10 qualified him.

11 THE MASTER: I think you need to ask
12 the witness if he knew the community and
13 discussed matters in the community and so
14 forth.

15 MR. ODAM: All right, sir.

16 MR. MITCHELL: And likewise, I believe
17 he testified that he lived, if I recall his
18 testimony, three to four years.

19 These are matters --

20 THE MASTER: He is asking about the
21 common knowledge as of November, 1974.

22 MR. MITCHELL: Yes, I understand that,
23 but there were matters that arose in 1969
24 way beyond the time he was a citizen in this
25 community.

1 THE MASTER: That is true, but I don't
2 see that is material.

3 MR. MITCHELL: I hesitated to make the
4 objection. I just don't know, I made it
5 because I felt a duty to call it to the
6 court's attention.

7 THE MASTER: It is overruled.

8 Wait, I am sorry, the aspect that he
9 has not been qualified is still sustained,
10 however.

11 Q (By Mr. Odam) Mr. Manges, the time that you lived
12 in Freer, Texas -- well, Freer is approximately
13 how far from San Diego, Texas?

14 A Around thirty miles from where I live.

15 Q You don't live in Freer itself?

16 A No, I live on a ranch eight or ten miles out.

17 Q Have you ever had occasion to go into the
18 community of San Diego?

19 A Very seldom.

20 Q How about the community of Freer?

21 A Very seldom. I live in that area, but seldom
22 do I get into those areas.

23 Q Do you have an airplane?

24 A No, sir.

25 Q Do you travel by automobile?

1 A Sometimes by automobile and sometimes by plane,
2 but if by plane, I charter it.

3 Q You have a landing strip at your ranch?

4 A Yes.

5 Q Where do you do your grocery shopping?

6 A I don't, my wife does.

7 Q Have you had occasion to go to Alice?

8 A Very seldom. I usually have business when I do
9 and it is a short time only.

10 Q Would you consider that -- do you know the gentle-
11 man sitting at the counsel table, Judge O. P.
12 Carrillo?

13 A Yes, sir.

14 Q Do you know his brother, Ramiro Carrillo?

15 A Yes, sir.

16 Q Would you say you know most of the county officials
17 in the county in which you reside?

18 A Part of them.

19 Q Dan Tobin is now the county judge, do you know
20 him?

21 MR. BATES: No, he is not.

22 THE MASTER: You can't testify, Mr.
23 Bates.

24 Q Well, you know the former county judge, Dan Tobin?

25 A I do know him, I don't know whether he is county

1 judge or not.

2 Q Do you know former county judge Archer Parr?

3 A Yes, sir.

4 Q Did you know Mr. George Parr when he was alive?

5 A Yes, sir.

6 Q Have you heard of a political party called a new
7 party?

8 A I don't know of it. It looked to me like most of
9 the time there was only one party. As far as
10 recognizing parties, I don't know.

11 Q Did you have an occasion to contribute politically
12 to races going on?

13 A I don't know whether I have or not, I don't remem-
14 ber.

15 Q You don't know if you can contributed for a race
16 to O. P. Carrillo?

17 A I don't think so.

18 Q I take it from your testimony of knowing Mr. Dan
19 Tobin, Ramiro and O. P. Carrillo, that you --
20 do you know Oscar Carrillo?

21 A Yes, sir.

22 Q I take it you have some acquaintances with public
23 officials in Duval County?

24 A Yes.

25 Q You know who they are and their positions?

1 A Some of them, I do.

2 MR. MITCHELL: Out of that group, part
3 of them are not public officials.

4 THE MASTER: I don't know that the
5 question said they were all public officials.

6 MR. ODAM: I think I used the term
7 at one time or another for the purpose of
8 the question.

9 MR. MITCHELL: Thank you.

10 Q (By Mr. Odam:) Mr. Manges, do you recall at the
11 time that your deposition was taken that I showed
12 you at that time pages from the statement of facts
13 in the disqualification hearing for Judge O. P.
14 Carrillo, do you recall me showing that to you?

15 A Yes, sir.

16 MR. MITCHELL: Excuse me, Counsel.

17 Do you mean the disqualification action,
18 there was no hearing had at the time of the
19 deposition.

20 THE MASTER: He is talking about the
21 disqualification of the judge in the proceed-
22 ings of Manges versus Guerra.

23 MR. MITCHELL: I am sorry.

24 Q (By Mr. Odam:) At which time I said, Mr. Manges,
25 I would ask you to look at what has been marked

1 on page 51, and you examined the Exhibit, and my
2 question was, I asked if you recall giving the
3 testimony in that proceeding and you answered
4 I recall several proceedings. At that time Mr.
5 Bates stated, if it will shorten your question
6 any, we have no objection to the pages you have
7 indicated as a part of the transcript prepared
8 by Mr. D. A. Van Dresser, the official reporter.
9 I said all right. I take it by that, whatever
10 statements are made by -- and Mr. Bates said
11 the record will speak for itself.

12 I said, all right, fine, that will shorten
13 the proceedings.

14 At that time we concluded the deposition
15 on page 26.

16 I take it by Mr. Bates' question that it
17 was necessary for me to take it through the
18 statements you made in that testimony at that
19 time. I will ask you the question now, if the
20 statements made in the transcript are, to the
21 best of your knowledge, that you can testify to,
22 the truthfulness of the statements you made at
23 that time, are they true?

24 A Yes.

25 MR. MITCHELL: As the Court recalls,

1 the objection was made to that transcript
2 and sustained.

3 Does Counsel intend to ask every ques-
4 tion in the transcript to the witness again?

5 THE MASTER: I understand, and listen
6 to me, gentlemen, if you will.

7 Counsel just asked Mr. Manges if the
8 testimony he gave in that disqualification
9 hearing before Judge Smith was true and he
10 said yes.

11 THE WITNESS: To the best of my knowledge,
12 it is, yes.

13 THE MASTER: Yes. I assume what Counsel
14 has in mind is now reoffering that testi-
15 mony.

16 MR. MITCHELL: Because I understand
17 the Court has admitted O. P. Carrillo's
18 deposition under the hearsay exception rule.
19 My objection is to keep a record on this.

20 THE MASTER: Okay.

21 Q (By Mr. Odam:) Mr. Manges, I show you what has
22 been marked as Exhibit E-25 in this proceeding,
23 which contains a general index where you were
24 examined by Mr. Smith beginning at page 51 and
25 again at page 88.

1 As you recall, these were the pages to which
2 you were referred and are attached to a part of
3 the record.

4 My question is -- well, strike that.

5 MR. ODAM: Your Honor, at this time,
6 in light of Mr. Manges' previous answer,
7 that he said what is here is the truth,
8 whatever he said, I offer that testimony
9 in that proceeding for the truthfulness of
10 the matters asserted therein for this pro-
11 ceeding.

12 MR. MITCHELL: I object as to no right
13 for cross-examination.

14 THE MASTER: You have the right now.

15 MR. MITCHELL: That is why I asked if
16 he was going to take each and every ques-
17 tion. Should I have to go back through it
18 all now?

19 THE MASTER: Well, I am not sure of
20 the propriety of asking a witness, in effect,
21 do you now reaffirm your testimony given
22 at a prior proceeding, but it is either
23 doing that or asking each question separately
24 and reading him his answer and saying is
25 that correct. He has done it in a single

1 question rather than individual questions.
2 He could obviously go and take the time to
3 do it individually and if there is a ques-
4 tion about the propriety of the document in
5 its entirety, rather than its individuality,
6 I will let Counsel make a decision in that
7 regard.

8 My idea is now it is admissible.

9 MR. MITCHELL: We stand on our objection.

10 THE MASTER: I understand, but I have
11 some doubt about it. I am prepared to over-
12 rule it, but with the realization I may be
13 wrong.

14 MR. ODAM: As I understand --

15 THE MASTER: I am prepared to admit
16 the evidence. The Supreme Court may decide
17 that I erroneously did and they can send it
18 back or disregard it.

19 MR. ODAM: Yes, sir.

20 Well, in that situation, we have now
21 offered the prior testimony for the truthful-
22 ness of the matters asserted therein and it
23 has been admitted for that and I see no
24 necessity to go back with this witness for
25 those matters to see if it is the truth.

1 THE MASTER: All right.

2 MR. ODAM: I pass the witness.

3 THE MASTER: Mr. Mitchell, the witness
4 was passed to you.

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E X A M I N A T I O N

8

9 BY MR. MITCHELL:

10

11 Q Mr. Manges, I will ask you if I ask you each and
12 every question that was put to you in this Exhibit
13 Number 25, would you refuse to answer on the
14 grounds that the answer might tend to incriminate
15 you?

15

MR. BATES: What is 25?

16

17 MR. MITCHELL: I'm sorry, that is
18 Exhibit Number 25, Mr. Bates. Let me hand
19 it to you.

19

20 (Handed to Mr. Bates.)

21

22 MR. MITCHELL: May I have just a
23 minute to go over this with Counsel?

23

24

(Discussion off the record.)

25

1 MR. MITCHELL: Judge, may I have the
2 deposition? I might state for the record
3 I have not seen the deposition of Mr.
4 Manges that has been used by Mr. Odam and
5 I really need for the purpose of preserving
6 the record to check it as well as may I
7 ask Counsel a question, did you offer all
8 of the testimony of Mr. Manges in Exhibit 25?

9 MR. ODAM: Yes.

10 MR. BATES: I want to apologize to the
11 Court for the deposition being late. I had
12 it here Monday and neglected to turn it in.

13 (Discussion off the record.)
14

15 THE MASTER: Mr. Mitchell, we have got
16 to go on.

17 MR. MITCHELL: All right, Your Honor,
18 I want the record to reflect that I have
19 been discussing with Counsel representing
20 Mr. Manges, out of courtesy to him, trying
21 to inform myself as to where we stood with
22 the record in this posture, that is, number
23 25, Exhibit 25, as to Mr. Manges having been
24 in some manner -- having been admitted and
25 now I am put to the obligation, burden and

1 duty to cross-examine.

2 THE MASTER: I agree.

3 MR. MITCHELL: And I have to ask the
4 question.

5 Q (By Mr. Mitchell:) Mr. Manges, if I ask you the
6 questions that are contained in Exhibit Number 25,
7 or ask you questions relating to the questions
8 and answers which would be a more appropriate way
9 to put it, would you plead the Fifth Amendment?

10 A Yes, sir.

11 MR. MITCHELL: We renew our objection
12 to 25, we are denied the right of cross-
13 examination.

14 MR. FLUSCHE: I think, Your Honor, that
15 last answer firmly establishes the necessity
16 for the acceptance of this and I think that
17 makes it more admissible than it was before.

18 MR. MITCHELL: I am sorry, Judge Meyers,
19 I didn't understand.

20 THE MASTER: Well, his point is that
21 that makes the witness, in effect, an
22 unavilable witness which you know is one
23 of the elements of testimony at a prior
24 proceeding.

25 MR. MITCHELL: I understood that.

1 THE MASTER: That is the point he is
2 making.

3 MR. MITCHELL: But he was --

4 THE MASTER: Mr. Mitchell, I think at
5 least initially, I think you need to ask
6 specifically the questions you think will
7 be declined to answer.

8 MR. MITCHELL: Judge, I would like the
9 record to reflect that I am having to search
10 through the record to areas that my client
11 and I decide are -- through consultation,
12 decide that need to be put to the witness
13 of a critical nature and would fall within
14 the rules. I don't intend to use up the
15 Court's time needlessly.

16 THE MASTER: All right.

17 MR. MITCHELL: On page 190.

18 MR. BATES: What page?

19 THE MASTER: Page 190.

20 MR. MITCHELL: The bottom line referring
21 to the shares of stock:

22 Q Question: "I will ask you this question: For
23 each of those shares you now own you have put up
24 a hundred dollars a share except for roughly the
25 one-seventh, is that right?"

1 A I refuse to answer on the grounds it might tend
2 to incriminate me.

3 Q The question on page 52 out of the February 20th,
4 1973, hearing in the middle of the page. I will
5 ask you the question put by Mr. Smith, to the
6 witness.

7 "While we are on the question of the bank,
8 Mr. Manges, I would like for you to give me your
9 understanding of how Judge O. P. Carrillo got on
10 the Board of Directors of the First State Bank and
11 Trust Company."

12 A I refuse to answer on the grounds it might tend
13 to incriminate me.

14 Q On page 53, top of the page.

15 "Do you recall what the values were that
16 were put on the house and the stock?"

17 A I refuse to answer on the grounds that it might
18 tend to incriminate me.

19 Q Down to the middle of the page.

20 "Did you know at the time what his balance
21 was on the Cadillac automobile?"

22 A I refuse to answer on the grounds that it might
23 tend to incriminate me.

24 THE MASTER: I believe that is enough,
25 Mr. Mitchell, unless you want to make some

1 more.

2 MR. MITCHELL: No, I am through.

3 THE MASTER: I am going to ask Mr.
4 Manges, and Mr. Bates, to step outside.
5 I think we have an evidentiary problem that
6 we need to discuss. I know that you are
7 under pressure to get under way.

8 MR. BATES: No, today is fine. It was
9 tomorrow that was killing me.

10 THE MASTER : We are operating from
11 eight thirty to one.

12 MR. BATES: All right, thank you, sir.

13 THE MASTER: Yes, sir, thank you.

14
15 (Whereupon Mr. Manges and Mr. Bates
16 left the hearing room.)

17 THE MASTER: The problem is this, that
18 the witness in answer to Mr. Odam's question
19 said that the testimony he gave in the
20 prior proceeding was true. I took that to
21 adopt that testimony and waive the Fifth
22 Amendment privilege as to that testimony.

23 Now, when asked those questions individu-
24 ally, the witness refuses to answer.

25 MR. MITCHELL: Yes, sir.

1 THE MASTER: And I don't know where
2 that leads us, do you have any thought on
3 on it?

4 MR. FLUSCHE: Can I respond to that,
5 Your Honor?

6 THE MASTER: Yes.

7 MR. FLUSCHE: I think it puts it exactly
8 in the same posture as a witness who is
9 dead, that you recall that the basic consid-
10 erations in making an exception to the hear-
11 say rule are two; one is trustworthiness and
12 the other is necessity.

13 Now, he said on this witness stand,
14 and this was sworn testimony in a court
15 hearing, and he said on this witness stand
16 that those things are true, but he is now
17 taking the Fifth Amendment and so it is
18 just as though he were dead, as far as this
19 Court is concerned. He is completely
20 unavilable.

21 MR. ODAM: If I can add --

22 THE MASTER: But now what about the
23 requirement of some identity of parties
24 in the prior proceeding? The problem that
25 bothers me is that Judge Carrillo was not

1 represented and he was not present and had
2 no opportunity to question this witness in
3 that prior proceeding, no standing, indeed
4 to question this witness in that prior
5 proceeding.

6 MR. FLUSCHE: Well, of course, he has
7 the right to cross-examine him now.

8 THE MASTER: But when he starts to do
9 so, the witness pleads the Fifth Amendment.

10 MR. FLUSCHE: Well, of course, what
11 he did today was not really cross-examination,
12 He propounded --

13 THE MASTER: That is correct, that is
14 correct, and I could bring Mr. Manges back.

15 (Discussion off the record.)
16

17 THE MASTER: I am sure if you cross-
18 examining him about these matters --

19 MR. MITCHELL: Yes.

20 THE MASTER: And I will probably
21 require you to do it, that he will do the
22 same thing and so -- it may be that you
23 should just -- what you asked him was if you
24 asked those questions in the Exhibit,
25 Examiner's Exhibit 25 --

1 MR. MITCHELL: Yes, sir.

2 THE MASTER: Would he, if you did ask
3 those questions one by one, would he answer
4 them that he refuses to answer on the
5 grounds that it might tend to incriminate.

6 It might be that you have to put him
7 back on and resume the stand and be asked
8 questions on cross-examination, not the
9 same questions, just ask him if I were to
10 cross-examine you on those matters which
11 you answered specifically --

12 MR. MITCHELL: Yes, Your Honor.

13 THE MASTER: Would you plead the
14 Fifth, if he does that, then the record is
15 completed, and whether or not that prior
16 testimony is admissible is a pretty tough
17 question in my mind.

18 MR. MITCHELL: May I argue just briefly
19 to that point. Judge, and then proceed to
20 call him, of course, with your permission.

21 I would say that the predicate for
22 the introduction of the testimony is testi-
23 mony taken at a prior trial being a legiti-
24 mate exception to the hearsay rule is not
25 complete. The witness is not dead or

1 unavailable in a true sense. There is --

2 THE MASTER: I disagree with that, I
3 think he has become unavailable.

4 MR. MITCHELL: I understand, Judge,
5 I am aware of only those cases where the
6 unavailability applies to cases where he
7 is outside of the jurisdiction of the court,
8 but does not become unavailable by the affirma-
9 tive operation of the rules such as the
10 dead man's statute.

11 THE MASTER: I appreciate the dis-
12 tinction.

13 MR. MITCHELL: So I would have to
14 assert this as a position that we are tak-
15 ing that he is not dead or unavailable, and
16 there is not an identity of parties. There
17 is not an identity of issues and certainly
18 the exception to the hearsay rule conceding
19 it were arguendo, the right to cross-
20 examination.

21 THE MASTER: It is a matter, of course,
22 that need not be decided today because his
23 testimony is here, he is obviously not
24 going to answer any other questions unless
25 you choose to see if he will. I assume that

1 you are satisfied that he will not.

2 MR. ODAM: That is correct, Your Honor,
3 if I might clarify or point out one thing.
4 Today I'll ask him if what he previously testi-
5 fied was true and he said it was, but also
6 at the time in this procedure, when there
7 was subject to cross-examination at the time
8 of taking the deposition, I asked him the
9 same question and he said then again on the
10 deposition, which is in the record, "Whatever
11 I said then is whatever I said" and that is
12 it.

13 It simply appears to me he not only
14 today ratified the truthfulness of it but
15 also at the deposition in this proceeding
16 ratified it and ratified what was taken
17 under oath at a time before opportunity of
18 cross-examination. It simply appears to me
19 it should be admitted for the truthfulness
20 of it as well as the basis for asserting the
21 Fifth Amendment.

22 Now, it was not asserted back then,
23 it could be introduced in part of the evi-
24 dence as a basis of the time the deposition
25 was taken, he didn't raise the Fifth Amendment

1 then.

2 MR. MITCHELL: May I say only one other
3 thing, Your Honor, I was not present at the
4 deposition taking, the secret rule was invoked,
5 I did not have any standing at all and did
6 not appear.

7 MR. ODAM: Now, Your Honor, --

8 MR. MITCHELL: I was not present at
9 the taking of the deposition.

10 MR. FLUSCHE: He was noticed.

11 THE MASTER: I can't imagine, it is
12 your last statement that startles me, the
13 secrecy rule being invoked. You were surely
14 not excluded from the deposition taking when
15 it involves your client, Judge Carrillo?

16 MR. MITCHELL: I honestly thought I
17 probably was, Judge, with his having his
18 own counsel, which was Mr. Bates, maybe I
19 was wrong.

20 THE MASTER: Well, I can't -- I think
21 you are wrong.

22 MR. MITCHELL: Well, perhaps I was,
23 at any rate I was not physically present,
24 whether it is my fault or not my fault.

25 THE MASTER: Mr. Pipkin, would you

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accommodate me in getting Mr. Manges?

(Discussion off the record.)

(Reporters Note: Whereupon Mr. Clinton Manges and Mr. Jim Bates returned to the hearing room.)

THE MASTER: Yes, sir, all right.

- - - - -

E X A M I N A T I O N

BY MR. MITCHELL:

Q Mr. Manges, if I put questions to you that are reasonably relevant and related to the questions asked you in Exhibit Number 25, would you -- and assuming the relevancy and related to and the rules being complied with, revoke your constitutional rights against self-incrimination?

A Yes.

THE MASTER: Is the effect of that, Mr. Manges, that while you answered the questions in the late winter and early spring of 1973, that you would not, if asked

1 those same questions today, answer them by
2 virtue of invoking your Fifth Amendment and
3 other privileges?

4 Also, you would do -- is it true that
5 you would do the same with respect to any
6 cross-examination along those same lines?

7 THE WITNESS: Yes, sir.

8 THE MASTER Thank you, I have nothing
9 further. Do you have anything further?

10 MR. ODAM: Just to clarify in my own
11 mind, as I understand the previous objections
12 were made and I assumed the ruling of the
13 Court stands, that the matters in the previ-
14 ous testimony have been admitted for the
15 truthfulness of the matters asserted therein.

16 THE MASTER: I am not certain in this
17 state of the record that that is an accurate
18 statement.

19 I have not -- I had admitted them
20 before Mr. Mitchell asked the questions that
21 he asked, but in light of this, I do not
22 know.

23 If you want -- so you must assume that
24 it is not yet in evidence.

25 MR. MITCHELL: And we make a motion to

1 strike, and have that motion before the
2 Court in that connection.

3 THE MASTER: Yes, sir.

4 MR. ODAM: Again, I assume that the
5 Court or the Master probably will rule on
6 that question of evidence at a later point.

7 THE MASTER: Certainly.

8 MR. ODAM: And make -- just so the
9 record will reflect that in the event that
10 the objection is sustained, then we wish the
11 record to reflect that the previous testi-
12 mony introduced and given by Mr. Manges
13 through Exhibit Number 25 is offered by
14 way of our bill of exception.

15 THE MASTER: Certainly. Do you have
16 anything further, Mr. Mitchell?

17 MR. MITCHELL: No, thank you, Judge.

18 MR. ODAM: Pass the witness.

19 MR. MITCHELL: No further questions.

20 THE MASTER: You are excused, thank
21 you. Who is your next witness?

22 MR. ODAM: Let's see --

23 THE MASTER: Have you got a five minute
24 witness, in other words?

25 MR. ODAM: Mr. Garland Smith would be

1 my next witness. He has Mr. Morris Atlas
2 out there.

3 THE MASTER: Can you finish with Mr.
4 Atlas?

5 MR. MITCHELL: Judge Meyers, we talked
6 to him and I can't say that I can be
7 through within the time, and certainly in
8 view of Mr. Odam's extensive cross-examination
9 on my first go-around, I doubt very seriously
10 whether we could finish and quite frankly,
11 Judge, I had sort of dropped him out of the
12 flow because of what the Court is saying,
13 asking me to --

14 THE MASTER: I think that is wise. I
15 think we have imposed on Mr. Smith suffi-
16 ciently and he ought to be your next witness
17 tomorrow morning.

18 MR. ODAM: All right, sir.

19 THE MASTER: And Mr. Atlas is just
20 going to have to come back.

21 MR. MITCHELL: And I think we can
22 finish Mr. Smith tomorrow.

23 THE MASTER: I am seriously concerned
24 about the admissibility of the testimony of
25 Mr. Manges. Obviously you did some looking

1 at it yesterday, but the problem in my
2 mind is not the fact that he has affirmed
3 the testimony and all of that, the problem
4 in my mind is one, the lack of identity of
5 parties and two, the lack of identity of
6 issues.

7 MR. FLUSCHE: I think, Your Honor, that
8 the issues are very similar and precisely
9 the same allegations were made by Mr.
10 Garland Smith that are being made here today,
11 maybe not precisely, but they are essentially
12 the same allegations, that he should be
13 disqualified from hearing that case because
14 of the acceptance of these gifts. So, I
15 think that there is a great similarity of
16 issues.

17 I would suggest that we research it
18 overnight and see if we can shed more light
19 than heat tomorrow morning.

20 THE MASTER: We will have more than
21 this afternoon, at the rate this thing is
22 going.

23 MR. FLUSCHE: I think that is true.

24 THE MASTER: -- to brief it.

25 MR. FLUSCHE: Could I suggest that we

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just carry it over and rule on it at some later time?

2023
THE MASTER: Yes. We will be in recess until eight-thirty in the morning.

THE COURT:
(Whereupon the hearing was in recess at one o'clock p.m. November 4th, 1975, until eight-thirty a.m., November 6th, 1975.)