EXAMINERS' EXHIBITS, NOT ADMITTED

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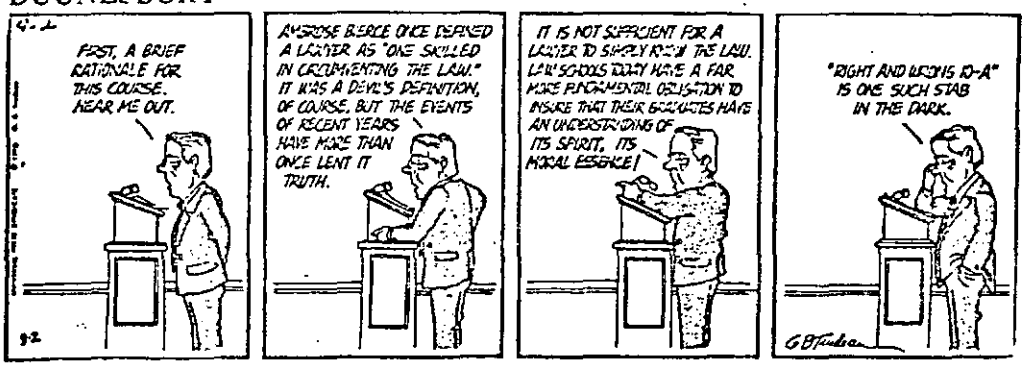
THE STATE OF TEXAS JUDICIAL QUALIFICATIONS

COMMISSION OF TEXAS

IN RE: HONORABLE O. P. CARRILLO, JUDGE OF THE 229TH DISTRICT COURT OF STARR COUNTY, TEXAS.	MEMORANDUM STATEMENT OF GARLAND F. SMITH, ATTORNEY, WESLACO, TEXAS

TO THE HONORABLE STATE JUDICIAL QUALIFICATIONS COMMISSION:



My name is Garland F. Smith. I am an attorney and partner in Smith, McIlheran, Yarbrough & Griffin, with offices in Weslaco Texas, where I have practiced law since November 1945. I graduat from Texas Tech in 1934 with a degree in political science and government, and from the University of Texas with an LLB degree in February 1937. I was employed by Shell Oil Company in Houston and New York City from March 1937 to May 1941, when I was drafted into the Armed Forces of the U. S., where I served in the Counter Intelligence Corps of the Eighth Service Command and later with the Air Transport Command, my overseas service being in the Gold Coast in Africa (Now Ghana). I was honorably discharged as a 1st Lieutenant in November 1945.

I have chosen to introduce this memorandum with the above cartoon because the "stab in the dark" made by the professor teaching the hypotetical course in "Right and Wrong, 10-A" puts a penetrating finger on the exact problem faced by the bench

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and bar, all of whose members have taken an oath to uphold and defend the Constitution and Laws of the United States and Texas. There are some things that judges, lawyers and other public officials simply cannot do themselves, nor tolerate in others, if we are to live up to our ideal of a "government of laws, and not of men" and provide for the inhabitants of this nation a minimum requirement of democracy, "equal justice under law" within the bounds of honest human endeavor.

I feel no hostility toward Judge Carrillo, although as an attorney representing R. R. and M. A. Guerra in Cause No. 3953 in the 229th District Court of Starr County, I prepared and successfully urged a motion that Judge Carrillo recuse or disqualify himself from further proceedings therein, and alleged and put on evidence indicating judicial misconduct which smacked of bribery, and filed briefs therein plainly suggesting that the things of value given to the Judge by the Plaintiff, Clinton Manges, during the pendency of the suit, constituted bribery as defined in the Texas Constitution and Statutes (Exhibit). Throughout this ordeal, Judge Carrillo treated me with courtesy, and I believe he understood that such hostility as I felt was directed, not at him, but at the almost terminal lack of attention to duty of higher echelons of government in Texas, which has permitted "police government" to exist in Duval and Starr Counties for almost a half century, and from time to time for shorter periods in other counties. The trouble seems to lie in the excuse, "what can we do, if they keep electing those people?" The bill of rights of the Texas and Federal Constitutions, which protect the civil rights of a minority of <u>one</u> against the majority of <u>99</u> cannot be so easily disposed of. While in a democracy the majority can determine the "person" of the judge, the judge, once elected, cannot ignore the law and enforce only the will of the majority

who placed him in office, denying basic rights to the minority, including the most fundamental right of a "fair trial before a fair and impartial judge." This latter is essentially what has been happening in Duval and Starr Counties long before Judge Carrillo assumed the bench, and will continue after his removal, if this Commission or the Texas Senate should cause his removal, unless judges, lawyers, and the political establishment learns and applies some of the plainly necessary ingredients of the hypothetical course, "Right and Wrong - 10-A."

In order that my testimony may be properly appraised I here answer some questions which logically arise:

1. I have not made a complaint to your Commission because your Commission is without power to grant adequate relief; that is, remove a judge and bar him from running for re-election and serving if elected. Note: Bear in mind that the Receiver was here appointed, not by Judge Carrillo, but by Judge Laughlin, (who had been removed by the Supreme Court of Texas, but permitted by the opinion of the Court to run for re-election and serve; 265 SW 2d 805). The significance of this will be dealt later with herein.

2. I did, along with Hon. Jack Skaggs, of Messrs. Carter, Stienberg, Skaggs and Koppel of Harlingen, Texas, file pleadings in other Courts in an effort to keep the case out of the 79th District Court or its successor in jurisdiction in Starr and Duval Counties, the 229th District Court, because of the common knowledge which we were convinced to be true, that any judge permitted to sit as judge by the machine controlling those two unfortunate "police counties" would be required to ignore the law and facts, and enforce only the will of men.

3. I have gone beyond the alleged misconduct of Judge Carrill in this memorandum to get at the evil involved, which has two aspects: (1) It would be one-sided justice to punish a judge for accepting a bribe, and let the litigant who gave the bribe go unpunished; and (2) When the Senate referred the matter to your Commission with full knowledge that your Commission could not give the full relief of barring a corrupt judge from re-election, in my disappointment, I confronted one of the 16 Senators who so voted. He insisted that the Senate, upon reconvening, would do its full duty; that neither your Commission nor the State Bar had done their duty in the matter, and that both had disciplinary responsibilities as to lawyers and judges; that if the law needed correction, they would then deal with that aspect of the matter. That the disciplinary responsibilities of your Commission and the State Bar were designed to eliminate the necessity of impeachment of judges, and possibly other state officials. While I reminded the Senator that the failure of others to do their duty was no excuse for the Senate not doing its duty, I could not argue with his position that a new, hard legislative look should be taken of this matter. In fact, I

agreed with him, and will at the conclusion of this memorandum, include some specific recommendations.

Moving now to evidence directly relating to Judge Carrillo, the motion that he recuse or disqualify alleged, and I submit the evidence proved, the following:

1. Directorship in the First State Bank and Trust Company: On December 10, 1970, at a time when the 444 shares of stock in said bank were in custodia legis (442 SW 2d 441), but were nevertheless during such period transferred from one of the defendants to the Plaintiff, Clinton Manges, the plaintiff who had added the M. Guerra & Son stock to other stock he had acquired to gain control of said bank, transferred 10 shares to Judge Carrillo and had him appointed a director in the bank. This was after he had been elected judge in the general election of 1970, but before he took office as judge. Nevertheless, this conduct cannot be separated from the fact that he as a lawyer and judge-elect was dealing with property in custodia legis, or if we indulge the fiction that it was possible to determine that the stock he got was not that of MGS, then the directorship could not have been delivered to him by the plaintiff but for the control made available through the transfer to plaintiff of the stock of MGS in custodia legis. In January 1971 Judge Carrillo was elected director of said bank and continued to serve after qualifying as judge.

2. Approval of Conveyances Made while Property was in Custodia Legis, and Without Requiring Plaintiff to Pay Receiver Therefor: Judge Carrillo qualified as Judge of the 229th District Court of Starr County early in January 1971. Among his early actions was the approval of a deed by the Receiver, James S. Bates, to the Plaintiff, Clinton Manges, conveying approximately 40,000 acres of ranch lands, based on a deed made by two of the defendants purporting to act for M. Guerra & Son to the Plaintiff on March 31, 1969, while the property was in custodia legis. The Plaintiff did not pay the full consideration for the land, and the deed did not recite a vendor's lien to secure the balance of the purchase price. The land was promptly mortgaged by the Plaintiff to the Bank of the Southwest National Association, and it was the failure of the Plaintiff to pay the Receiver the full purchase price, which brought on the last phase of the litigation wherein Judge Carrillo was held disqualified. In the end, the Plaintiff paid in to the Receiver a balance of $225,000.00, which relieved the necessity of selling the reserved one-half of the minerals under the 72,000 acres of ranch lands, which the Receiver's motion proposed to do, rather than make the Plaintiff pay up. (See final judgment of June 11, 1974) Attached Exhibit #9)

3. The Cadillac: On January 29, 1971, while this case was pending in Judge Carrillo's Court, the Plaintiff Clinton Manges gave his check to Riato Cadillac Company in San Antonio for $6,955.15, stubbed "for O. P. Carrillo '71 Cad." Judge Carrillo was driving a new Cadillac, and the rumor was that it was a gift from the Plaintiff, Manges. Judge Carrillo testified that this tied in to the deal concerning the directorship in the bank made on December 10, 1970; that he had traded a lot with a 2 story house located thereon and a trade-in automobile

for the ten shares of stock in the bank, and with Manges to pay the difference required to purchase for the Judge a new Cadillac automobile. Defects in this story are as follows:

a. Title not in Judge: Judge Carrillo offered in evidence to support his claim a deed dated October 12, 1970, but not recorded until August 23, 1971. The attorney for the Receiver, Dennis Hendrix, testified that he checked the title for the grantee, Clinton Manges, and that title was good, taxes all paid and that Manges got good title. (S.F. page _____, Exhibit). Our investigation revealed, however, that the lot was vacant, grown up in brush, that title was not in Judge Carrillo, and that taxes were delinquent since 1939. (SF page).

b. Title to Lot Described in Correction Deed not in Judge: After our presentation of evidence that the lot conveyed was not owned by the Judge, he claimed a mistake had been made and Judge Smith recessed the hearing to permit Judge Carrillo to explain this new discrepency. At the recessed hearing on April 10, 1973, the Judge offered in evidence a correction deed (Exhibit) dated April 9, 1973, and recorded the same day, which conveyed to Manges a lot which did contain a 2 story house, which house had been vacant for about 2 years, and did not suggest Mr. Manges' life style (the testimony being that he bought it for his family to live in). Our investigation indicated that the title to the lot so described was not in the Judge on the date of the original deed of October 12, 1970, nor the date of the alleged trade with Manges on December 10, 1970, and in fact title was transferred to Judge Carrillo by deed from Celia Carrillo Ramirez the same day as his correction deed to Manges, April 9, 1973, over two years after the attorney for the Receiver was supposed to have examined title and found good title in the Judge.

4. Loans to Judge from Bank: Evidence revealed further that the First State Bank and Trust Company, control of which had passed to the Plaintiff, Manges while the control stock was in custodia legis, loaned to Judge Carrillo some $306,000.00 secured by land, and $38,000.00 supported by the Judge's financial statement. These loans were made during the period from October 12, 1970 to March 1973. (SF page).

5. Grazing Leases from Plaintiff: The evidence revealed that during the pendency of this litigation, the plaintiff made two oral grazing leases to the Judge. The first lease was of from 1000 to 1500 acres for a 90 day period. Manges testified that no consideration was paid for the lease; that it was made as a "courtesy to the judge." Judge Carrillo testified that he intended to pay a consideration of $1.00 per acre per year for such lease. The second lease covered 5000 to 6000 acres of land, some of which was the MGS lands acquired by Manges, with no consideration paid down, but with the Judge to pay $1.00 per acre per year at the end of the 3 year term in cash or cattle, at Manges' option. Manges also had the option to cancel the lease at any time if he should have need of the land. (SF page).

6. Judge Carrillo's Failure to Control Officers of Court: The most shocking thing to me, and the most damaging thing to the Guerra defendants represented by Mr. Skaggs and myself, was the partiality inherent in the receivership freezing the MGS assets so far as our clients were concerned (with the exception

of the ranching operations conducted by Ruben and Virgil) while the Plaintiff Manges, and defendants, J. C. and V. H. Guerra went blithely along transferring bank stock to Plaintiff, conveying all of the MGS ranch lands to Plaintiff, all without the slightest fear of being held in contempt of Court - and in the end to find the Receiver and all officers of the Court pressing to confirm the transactions so made while the assets involved were in custodia legis. This must be considered in light of the fact that the Plaintiff had not only conferred favors on the Judge himself, but also on the Receiver, the Attorneys for the Receiver, and the Judge's brother. Some of these favors were as follows:

a. Manges attempted to have the Receiver appointed to the Board of Directors of the Groos National Bank, of which he had acquired controlling interest. (SF page).

b. Manges had caused the election of Dennis Hendrix, the partner of the Receiver, and attorney for the Receiver, to the Board of Directors of the First State Bank and Trust Company. (SF page)

c. Manges caused the election of Ramiro Carrillo, brother of the Judge, to the Board of Directors of said First State Bank and Trust Company. (SF page).

d. Manges caused the election of Frank R. Nye, Jr., one of the attorneys for the Receiver, to the Board of Directors of the said First State Bank and Trust Company. (SF page).

It is difficult to believe that Judge Carrillo did not know that the property being dealt with was in custodia legis, nor that the Plaintiff was all but smothering the Judge and all officers of the Court connected with the decision making process, with favors constituting "things of value" within the bribery definitions of the Texas Constitution and Statutes. After all, he served on the Board of Directors of the Bank with two attorneys for the Receiver, and the brother of the Judge, all of whom received their appointments or election to the Board at the hands of the Plaintiff, Manges, while litigation was pending. Having made these observations concerning alleged misconduct of Judge Carrillo, fairness requires that we admit that his misconduct is only a single element in the massive neglect of duty by higher echelons of state government, the judiciary, the State Bar, and lawyers generally, which has permitted these police counties to be established, develop and exist for half a century. To an extent the wide participation of others is a mitigating circumstance as to Judge Carrillo.

To understand this, it is necessary to understand the Guerra case itself, the involvement of others, great and small, and to appraise Judge Carrillo's conduct as a product of that environment.

CLINTON MANGES V. M. A. GUERRA, ET AL

The case of Clinton Manges, Plaintiff, vs. M. A. Guerra, R. R. Guerra, H. P. Guerra, Jr., (opposed to Manges) J. C. Guerra, V. H. Guerra and Virginia G. Jeffries (who were cooperating with Manges), defendants, No. 3953 in the 229th District Court of Starr County, Texas, is like an octopus, complicated from any standpoint you approach it. It had three phases: (1) First to determine the validity of the appointment by Judge Laughlin of the 79th District Court of James S. Bates as Receiver of M. Guerra & Son, herein called MGS a limited partnership owned by the defendants, which partnership owned 72,000 acres of land and 444 shares of stock in the First State Bank and Trust Company. (2) Second, upon determining the validity of such appointment, for the Court to supervise the Receiver in the payment of all debts of the partnership, partition the remaining assets among the partners according to their ownership; (3) Third, to dissolve the partnership pay court costs, and close the proceedings.

FIRST PHASE

This was settled when the Supreme Court of Texas refused the application of M. Guerra & Son, acting through M. A. and R. R. Guerra (represented by Mr. Skaggs) for a writ of error to the Court of Civil Appeals in Waco to review its opinion holding valid the appointment of James S. Bates as Receiver, as reported in 442 SW 2d 441. (Attached Exhibit #2)

SECOND PHASE

It was presumed by all parties, including the Receiver, that

when the general settlement was made on August 20, 1971 by orders agreed to by all parties except M. A. Guerra and Mrs. Virginia G. Jeffries (whose approval was considered unnecessary because Manges had taken their places in the partnership) which orders were signed and entered by Judge Carrillo, that the entire case was over but for the administrative detail of the Receiver making his final report, paying a few incidental bills and court costs, and dividing any money which might be left over. The stock in the First State Bank and Trust Company was conceded to Manges, along with about 40,000 acres of MGS ranch lands with one-half of the minerals, with executory rights as to leasing for oil, gas and minerals. Defendant R. R. Guerra, withdrew 13,269.559 acres of ranch lands, and received a conveyance from Manges of the one-half minerals thereunder which Manges acquired under the controversial deed given him by J. C. and V. H. Guerra while the land was in custodia legis, with full executory rights as to leasing for oil, gas, etc., and retained his partnership interest in the remaining one-half of minerals and town lots reserved in said deed. V. H. Guerra withdrew 12,000 surface acres and H. P. Guerra, Jr. withdrew 7,500 surface acres. J. C. and M. A. Guerra sold their interests in land to Manges. All of the defendants retained their partnership interest in the reserved one-half of the minerals owned by MGS under the 72,000 acres of ranch lands, being one-half interest in about 56,000 acres of minerals, more or less, subject, however to the executory rights of Manges to lease all for minerals, except the minerals under R. R. Guerra's 13,269.559 acres, as to which R. R. Guerra had executory rights.

THIRD PHASE

Time drug on after August 20, 1971 during which time R. R. Guerra, M. A. Guerra and H. P. Guerra, Jr., were urging the Receiver to close the receivership and dissolve the partner-

ship, so each could safely go about the business of separately managing their affairs, free of the receivership. But the Receiver could not close. The difficulty lay in the failure of the Plaintiff Clinton Manges to pay to the Receiver the balance owed for the land conveyed to him. In the final judgment entered on June 11, 1974, agreed to by Manges, he conceded owing an additional $225,000.00, which the agreed judgment ordered him to pay. By the calculations arrived at and contended for by R. R. and M. A. Guerra, he actually owed an additional $312,000.00. Obviously, the chickens had come home to roost on the action of the Court in approving the conveyance to Manges by the Receiver, without requiring Manges to pay the full price in cash, or reciting a first vendor's lien for the unpaid balance. It was this shortage which brought on the "Third Phase," in which it became necessary to move the disqualification of Judge Carrillo. The Receiver, on November 17, 1972 (15 months after the August 20, 1971 settlement) filed a document purporting to be a final accounting and report, indicating a shortage of some $300,000, and applying to the Court for authority to sell the one-half of the minerals reserved to the defendants. By more than strange coincident, the report noted that the plaintiff, Clinton Manges, was in the wings, and willing to pay $300,000 therefor, and thereby permit the estate to be closed. Since the defendants considered the minerals worth $100.00 per acre, their one-half interest in roughly 56,000 mineral acres would be worth $2,800,000, and they were shocked at this development. I was employed by R. R. Guerra and M. A. Guerra to oppose this sale. The examination into the receivership indicated that Manges lacked some $312,000 of paying for the lands conveyed to him by the Receiver. If this payment were made, there would be no necessity to sell any further assets. We filed pleadings to this effect.

To understand our position as lawyers, it is here noted that we did not represent R. R. nor M. A. Guerra in the first phase, and only H. P. Guerra, Jr. in the Second Phase until after February 27, 1970, when Mr. Skaggs (who represented R. R. and M. A. Guerra in the first and second phases to February 27, 1970, when settlement for R. R. Guerra was made with Clinton Manges) advised M. A. Guerra that he could no longer represent him. Thereafter we represented H. P. Guerra, Jr. and M. A. Guerra in the second phase until December 1, 1970, when H. P. Guerra, Jr., an attorney, made a direct settlement with Manges, and January 15, 1971 when the settlement contract of December 8, 1970 between M. A. Guerra and Manges was closed. The significance of these incidents to the bar and bench incidents cannot be understood in isolation, for which reason additional detail follows.

DETAILS OF FIRST PHASE

The plaintiff, Clinton Manges, who had been convicted of a felony (defrauding the Small Business Administration) on a plea bargaining guilty plea in 1965 (see Manges v. Camp, 474 F. 2d 97 for details, attached Exhibit #1) became interested in acquiring all or part of the 72,000 acres of Starr and Jim Hogg Counties ranch lands owned by the limited partnership known as M. Guerra & Son, hereinafter MGS. The partners, Horace P. Guerra, Jr., Ruben R. Guerra, Joe C. Guerra, Virgil H. Guerra, M. A. Guerra, and Virginia G. Jeffries, who will hereafter be referred to only by their first names for both brevity and clearity, were the six children of Horace P. Guerra, Sr., deceased. Manges was successful in August 1968 in inducing three of the partners, Joe, Virgil and Virginia, to deed to him their alleged 1/6 each of the surface of said ranch lands, with one-half of the minerals, but with Manges to have executory leasing rights as to the reserved one-half of the minerals.

Town lots owned by the partnership were also reserved. Joe also transferred to Manges stock in the First State Bank and Trust Company of Rio Grande City, some of which was allegedly owned by MGS, but standing in Joe's name but some admitted to be property of Joe. These three deeds provoked the litigation involved in the first phase, resulting in the appointment on October 9, 1968 of James S. Bates, Receiver, in Cause 3953, by Judge C. Woodrow Laughlin, Judge of the 79th District Court of Starr County. (442 SW 2d 441 M. Guerra & Son v. Manges, Attached Exhibit #2) It was common knowledge among members of the bar in South Texas, if not also of members of the public, that the Judge of the 79th District Court was captive of the political machine which dominated Duval and Starr Counties and must do the bidding of the machine; if not willing to do so, he would not be judge! A significant footnote here is that Judge Laughlin had been removed as judge by the Supreme Court of Texas over a decade ago, but in an unfortunate opinion permitted to run for re-election and resume his duties as judge, the Supreme Court avoiding the option to bar him from further public office as provided by the Constitution in cases of impeachment. (In Re: Laughlin, 265 SW 2d 805, March 13, 1954, Attached Exhibit #3) It was known by the litigants that the Plaintiff, Clinton Manges, had moved from Bexar County to Duval County to get under the umbrella of general immunity from the law, and favoritism of the law available to the political machine members and their associates, and had made alliances with the machine; that the defendants, M. A., Ruben and Horace Guerra, as remnants of the "Old Party" in Starr County were persona non-grata to the dominant machine - and believed that the machine dominated judge (whether Laughlin, Luna or Carrillo) would be used to plunder the assets of MGS

in the pending receivership. Consequently the strategy pursued by attorneys for Ruben, M. A. and Horace was to exhaust all possibilities of keeping the case out of 79th District Court, and later the 229th District Court of Starr County, which replaced the 79th, as evidenced by the following sequence of events:

October 9, 1968: The petition of Plaintiff, Clinton Manges, against M. A. Guerra, and other partners in M. Guerra and Sons was presented to Judge C. Woodrow Laughlin of the 79th District Court of Starr County (apparently before the petition was filed with the clerk) and Judge Laughlin set October 17, 1968 as a date for the hearing for defendants to show cause why a Receiver should not be appointed for M. Guerra & Son (hereinafter for brevity referred to as MGS). The petition was filed with the Clerk of the Court in Rio Grande City on October 11, ~~1975~~, 1968. along with the FIAT setting date for hearing. (Exhibit)

October 28, 1968: M. A. Guerra and R. R. Guerra, two of the defendants in the suit filed by Manges for receivership, employed the law firm of Carter, Stiernberg, Skaggs & Koppel of Harlingen, Texas to represent them and this firm filed Cause No. B-24674 in the 93rd District Court of Hidalgo County, Texas wherein said two defendants acting for the partnership, MGS, sued the Plaintiff in the receivership suit as well as Joe, Virgil and Virginia seeking a declaratory judgment declaring invalid the three deeds from Joe, Virgil and Virginia to Manges, and for damages. (Copy of original petition, Attached Exhibit #4) The firm of Carter, Stiernberg, Skaggs & Koppel also filed a suit in Goliad County, in an apparent further effort to keep the litigation out of the District Court in Starr County.

November 18, 1968: Judge Woodrow Laughlin, as judge of the 79th District Court, which then covered Starr County, granted the petition of Clinton Manges for receivership, appointed Hon. James S. Bates, Receiver and placed all of the assets, both land and 444 shares of bank stock, in receivership. These two defendants, Ruben and M. A. appealed, being represented in such appeal by attorney Jack Skaggs of Messrs. Carter, Stiernberg, Skaggs & Koppel. While the property of MGS was thus in custodia legis, and Judge Laughlin's judgment on appeal, the plaintiff Manges and defendants Joe and Virgil continued to deal with the assets of MGS, as evidenced by the following:

a. At some time after November 18, 1968 and January 1971, defendant, J. C. Guerra, transferred to plaintiff, Clinton Manges, the stock in First State Bank and Trust Company standing in his name, some of which was alleged to be property of MGS, and therefore in custodia legis.

b, On March 31, 1969 J. C. Guerra and V. H. Guerra, proporting to act for the partnership of M. Guerra and Son, executed a deed to Clinton Manges proporting to convey to him the entire 72,000 acres of ranch lands.

The above acts were in fact in contempt of court, had the litigation been before a fair and impartial judge. The frustration of justice was massive, since these acts in contempt for all practical purposes disposed of the entire property of which the Court had taken custody for the protection of all parties. Obviously, there was no protection for Ruben, M. A. or Horace, when the entire judicial process was now rigged, not to punish the contempt, but to enforce upon Ruben, M. A. and Horace, the actions of the plaintiff and two defendants in so dealing with the property of which the Court had taken custody. The only hope appeared to their attorneys to be to get the case out of the hands of the District Court of Starr County, whether it be the 79th, the 229th, whether presided over by Judge Laughlin, Judge Luna or Judge Carrillo, as is clearly demonstrated as we resume the sequence of events and the maneuvering of attorneys to accomplish this purpose:

May 22, 1969: The Court of Civil Appeals in Waco affirmed the judgment of Judge Laughlin in appointing a receiver. (442 SW 2d 441, Attached Exhibit #2)

June 10, 1969: Horace, one of the partners who was an attorney, had not joined Ruben and M. A. in opposition to the Receivership, nor in the case in the 93rd District Court of Hidalgo County (Attached Exhibit #4) for the reason he was attempting the role of peacemaker in hopes of a peaceful partition, learned of the deed of March 31, 1969, which will hereinafter be referred to as the "big deed." Horace, like Ruben, M. A. and Virgil, desired to retain his ranch lands. We here include Virgil (who had in August 1968 executed the deed to Manges sought to be invalidated) because it was the understanding of Ruben, M. A. and Horace that Virgil, who was in the ranching business and knew no other profession, had no intention of disposing of his ranch lands; that there was a secret understanding between Virgil and Manges, that through use of the deeds given by him they would force other partners to sell their interest, and in the end Virgil would receive his land back. This arrangement was carried out in the transactions recommended by the Receiver and approved by Judge Carrillo. Horace, therefore, employed Garland F. Smith of Weslaco to represent him. The decision was made to intervene in Cause No. B-24674 in Hidalgo County, Texas in an effort to have the deeds given by Virgil, Joe and Virginia and the "big deed" set aside, both on grounds of violation of the partnership agreement and on grounds of fraud against other partners; also to set aside sale of bank stock.

September 1, 1969: There were rumors of dissatisfaction by the Duval-Starr political machine with Judge Laughlin;

that he was resisting some of the demands. Whether true or not, I do not speculate. Oscar Carrillo, brother of Judge O. P. Carrillo and County Commissioner Ramiro Carrillo, was a member of the House of Representatives, and desired to create a District Judgeship for his brother, O. P. Carrillo. House Bill No. 292, introduced by Oscar Carrillo creating the 229th Judicial District composed of Duval, Starr and Jim Hogg Counties became effective, taking Jim Hogg County from the 49th District Court in Laredo and taking Starr and Duval Counties from the 79th District Court. Because the brother of Judge Carrillo was the author of the bill creating the Court, the governor could not appoint O. P. Carrillo and appointed as caretaker until O. P. Carrillo could run and be elected, Judge R. F. Luna. O. P. Carrillo ran at the next election.

October 1, 1969: The Supreme Court of Texas refused the application for writ of error filed by Mr. Skaggs on behalf of Ruben and M. A. and a motion for rehearing was filed.

October 21, 1969: Ruben, M. A. and Horace filed in the United States District Court for the Southern District of Texas Civil Action 69-B-9 in re: M. Guerra and Son, presenting to the Federal Court a real estate arrangement in bankruptcy, under the terms of which all action in the receivership case, 3953 in Starr County, was stayed until final action by the Federal Court. In this action, Ruben and M. A. were represented by Jack Skaggs of Carter, Stiernberg, Skaggs & Koppel and Horace was represented by Garland F. Smith of Smith, McIlheran, Yarbrough & Griffin. All three applicants were represented by Sheinfield, Maley and Kay of Houston, the latter being bankruptcy specialists.

February 27, 1970: Ruben, with the assistance of his attorney Jack Skaggs, made a settlement with the Plaintiff, Clinton Manges, under the terms of which Ruben was to withdraw from MGS his 18.66% interest in the ranch lands which was calculated to be 13,445.20 acres, and further that R. R. Guerra would preserve his percentage interest in the remaining one-half of the minerals owned by MGS, to which Manges made no claim under the "big deed" and Manges was to convey to Ruben the one-half of minerals under Ruben's 13,445.20 acres, together with full executory rights as to leasing. Manges also agreed to pay all receivership expenses chargeable to Ruben's interest in excess of $8,333.00. At this point Mr. Skaggs advised M. A. that he could no longer represent him because he had made this settlement for Ruben; that he felt that M. A. was so overdrawn in his accounts with the partnership, he would likely have nothing coming anyway. Mr. Skaggs had prior to this date accepted employment from the Plaintiff, Clinton Manges, to represent him in his effort to gain control of the Groos National Bank in San Antonio. M. A. then, employed Garland F. Smith to represent him. My firm then filed in Federal Court an amended plan on behalf of Horace and M. A., Mr. Skaggs having dismissed as to Ruben.

December 1, 1970: Horace negotiated and signed directly with the Plaintiff, Clinton Manges, a settlement under the terms of which he was to withdraw from the partnership 7500 acres of land and retain his interest in the one-half of the minerals reserved in the "big deed" with Manges to stand receivership costs and expenses in excess of $50,000.00. Horace then requested my firm on his behalf to dismiss the federal proceedings as far as he was concerned. This was done, leaving M. A. the only partner now in Federal Court contending for an arrangement in bankruptcy.

December 8, 1970: M. A. made a settlement with Manges, under the terms of which he sold to Manges his interest in the MGS for $230,000.00 cash, with Manges to assume and pay any income tax asserted against him because of the profit in the sale of his interest, with Manges to assume M. A.'s part of the internal and external debts to the partnership but to have M. A.'s interest in assets of the partnership. M. A. reserved his interest in the undivided one-half of the minerals reserved in the "big deed" and town lots situated in Roma and Rio Grande City and certain land in Goliad County.

December 10, 1970: O. P. Carrillo, who had been elected judge of the 229th Judicial District in the general election of November 1970 received from the Plaintiff Clinton Manges qualifying stock in the First State Bank and Trust Company and was appointed to the Board of Directors thereof.

December 31, 1969 - January 1, 1970: The term of R. F. Luna of San Diego, Texas as Judge of the 229th Judicial District expired, he having been appointed by the Governor, and the elective term of O. P. Carrillo as Judge began. Judge Carrillo qualified promptly after January 1, 1971.

January 6, 1971: M. A. Guerra dismissed the proceeding in Federal Court for arrangement in bankruptcy and promptly thereafter James S. Bates qualified as Receiver in this cause.

February 11, 1971: The Receiver filed an application to sell to the Plaintiff Clinton Manges certain lands (which we have calculated to be approximately 40,899 acres) free and clear of all liens and encumbrances of whatever nature, the consideration being that he had assumed certain debts of the corporation and was thereby the largest creditor of the corporation. The deed carrying this out was dated February 9, but the Receiver did not deliver the deed to Manges until the application was filed and approved by the court on February 11, 1971. The consideration was the debts assumed "and the further consideration of the sum heretofore agreed upon between the owners and Clinton Manges, as shall be shown in the report of sale and of the distribution to said Clinton Manges" etc. The application and deed which followed specifically reserved the undivided one-half of the minerals which was in controversy in the Third Phase. The record is not clear as to the unpaid balance of cash owed by Manges to the partnership for the land conveyed to him, but apparently it is somewhere between $225,000.00 ultimately paid and $312,000.00.

February 11 to August 20, 1971: Ruben's understanding with Manges was that immediately upon the conveyance of the 40,899 acres to him, the Receiver would promptly convey to Ruben, Horace and Virgil the lands they were to receive, and to all partners the remaining undivided one-half of the minerals, town lots and Goliad County land which had been reserved in the "big deed." But this was not done. Manges and the Receiver required that the other partners pay into the partnership the sums of money required to pay their pro-rata part of internal and external debts of the partnership before receiving deeds to their lands. Manges made certain additional requirements of Ruben, one being that he concede additional land. Ruben acceeded to all of these demands. When the settlement was made on August 20, 1971 (this being the third settlement Ruben had made with Manges) he fully expected that now Manges would live up to his contract and the Receiver would close the receivership and convey the interest to the former partners for their reserved one-half of minerals, town lots and Goliad County land.

EXPLANATORY NOTE: Garland F. Smtih did not participate in the proceedings after January 15, 1971, when the settlement between M. A. Guerra and Manges was closed in the Directors' Room of the First State Bank and Trust Company in Rio Grande City, by the delivery to M. A. of a cashier's check for $230,000 and delivery by M. A. to Manges of deeds, etc. The reason was that Horace, being an attorney, did not need assistance in the routine of closing; and M. A. having sold his interest for cash, with Manges assuming all of his obligations, was no longer practically interested.

August 21, 1970 to November 17, 1972: During this period of time Ruben was represented by attorney Jack Skaggs. Jack Skaggs repeatedly requested the Receiver to close the receivership and deliver to Ruben his 18.66% interest in the reserved one-half of the minerals, town lots and Goliad County lands, all of which the Receiver refused to do. M. A., in the interim, had not participated further in the affairs of the partnership, depending upon Manges who was under contract to represent his interest in the partnership affairs and to see that his 17.66% interest in reserved minerals, town lots and Goliad County land was ultimately delivered to him by the Receiver. M. A. had no apprehension concerning this matter until the Receiver on November 17, 1972 filed his "accounting and report on condition of Receivership, application for sale of properties and requests for dissolution of receivership and partnership of M. Guerra and Son", under the terms of which the Receiver proposed to sell to Manges the undivided one-half of the minerals, town lots and other assets of the partnership for $300,000.00. This involved the sale of the minerals which constituted a consideration for the settlement as between Ruben and Manges and M. A. and Manges. Whereupon M. A. again called upon Garland F. Smith to intervene on his behalf to protect his 17.66% interest in the minerals, town lots and Goliad County land. Ruben concluded that because of attorney Skaggs' employment by Manges in the Groos National Bank matter, and Skaggs' inability to induce Manges and the Receiver to carry out the settlement agreements made, that he should employ other counsel and did arrange for the replacement of Mr. Skaggs in representing him in the matter by Garland F. Smith. Thereafter M. A. and Ruben were both represented by his firm. Thus began the Third Phase.

THE THIRD PHASE

Upon being requested by Ruben to assume his representation, I first conferred with Mr. Skaggs, who confirmed that he had authorized Ruben to employ other counsel; that he had considered the matter hopeless because of the relationship which had been established between Manges and Judge Carrillo. He consented to my representation of Ruben, and wished me luck. While my clients considered the Judges of the 79th and 229th District Courts entirely subservient to the Plaintiff, Manges, because of his alliance with the Duval-Starr political machine, they

considered Judge Carrillo the more dangerous because of the know-how of machine politics he had learned through his long and active participation in Duval politics. I checked available sources, and especially the opinion of the Supreme Court of the United States wherein Attorney Abe Fortas had induced the Supreme Court to overturn a conviction of O. P. Carrillo, George Parr and others for mail fraud and conspiracy to commit mail fraud. The victims of the 19 counts of frauds of which the jury found the defendants guilty were the Benavides Independent School District, Duval County, the State of Texas and the taxpayers of each. (George Parr, et al vs. United States, June 13, 1960, 363 US 470, 80 S. Ct., 1171, 4 L ed 2d 1277, Attached Exhibit #5) The majority of the Supreme Court did not overturn on grounds that the frauds had not been committed, but on the grounds that the prosecution had stretched the mail frauds statutes too far. (See 4 L ed 2d pages 1280 to 1292) Justice Frankfurter, joined by Justices Harlan and Stewart, wrote a strong dissent, (4 L ed 1292 to 1298) among other things stating:

> No Texas Statute required them (defendants) to collect what they intended to spend to keep the schools running, plus an amount which they intended to misappropriate, and that is precisely what the proof established and the jury found that they did. (4 L ed at 1294)

It is difficult to read the 12 page majority opinion and the 6 page dissent and the authorities relied upon by each, without a sensation that the law as it existed at the time was bent materially by the majority to accommodate the plight of the defendants.

EXPLANATORY NOTE: When faced with the persuasion of the above opinion and dissent that the power of the machine could reach and affect decisions of the majority of the Supreme Court of the United States, an attorney faced with urging the disqualification of a machine judge must take careful stock of his grounds. But the more dangerous consideration was that we were in State Courts, and in spite of the jury conviction of the defendants of fraud against the School District, County and State, there was no effort by any State agency to recover the misappropriated funds. Also, Mr. Skaggs had informed me that he had attached the deed of March 31, 1969 to his brief which went before the

Waco Court of Civil Appeals, and the fact of such dealing with property in custodia legis did not deter the Court from affirming the receivership for the benefit of those whose hands were thus dirtied. We also knew the reputation of the Plaintiff, Clinton Manges, for truth and verasity to be very bad, having had prior experience in representing farmers who had sold their cotton to his Mongoose Gin of Raymondville, and had been forced to sue him, the gin, and purchasers of the cotton, to recover the purchase price, and were forced to settle for less than the full amount owed. We knew further that he was being financed by the Bank of the Southwest National Association in his drive to gain control of the Groos National Bank of San Antonio, which bank was represented in the matter by one of the more powerful law firms of the State, now Fulbright & Jaworski of Houston. Said bank now held a multi-million dollar mortgage on the lands conveyed by the Receiver to Manges, and other tracts had been conveyed by Manges to persons powerful in the economic and political affairs of South Texas, whose mortgages and titles would be void if the Judge were disqualified. There was only one thing going for our clients: the facts were so raw that no impartial trial judge or appellate court could openly condone it. The facts had to be brought out into the open.

We now come to the series of events involved in the third phase, including the disqualification of Judge Carrillo and final judgment entered by retired Judge Max Boyer on June 11, 1974:

November 17, 1972: The Receiver filed his designated final report and accounting and motion to sell the retained one-half of minerals reserved to Ruben, M. A, Horace, Joe, Virgil and Virginia, and it was set for hearing on January 15, 1973.

January 8, 1973: M. A. and Ruben filed their answer to the Receiver's Report, and filed their cross-actions.

January 9, 1973: Ruben and M. A. transmitted to the clerk their original "Motion for Disqualification or Recusation" of Judge O. P. Carrillo, based on his accepting from one of the litigants, Manges, directorship in the First State Bank and Trust Company, Manges' control of which bank required judicial approval of stock transferred to Manges while such stock was in custodia legis.

January 15, 1973: Hearing on Motion of Disqualification held before Judge O. P. Carrillo, the presiding Judge of the 229th Judicial District. Hearing recessed to February 20, 1973.

January 25, 1973: Attorney Harvey L. Hardy of San Antonio filed for Virgil and on January 29 filed answer for Joe. Mr. Hardy did not, on behalf of his clients, oppose or support the disqualification motion.

January 23, 1973: Request for Admission submitted to Judge Carrillo under Rule 169. These were answered by Judge Carrillo admitting directorship in the bank; asserting that the Cadillac had been acquired from Manges by trading a house and lot for the Cadillac and bank stock; and admitting a three year grazing lease from Manges, to be paid at the end of the term. (Attached Exhibit #6)

February 5, 1973: Judge Carrillo requested Judge J. R. Alamia of the 92nd District Court to have another judge hear the Motion of Disqualification.

February 7, 1973: Hon. J. R. Alamia, Presiding Judge, Fifth Administrative Judicial District appointed Hon. Magus F. Smith, Judge of the 93rd District of Hidalgo County, Texas to hear the Motion to Disqualify or Recuse.

February 20, 1973: Hearing held by Judge Magus F. Smith on Motion of Disqualification; recessed to March 30, 1973 to hear additional evidence.

February 21, 1973: Ruben and M. A. filed Supplemental Motion of Disqualification, alleging the additional grounds of the grazing lease on a substantial acreage free, and the lease on 5000 acres with consideration to be paid at the end; and alleging also the house and lot trade for bank stock and the Cadillac.

March 1, 1973: Motion filed by Ruben and M. A. that Judge take judicial notice of certain proceedings, and that Starr and Duval counties were controlled by a political machine, and that such control did affect the judiciary. Judge Smith denied the latter request, but presumably went along with taking judicial notice of the pleadings. A bill of exceptions was taken on his refusal to take notice of the political machine, and data submitted.

March 2, 1973: Answer of Ruben to cross-action of Receiver mailed. Receiver alleged Ruben had misled him because a bill assumed by Ruben to a Houston law firm was not yet paid.

March 30, 1973: At this hearing on the Motion the Second Supplemental Motion for Disqualification or Recusation was filed, alleging the rights to trial before a fair and impartial judge as contained in the 14th and 5th amendments to the U. S. Constitution, and their right to equal protection of the laws under the 14th Amendment. The hearing was recessed to April 23, 1973 to permit Judge Carrillo and Manges to explain circumstance that the deed given Manges was to a vacant lot, not owned by Judge Carrillo, rather than to a lot with two story house.

April 23, 1973: Hearing held on Motion of Disqualification; hearing closed and parties ordered to submit final briefs to Judge Magus F. Smith.

May 11, 1973: Receiver, James S. Bates, filed motion to reopen evidence on the receivership. Set for hearing May 18.

May 14, 1973: Ruben and M. A. transmitted by mail to the District Clerk their answer to the Motion of Receiver to reopen evidence on the disqualification matter.

May 18, 1973: Motion to reopen heard and granted. At the close of evidence Judge Magus F. Smith ruled that Judge Carrillo was disqualified. (Comments of Judge Smith and order, Attached Exhibit #7)

May 21, 1973: Judge Magus F. Smith signed the order holding Judge O. P. Carrillo disqualified as of February 1, 1973.

June 4, 1973: Judge Vernon D. Harville, who had been appointed by Hon. Joe R. Alamia, Presiding Judge of the 5th District to hear the case on the merits, ruled that all transactions after February 1, 1971 were void.

August 23, 1973: Ruben and M. A. filed separate motions for summary judgment against Manges, which were heard in Corpus Christi by Judge Harville, and granted from the bench, but he entered only the judgment in favor of M. A. and declined to enter the judgment in favor of Ruben. (See M. A.'s judgment, attached Exhibit #8)

October 1, 1973: Hearing held in Rio Grande City before Judge Harville on the merits of the Receiver's motion. An auditor was appointed, but no other significant action taken. The Motion for Summary Judgment in favor of Ruben was re-urged, but no action taken.

December 4, 1973: Hon. J. R. Alamia, Judge of the 92nd District Court and presiding Judge, Fifth Administrative District, called a conference of the attorneys involved in the case to advise them that Hon. Vernon D. Harville had found that his own docket in Corpus Christi so heavy that he could not continue handling the Guerra case, and must withdraw. Judge Alamia counselled all attorneys to explore fully the possibilities of settlement.

June 11, 1974: In the interim between Judge Harville's withdrawal and June 11, 1974, Judge Alamia with the assistance of Chief Justice Joe Greenhill of the Texas Supreme Court had made arrangement for Hon. Max Boyer, a retired District Judge residing in San Antonio, to take charge of the case. One hearing had been held in San Antonio, largely to acquaint Judge Boyer with the case, and he set it on the merits for trial in Rio Grande City on June 10, 1974. At the hearing on June 10, 1974 negotiations for settlement which had resulted from Judge Alamia's urging began making some headway. Judge Boyer made a few significant rulings on law points, which assisted settlement. On June 11, 1974, the second day of the hearing, about 3:00 o'clock in the afternoon, a settlement was reached under the terms of which Manges agreed to pay over to the receiver a balance of $225,000.00. This relieved the necessity for sale of the reserved one-half of the minerals and town lots, which was the bone of contention in the Third Phase. (See copy of the judgment so entered, Attached Exhibit #9)

OBSERVATIONS AND COMMENTS

1. A dishonest Judge is the first beachhead and the last refuge of a corrupt political machine. Without corrupting the courts, illegal purposes of a political organization cannot be accomplished, and the machine cannot exist. There are legitimate purposes for political organization, and no one questions the fact of life that the political majority can and should determine the "person" of the judge. Having done that their authority over the Judge ceases. Such is the genius of a "government of laws" whereby a bill of rights protects a minority of one against tyranny of the majority, no matter how great. If free men can

have their civil and criminal litigation tried before fair, impartial and competent judges, they will not submit to dictatorship. Once a dictatorship has existed as in the unfortunate police counties of Starr and Duval for half a century, the hazards of resistance soon render submission comfortable. It has now been going on too long. For background there is attached a series by the Dallas Morning News, styled, "Duval, a Troubled Dukedom" (Attached Exhibit #10).

2. There appeared to be in the makings a receivership racket similar to that which existed in New York under the infamous Tweed Ring, wherein three Judges were debenched, one being the father of Justice Cordoza, whose distinguished career redeemed the family name. A good account of the effort taken by the New York Bar to restore integrity to the judiciary is contained in a book by George Martin entitled "Causes and Conflicts", of which Chapter 6 is attached. (Attached Exhibit 11)

3. It is manifest that the job of restoring integrity to the Texas judiciary cannot be left to the harrassed voters of the police counties, nor the local District Attorney. After all, the local DA is the fox put in charge of the henhouse by the machine. When local government breaks down in so basic a matter as justice, the remedy must come from a higher echelon of government, here the Attorney General through available constitutional and statutory provisions, or the Governor through martial law. That such was contemplated by the founders of our republic is evident from a review of the Federalist Papers, a brief of which my firm submitted to the Federal Court in the bankruptcy proceeding. (Attached Exhibit #12).

That we cannot safely ignore the problem of police counties along the Texas-Mexican border is equally manifest. We now have two generations of citizens in these two counties, many still speaking Spanish with little competence in English, who

have grown up without having ever seen anything enforced other than the will of the bosses. When a new generation of "Chicanos" take over in Zavala County, and send the County Judge and Commissioners Court to Castro's Cuba, and return with glowing reports of the good things observed there, and without noting substantial difference, we are all alarmed. Is this just a reflection of what we have taught them, that the whole concept of a "government of laws and not of men," and "equal justice under law" are just cliches? Have we left the impression with them that these basics of the American system are just like "immaculate conception," allright as an article of faith, but not being practiced locally?

5. The conduct of lawyers, the political and business establishment, and the press are not blameless. A lawyer who knowingly takes advantage of the corruption of a judge for the benefit of himself or his client is violating his oath to uphold the Constitution and Laws of the United States and Texas, and must share guilt with the judge, and his businessman client; and the lawyer who submits his client and himself to the debasement of a corrupt judge is doing less than the requirements of his oath.

6. The State Bar of Texas with its disciplinary powers over lawyers and judges has direct responsibility to enforce these ethical, if not legal, obligations of its membership; and the fact that a lawyer is a judge does not render him immune from discipline of the Bar. If a businessman bribes a judge, the Bar, Press and Business community should be as aggressive in bringing to justice the businessman who gave the bribe as they are in hounding a public official out of office. In spite of all of the publicity of the troubles in Duval County of recent months, the press has not addressed itself to the possibility that democracy could be restored (or established, might be a

better word) there, but they have only speculated as to who may emerge as a "new duke of Duval." It seems the press delights in the corruption because it is news, and gives little emphasis to its duty to help put it down.

7. Texas Senators who indulge senatorial courtesy to perpetuate or protect a corrupt judge, or who submit to the requirements of senatorial courtesy exercised by another Senator for such purpose, are abusing the fundamental and proper use of this legislative amity. The members of the House of Representatives and Senate who voted for creation of the 229th District Court, knowing it was a court being created as a plaything for a corrupt political machine, should examine the requirements of their oaths to uphold the Constitution and Laws of the United States and Texas. The Texas Senate should recognize that it is the only body under existing law who can give full relief by barring a corrupt judge from again holding office. If they do not like the chore, then they should pass legislation giving some proper agency power to give full relief.

8. Move now to specific appraisal of Hon. Leon Jaworski's role as adviser to the Senate on procedural matters. I consider him as compromised in such undertaking because his client, The Bank of the Southwest National Association, is heavily involved with the Plaintiff, Clinton Manges, and is carrying mortgages against Manges and his Duval County Ranch Company in excess of $10,000,000.00. I attach hereto my correspondence with Mr. Jaworski concerning this matter. (Attached Exhibit #13) While I did not question the integrity of the procedural advise he might give the Senate, I do now specifically question his recommendation (adopted by the Senate) that to impeach, the misconduct must be proved "beyond a reasonable doubt." This is in violation of the test applied by the Supreme Court of Texas as to removal of judges from office, wherein the test is by "preponderance of evidence." (In Re; Brown, 512 SW 2d 312) Fundamentally, the

Jaworski test would ignore the right of litigants to try their cases before fair and impartial judges, and exhalt the right of a judge (only a doubt removed from being a felon) to hold office. It is the right of the people to fair and impartial judges the Constitution protects, not the right of lawyers to jobs as judges. Impeachment does not take the judge's liberty; just keeps him from damaging others.

RECOMMENDATIONS

We do not have to put up with corrupt judges in Texas, and we are not without remedy. I recommend the following:

1. That Duval County be returned to the 79th Judicial District, and that Jim Hogg County be returned to the 49th Judicial District; that Starr County be attached to one of the four district courts of Hidalgo County, the 92nd, 93rd, 139th or the 206th.

2. That the 229th District Court be either abolished, or if Judge Carrillo is removed, the 229th Judicial District be enlarged to include the full 254 counties of Texas, and given special jurisdiction to try the following type cases:

a. Cases that cannot now be tried: Statewide election contests obviously cannot be tried in a practical way under existing law, as was adequately demonstrated in 1948. There may be other such situations.

b. Transfers from police counties: When a political machine dominates a Texas county, and the domination affects the proper administration of justice, any litigant so harrassed should be permitted to apply for transfer of his case to this statewide court, subject to the discretion of the judge to prevent abuse.

c. Appeals from Administrative Agencies: Such a statewide court would relieve the courts of Travis County of this appellate chore, and relieve litigants over the state of the fear that their appeals may be adversely affected by Travis County politics.

Respectfully submitted,

Garland F. Smith

Clinton MANGES, Plaintiff-Appellant,
v.
William B. CAMP et al., Defendants-Appellees.
No. 72-1962.

United States Court of Appeals,
Fifth Circuit.
March 1, 1973.

Action by owner of controlling interest in stock of national bank for permanent injunction restraining comptroller of the currency from continuing in force order prohibiting stockholder from further participation in conduct of affairs of the bank. The United States District Court for the Western District of Texas at San Antonio, Jack Roberts, J., dismissed the suit and stockholder appealed. The Court of Appeals, Lewis R. Morgan, Circuit Judge, held that where owner of controlling interest in stock of national bank began purchasing stock in the bank in December of 1970, and reported to comptroller of currency the acquisition of controlling interest on February 14, 1971, disclosing also a 1965 conviction of making false statement to the small business administration, comptroller was not acting within scope of his proper authority in prohibiting stockholder from further participation in conduct of affairs of the bank, and the clear departure from statutory authority warranted judicial review notwithstanding withdrawal statute.

Reversed and remanded.

1. Administrative Law and Procedure ⇐663

Court-created exception to jurisdiction withdrawal statutes comes into play when there has been a clear departure from statutory authority, and exposes the offending agency to review of administrative action otherwise made unreviewable by statute.

2. Banks and Banking ⇐248

Owner of controlling interest in stock of national bank could not constitutionally be deprived of effective ownership of stock without notice, hearing or any judicial review or administrative procedure other than the decision of the comptroller of the currency. Federal Deposit Insurance Act, § 2 [8] (g)(1), (h)(2), (i), 12 U.S.C.A. § 1818(g)(1), (h)(2), (i).

3. Banks and Banking ⇐234

Congressional intent in promulgating statute providing that whenever any person participating in conduct of affairs of bank is charged with commission of or participation in felony involving dishonesty or breach of trust the appropriate federal banking agency may prohibit him from further participation in conduct of affairs of bank was to routinely eliminate any person who is convicted or charged with a felony involving a breach of trust while he is at the same time participating in the affairs of a national bank. Federal Deposit Insurance Act, § 2 [8] (g)(1), 12 U.S.C.A. § 1818(g)(1).

4. Banks and Banking ⇐216

Where owner of controlling interest in stock of national bank began purchasing stock in the bank in December of 1970, and reported to comptroller of currency the acquisition of controlling interest on February 14, 1971, disclosing also a 1965 conviction of making false statement to the small business administration, comptroller was not acting within scope of his proper authority in prohibiting stockholder from further participation in conduct of affairs of the bank and the clear departure from statutory authority warranted judicial review notwithstanding withdrawal statute. Federal Deposit Insurance Act, §§ 2 [8] (g)(1), (2), (i), § 1818(g)(1)(h)(2), (i).

5. Courts ⇐263(5)

In suit to review order of comptroller of currency prohibiting owner of controlling interest in stock of national

Attached Exhibit No. 1

bank from further participation in conduct of affairs of the bank, pendent jurisdiction existed as to the bank and its directors to restrain directors from refusing to permit stockholder's participation in the affairs of the bank. Federal Deposit Insurance Act, § 2 [8] (g)(1), 12 U.S.C.A. § 1818(g)(1).

Jack Skaggs, James Harris Denison, Jr., Harlingen, Tex., for plaintiff-appellant.

William S. Sessions, U. S. Atty., San Antonio, Tex., Walter H. Fleischer, Anthony J. Steinmeyer, Dept. of Justice, Washington D. C., Ralph Langley, Emerson Banach, Jr., San Antonio, Tex., for defendants-appellees.

Before JOHN R. BROWN, Chief Judge, and THORNBERRY and MORGAN, Circuit Judges.

LEWIS R. MORGAN, Circuit Judge:

Clinton Manges, owner of controlling interest in the stock of The Groos National Bank, received an order on March 4, 1971, from the Comptroller of the Currency of the United States, prohibiting Manges "from further participation in any manner in the conduct of the affairs of The Groos National Bank". Manges filed suit in the district court below seeking a permanent injunction against the Comptroller from continuing this order in force. The district court dismissed the suit for want of jurisdiction due to 12 U.S.C. § 1818(i), a withdrawal statute. This case involves appeal of that dismissal.

This court has determined that jurisdiction does lie in this specific case, that the withdrawal statute is not applicable here, and that the Comptroller acted outside of his proper statutory authority.

FACTS

On October 8, 1965, Clinton Manges was convicted upon his plea of guilty to the charge of making a false statement to the Small Business Administration, in violation of 15 U.S.C. § 645. Manges was sentenced to pay a fine of Two Thousand Five Hundred ($2,500.00) Dollars, and he did so pay on October 11, 1965. In December of 1970, Manges began purchasing shares of the common stock of The Groos National Bank of San Antonio, Texas. By February 2, 1971, he had obtained controlling interest of the Bank's common stock. Manges reported this acquisition to the Comptroller of the Currency on February 14, 1971, along with other required information concerning his background. The 1965 conviction was included in that information. Manges, on February 16, 1971, presented written requests to the Bank's Board of Directors asking them to pass certain resolutions. The Board took no action.

The Comptroller of the Currency then issued the order of March 4, 1971, which prohibited Manges from participating in any manner in the conduct of the affairs of the Bank.[1] A copy of the order was sent to Manges and to The Groos National Bank. Pursuant to this order, the Bank (the Board of Directors) refused Manges' participation in its affairs and prevented him from voting his stock. Manges, in July of 1971, requested that the Comptroller clarify the order of March 4, 1971. The Comptroller acknowledged Manges' request and said nothing.

This case was commenced December 20, 1971, when Manges requested that the Comptroller be permanently enjoined from continuing in force and effect his order of March 4th. Manges further requested that a preliminary injunction be issued against the Board of Directors of The Groos National Bank preventing them from taking any action to his financial detriment as concerns control of said Bank. The district court dismissed, basing its decision on 12 U.S.C. § 1818(i), a withdrawal statute.

1. 12 U.S.C. § 1818(g)(1).

Attached Exhibit No. 1

ISSUES

Manges, on appeal, not only contends that the Comptroller was acting beyond the scope of his authority in 12 U.S.C. § 1818(g)(1), but he also attacks the constitutionality of 12 U.S.C. § 1818(h)(2) and § 1818(i), as violative of the due process and equal protection guarantee of the Fifth Amendment. Manges further states that judicial review of this statute should be allowed and cannot be excluded in this situation. These contentions should not be taken lightly.[2] If Manges' claims are true, then he has suffered grievous harm due to the action by the Comptroller of the Currency, possibly in violation of the United States Constitution. The government naturally asserts that the Comptroller was acting well within his designated authority under the statute and was in no way violating any of Manges' guaranteed rights. This court, therefore, feels careful scrutiny of the statute in question and the intent behind it is demanded.

JURISDICTION

This court, however, upon reading 12 U.S.C. § 1818(h)(2) and § 1818(i), is not so convinced that the Comptroller was within his designated statutory authority. Further, if the Comptroller was not acting within his authority granted by Congress, then 12 U.S.C. § 1818(i) could not withdraw jurisdiction.

[1] There is, however, a very strong court created exception to withdrawal statutes. This exception comes into play when there has been a clear departure from statutory authority, and thereby exposes the offending agency to review of administrative action otherwise made unreviewable by statute.

Two recent decisions by the Supreme Court give concrete support to the concept that a clear departure from designated authority demands judicial review. In Oesterich v. Selective Service System, 393 U.S. 233, 89 S.Ct. 414, 21 L.Ed.2d 402 (1968), a draft board granted a divinity student exemption from military service as provided for by law. Then the board revoked this exemption and ordered the student inducted due to conduct unrelated to the granting or continuing of that exemption. The Military Selective Service Act of 1967 provided that there would be no pre-induction judicial review of the classification or processing of the registrant. The Supreme Court held that the draft board clearly departed from its statutory mandate and acted in a lawless manner. Supra at 238, 89 S.Ct. 414. Justice Douglas stated on behalf of the Court that concerning the statute itself "[n]o one, we believe, suggests that § 10(b)(3) [withdrawal section of the statute] can sustain a literal reading . . . Examples are legion where literalness in statutory language is out of harmony either with constitutional requirements or with an Act taken as an organic whole." (citations omitted). Supra at 238, 89 S.Ct. at 417.

Also, in Breen v. Selective Service System, 396 U.S. 460, 90 S.Ct. 661, 24 L.Ed.2d 653 (1970), under similar facts, the Court once again ruled that a clear departure from statutory mandate was present and justified judicial review. Supra at 467, 90 S.Ct. 661. Justice Harlan in his concurrence was careful to point out that the Court's judicial scrutiny of Breen's legal contention, unlike review of factual and discretionary decisions, in no way hindered the function of the Selective Service System which was the primary concern of Congress in enacting this withdrawal section. Supra at 468, 90 S.Ct. 661.

The question then before this court is whether or not the Comptroller acted

2. This court is following the recommendation of the United States Senate ". . . the power to suspend or remove an officer or director of a bank or savings and loan association is an extraordinary power, which can do great harm to the individual affected . . . it must be strictly limited and carefully guarded." 112 Cong.Rec. 20083 (1966).

Attached Exhibit No. 1

within the scope of his authority as Congress so intended it to be.

The precise language of 12 U.S.C. § 1818(g)(1) states "Whenever any . . person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the appropriate Federal banking agency may, by written notice served upon such . . . person . . . . prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency." This language, on its face, certainly appears to speak to the present tense, that is to say, it speaks to the situation where a person is presently involved and participating in the affairs of a bank and is presently charged with a felony. The Comptroller has asserted this language was intended to go not only to the present, but also to any past felony charges or convictions that might have occurred as regards Manges.

[2] Because what has occurred, on its face, appears highly suspect as regards the safeguarding of individual rights guaranteed under the Constitution, this court must seek the precise intent Congress had in promulgating this legislation.[3]

After reviewing carefully the legislative history concerning this Act there can be no doubt that Congress never intended to establish a procedure such as the one utilized here by the Comptroller, H.R.Rep. 2077, 89th Cong., 2nd Sess., 1966; S.Rep. 1482, 89th Cong., 2nd Sess., 1966, U.S.Code Cong. & Admin. News 1966, p. 3532; 112 Cong.Rec. 24980–25026 (1966); 112 Cong.Rec. 20077–20248 (1966). Further, if the Comptroller's argument were taken as true and this statute were to operate as the Comptroller asserts, then this could be the only section of the statute whereby judgment of one individual was in no way reviewable by any court or administrative procedure.

[3] This court at no time has overlooked the intent of Congress to provide safeguards to ensure that the public and financial institutions shall not be subject to loss due to infiltration by criminal or dishonest elements. There are other provisions of this statute that not only safeguard the institutions involved, but also appear to provide adequate procedural safeguards to guarantee that no individual shall have his rights violated due to the arbitrary action of one individual or even the arbitrary action of a group of individuals. It should be noted that 1818(g)(1) is the only section that could possibly subject a person to possible arbitrary and capricious judgment of one individual. No other section of the statute has such a provision. In all other situations judgment as to fitness as regards the criminal background of an individual resides in the collective judgment of a number of individuals rather than in a single person. What Congress did intend in promulgating 1818(g)(1) was to routinely eliminate any person who is convicted or charged with a felony involving a breach of trust while he

3. Manges has been deprived of effective ownership of several million dollars worth of stock without notice, hearing, or any judicial review or administrative procedure other than the decision of one man, the Comptroller of the Currency. This is clearly not allowable under our present system of constitutional government. In Joint Anti-fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 647, 95 L.Ed. 817 (1951), (concurring opinion) Justice Frankfurter stated that essential to due process of law is "the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction." Where tangible property is taken, either directly or indirectly, there is no doubt that the opportunity for hearing must exist. Londoner v. Denver, 210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 1103 (1908).

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is at the same time participating in the affairs of a national bank.[4]

This routine removal, however, cannot be the case with Clinton Manges. If this section did apply to Clinton Manges, then logically any person in the United States who has ever been convicted of a felony and who also owns stock in a national bank could be deprived of effective ownership of that stock by the unreviewable order of a single government administrator.

This court notes that the draft of the original bill was amended so as to provide that the Federal Reserve Board and not a single individual should be designated with removal powers as regards national bank officials. The Senate Committee on Banking and Currency reported to the full Senate that:

> The duty and responsibility of suspending or removing bank officials is a quasi-judicial function of the highest delicacy, requiring the most careful balancing of the interests of the institutions and officials involved, on the one hand, and the interest of the depositors, savers, borrowers, and the Government and the public generally on the other hand. To permit suspensions and removals without thorough consideration would be unfair to the institutions and officers involved. Any procedure which would permit this would have a harmful effect on the banking system itself and on depositors, borrowers and the public. S.Rep.No.1432, 89th Cong., 2 Sess., page 3, (1966), U.S.Code Cong. § Admin.News 1966, p. 3540.

Although this refers to bank officials, certainly a person owning controlling interest in a bank should be within the purview of this concept.

This construction of the statute then properly avoids serious constitutional questions raised herein by appellant Manges relating to the lack of any hearing. By this decision, we do not in any way comment on any of the possible constitutional issues involved in this suit or any constitutional issues that may be raised as pertains to this statute in later suits.

[4] This court then finds that the Comptroller was not acting within the scope of his proper authority under 1818(g)(1), thus, exposing himself to judicial review under the doctrine of *Oesterich* and *Breen*, supra. This case also involves a clear departure from statutory authority though not as obvious on its face as in the Selective Service cases above. There can be no doubt after considering the intent and purpose Congress had in promulgating this legislation that this court should and does have jurisdiction in this specific situation.

[5] It is the order of this court that the judgment below be reversed and the injunction granted as to the Comptroller of the Currency of the United States prohibiting him from acting under Section 1818(g)(1) as to Clinton Manges. This action then of the Comptroller being void and of no effect can no longer serve as authority for the Directors of The Groos National Bank to refuse Manges' participation in the affairs of that bank.[5] Therefore, an injunction will lie as to those Directors if they refuse Manges' participation, basing their action upon that order of the Comptroller. The order of the lower court dismissing the suit by Clinton Manges against the Comptroller of the Currency of the United States is

Reversed and remanded for proceedings not inconsistent with this opinion.

4. Evidence of this specific intent to routinely remove persons charged with a felony is substantiated by Senator Proxmire in his discussion of another section of this statute. 112 Cong.Rec. 20245 (1966).

5. This court has found that there is a common nucleus of operative fact in this case and, therefore, pendent jurisdiction as to The Groos National Bank and its directors clearly exists. United Mine Workers v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

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00030

District Court, Starr County, C. W. Laughlin, J., issued an interlocutory order appointing receiver over the property and assets of the partnership. Partnership and copartners appealed. The Waco Court of Civil Appeals, McDonald, C. J., held that appointment of receiver of partnership ranch lands, on application of partner and cross complaint of copartner, did not constitute error, under evidence that property of partnership was in danger of being lost or materially injured.

Affirmed.

1. Partnership ⇨210

Plaintiff who acquired an interest in ranch lands of partnership by warranty deeds from two of the partners acquired a probable interest in such lands so as to come within statute authorizing appointment of receiver. Vernon's Ann.Civ.St. art. 2293.

2. Partnership ⇨120

Fair construction of general partner's cross complaint which requested appointment of receiver but did not specifically pray for partition of partnership property, in another partner's suit for receivership of partnership property and partition, was that he did seek partition. Vernon's Ann. Civ.St. art. 2293.

3. Partnership ⇨119, 210

Receivership granted under statute authorizing appointment of receiver for partnership extends to entire property. Vernon's Ann.Civ.St. art. 2293, § 1.

4. Partnership ⇨210

Receiver of partnership property is not appointed for benefit of applicant but to receive and preserve property for benefit of all parties interested therein. Vernon's Ann.Civ.St. art. 2293.

5. Partnership ⇨120

Under partnership receivership statute, allegations and proof by partner seeking appointment of receiver of insolvency of

M. GUERRA & SON et al., Appellants,

v.

Clinton MANGES et al., Appellees.

No. 4804.

Court of Civil Appeals of Texas.

Waco.

May 22, 1969.

Rehearing Denied June 26, 1969.

Partner filed suit for partition and receivership and copartner filed cross action seeking receivership. The 79th

Attached Exhibit 2

partnership, inadequacy of legal remedy, or other equitable grounds were not necessary. Vernon's Ann.Civ.St. art. 2293, § 1.

6. Partnership ⇐118

Appointment of receiver of partnership ranchlands, on application of partner and cross complaint of copartner, did not constitute error, under evidence that property of partnership was in danger of being lost or materially injured. Vernon's Ann.Civ.St. art. 2293.

Carter, Steinberg, Skaggs & Koppel, Harlingen, for appellants.

Watson & Weed, Waco, Arnulfo Guerra, Roma, Kampmann, Kampmann, Church & Burns, San Antonio, for appellees.

OPINION

McDONALD, Chief Justice.

This is an appeal from an interlocutory order appointing a receiver over the property and assets of M. Guerra & Son, a limited partnership.

This suit was filed by Appellee Manges against M. Guerra & Son and the 6 partners. (M. A. Guerra, H. P. Guerra, Jr., R. R. Guerra, Virgil H. Guerra, J. C. Guerra and Virginia Guerra Jeffries) (and Southwestern Life Insurance Company, holder of $370,000 indebtedness and lien). Manges alleged he was owner of an undivided ⅝ interest in the partnership ranch properties through deeds from partners Virgil H. Guerra and J. C. Guerra; that he has not received any rents for such interest; that he is entitled to an accounting; that there is a past due indebtedness to Southwestern Life Insurance Company secured by mortgage on partnership lands, as well as other past due indebtedness; and that he has been refused the right as a cotenant to joint possession of the property. Manges prayed that a Receiver be appointed for the benefit of all owners to take charge of the lands, books and records, for an accounting, and for partition of his undivided ⅝'s interest in the property.

Thereafter Virgil H. Guerra filed cross-action against the other 5 partners alleging the assets of the partnership consist of real estate in Starr and Jim Hogg Counties, cattle, bank accounts and other personal property; that since 1958 there have been no partnership meetings; that the business of the parnership has been carried on in a loose and disconnected manner; that any two partners can sign a check and withdraw partnership funds; that various partners have received advances in excess of their proportionate interest in the partnership; that the partnership is heavily indebted by loans and does not have the funds to liquidate such loans and debts without selling real estate; that the partners have for some years been negotiating between themselves in an attempt to partition partnership properties, and all attempts have been useless; that it is impossible to have an accounting between the partners or to divide the partnership properties; that unless the partnership is dissolved in an orderly manner and the debts paid, the personal and real property of the partnership are in danger of being lost on foreclosures, or the property materially injured by reason of improper operation. Cross plaintiff Virgil Guerra prayed that a receiver be appointed to take charge of all partnership property "and for such other and further orders as may be necessary to the Court, premises considered".

The partnership M. Guerra & Son, M. A. Guerra, R. R. Guerra and H. P. Guerra, Jr. answered resisting plaintiff's suits.

The trial court, after hearing, entered interlocutory order finding "the appointment of a Receiver for the partnership of M. Guerra & Son is necessary in that the interests of the Plaintiff, Clinton Manges, in the lands owned by such partnership is in imminent danger of being lost or damaged by reason of the large amount of outstanding current obligations of the partnership, and that further, such Receiver is necessary to protect the interests of all

Attached Exhibit 2

of the partners in said M. Guerra & Son, in that said current debts and obligations are greatly in excess of any cash on hand or income, and that such debts and obligations cannot be paid in the ordinary course of business, and further that as the partners of M. Guerra & Son are unable to jointly agree on business matters or to take any action on such financial problems, and further, that the withdrawal of funds from partnership banking accounts in the past have greatly exceeded the profits or income of the business, and which is endangering the financial condition of such partnership * * * and unless a Receiver is appointed herein, the Plaintiff Clinton Manges, and Cross plaintiff, Virgil H. Guerra, and the other partners * * * will suffer irreparable loss or damages, and that the applications of both plaintiff Clinton Manges, and the cross plaintiff, Virgil H. Guerra, for the appointment of a Receiver should be granted by the Court;" and appointed James A. Bates Receiver "over all the property and assets of M. Guerra & Son, a partnership," with general powers to operate the properties.

M. Guerra & Son (acting through partners, M. A. Guerra, R. R. Guerra and H. P. Guerra, Jr.) and M. A. Guerra, R. R. Guerra and H P. Guerra, Jr. appeal on 8 points:

1) The trial court erred in appointing a receiver over all the property and assets of the partnership M. Guerra & Son, because such action is radical in the extreme, and if allowed to stand, will discredit, cripple, and probably put an end to the business of M. Guerra & Son.

2) The trial court erred in granting the application of Virgil H. Guerra for the appointment of a receiver when there was no showing Virgil Guerra had been excluded from participation in partnership affairs, and when he was in possession and control of ¾'s of the partnership assets at the time of filing his application for receivership.

3) The trial court erred in granting the application of Virgil H. Guerra for the appointment of a receiver, where there was no showing of such discord between the partners as to render the continuation of the partnership, pending dissolution, impossible, and where no mismanagement was alleged or shown.

4) The trial court erred in granting the application of Virgil H. Guerra for appointment of a receiver, where there was no showing that Virgil H. Guerra's interest in the partnership was in danger of being lost, removed or materially injured.

5) The trial court erred in granting the application of Virgil H. Guerra for appointment of a receiver when he did not seek dissolution of the partnership.

6) The trial court erred in granting the application of Manges for the appointment of a receiver, when Manges is not shown by the record to have any probable joint interest in the assets of M. Guerra & Son.

7) The trial court erred in granting the application of Manges for the appointment of a receiver, when Manges did not show that any interest owned by him in the assets of M. Guerra & Son was in danger of loss, removal or material injury.

8) The trial court erred in appointing a receiver on application of Manges and Guerra when they by their own actions had disqualified themselves from seeking equitable relief, and where there is no showing that other remedies would not protect their interests, if any.

Digest

M. Guerra & Son is a family partnership which has operated for many years in Starr, Jim Hogg and Goliad Counties. The present partners are M. A. Guerra, H. P. Guerra, Jr., R. R. Guerra, Virgil H. Guerra, J. C. Guerra, and Virginia Guerra Jef-

Attached Exhibit 2

fries (and are the children of H. P. Guerra, Sr., deceased). The present partnership was created by a Partnership Agreement executed September 1, 1958. The principal assets of the partnership are: 72,000 acres of land, 2485 cattle, 444 shares (out of 1000) stock of First State Bank and Trust Company of Rio Grande City, 150 town lots, an apartment house, ranch improvements, automobiles, ranch equipment, and money in the bank.

Virgil Guerra manages some 54,000 acres (with the cattle thereon); R. R. Guerra manages some 18,000 acres (with the cattle thereon); H. P. Guerra, Jr. is President of the Bank; Virginia G. Jeffries manages the apartments; M. A. Guerra and J. C. Guerra have no duties. The principal business of the partnership is cattle, although oil leasing, hunting leasing, rentals, and banking also contribute to the income. The partnership assets have a value in excess of $5 million dollars. The partnership has debts amounting to $1,300,000. which includes $633,000. in secured debts, and $665,000. in unsecured debts. One note for $150,000 owed the National Bank of Commerce in San Antonio is past due; as is a $10,000. payment on the Southwestern Life Insurance note; and as of September 30, 1968 there was a $19,615, overdraft at the Rio Grande City Bank.

A partner to make a "withdrawal" signs a check on the bank account, cosigned by another partner. The partners had an agreement that only $1000. per month would be withdrawn, but the agreement has not been observed. In 1967 there was net income for the partnership of $11,921., but withdrawals by the partners, of $134,124. The internal debts of the partners to the partnership, as evidenced by the withdrawals is: M. A. Guerra $568,761; H. P. Guerra, Jr. $448,512; R. R. Guerra $326,579; Virgil H. Guerra $316,643; J. C. Guerra $354,466; Virginia Jeffries $128,742; totalling more than 2 million dollars. It is in evidence that M. A. Guerra is approaching his interest in the partnership in the amount of his draws.

The operation has been, that the income goes into the bank, the partners draw what they want to, and the deficit is made up by loans to the partnership, arranged primarily by H. P. Guerra, Jr. (the banker).

And the partners individually owe notes at banks, which notes are carried as partnership debt; and partnership cattle were transferred to one partner, to individually borrow some $90,000 on, which funds went into the partnership operations, and some partners run individual cattle on the partnership lands. There have been no general meetings of the partnership since 1958; there is discord among some of the partners.

There is evidence that some of the partners have tried to effect a dissolution of the partnership, or purchase or sell their interest in times past, but that nothing was in fact done.

The present controversy arose in August 1968 when Virgil H. Guerra and J. C. Guerra executed a deed to Clinton Manges, conveying to him the 1/6 undivided interest of each in the partnership ranch lands (less mineral interest). Under their contracts the selling partners were to each receive $621,620. A total of $112,000 has been paid on such consideration.

Following the sale to Manges, he filed suit for partition and receivership, and Virgil H. Guerra filed cross action seeking receivership.

Article 2293 Vernon's Ann.Tex.St. provides: "Receivers may be appointed by any judge of a court of competent jurisdiction of this State, in the following cases: 1. In an action * * * between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured."

If under the foregoing statute the right to the appointment of a receiver exists,

Attached Exhibit 2

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it is not dependent on the general rules of practice in courts of equity, and cannot be attacked on the ground that it is harsh, that plaintiff had an adequate remedy at law, or a less drastic remedy. Hitt v. Morris, Tex.Civ.App., mandamus overr. 250 S.W.2d 408; 49 T.J.2d p. 37.

[1] Plaintiff Manges acquired an interest in the ranch lands owned by M. Guerra & Son by warranty deeds from J. C. Guerra and Virgil H. Guerra, two of the general partners, and as such, acquired for the purposes of this suit for receivership and partition, at least a probable interest in such lands.

[2] Cross plaintiff Virgil H. Guerra, a general partner, under the facts had cause for concern, and plead that "unless the partnership is dissolved in an orderly manner, and the debts paid, the personal and real property of the partnership are in danger of being lost on foreclosures, or the property materially injured by reason of improper operation". While he did not pray specifically for partition, he did ask that a receiver be appointed, and we think fair construction of his pleading is that he did seek a partition.

[3–5] In any event Manges sought partition and receivership under the provisions of Section 1 of Article 2293 supra, and when the appointment of a receiver is sought in such situation, the receivership is granted extends to the entire property. Moreover the receiver is not appointed for the benefit of the applicant, but to receive and preserve the property for the benefit of all parties interested therein. And in such situation allegations and proof of insolvency of defendant, inadequacy of legal remedy, or other equitable grounds are not necessary. Anderson & Kerr Drilling Co. v. Bruhlmeyer, 134 Tex. 574, 136 S.W.2d 800, 127 A.L.R. 1217.

[6] From the record the trial court was authorized to believe that the property of the partnership (including the lands in which Manges had a probable interest) was in danger of being lost or materially injured.

Alexander v. Alexander, Tex.Civ.App. (NWH) 99 S.W.2d 1062 is very similar on its facts to the instant case, and upheld receivership in a partner's suit against other partners, to dissolve partnership, for accounting, and to partition the properties of a ranch partnership.

The trial court did not err in appointing a receiver.

Appellant's points and contentions are overruled.

Affirmed.

O. J. COLE, Appellant,

v.

CITY OF HOUSTON et al., Appellees.

No. 238.

Court of Civil Appeals of Texas, Houston (14th Dist.).

May 14, 1969.

Rehearing Denied June 11, 1969.

Action against city and mayor by former employee for wrongful discharge from employment. The District Court, Harris County, William M. Holland, J., entered judgment for former employee for lost salary and all parties appealed. The Court of Civil Appeals, Barron, J., held that former employee who was orally examined by several city officials and who was subsequently certified and retained as an employee and received benefits accorded to civil service employees complied with all prerequisites for classification as a civil service employee, that mayor's letter notifying employee that employee's job was to be abolished did not have legal effect of abolishing job but that city's liability for employee's loss of salary should be reduced

Digest

Attached Exhibit 2

In re LAUGHLIN, District Judge.

No. A-4295.

Supreme Court of Texas.

March 17, 1954.

Original proceeding for removal of district judge. The Supreme Court, Calvert, J., held, inter alia, that district judge's discharge of grand jury, because of apprehension that, unless discharged, grand jury might indict judge's brother, constituted such partiality and "official misconduct" as to justify and require removal of judge from office.

Removal ordered.

1. Judges ⇐11

Amendment of presentment for removal of district judge to substitute oaths of eleven lawyers for those of single witness would be allowed. Vernon's Ann.Civ.St. art. 5981; Vernon's Ann.St.Const. art. 15, § 6.

2. Judges ⇐11

Although proceeding for removal of district judge involves imposition of penalty in that it may result in depriving one of a public office and the emoluments thereof, it is not, strictly speaking, a "criminal proceeding," and rules of law preventing amendment of criminal indictments do not apply. Vernon's Ann.Civ.St. art. 5981; Vernon's Ann.St.Const. art. 15, § 6.

See publication Words and Phrases, for other judicial constructions and definitions of "Criminal Proceeding".

3. Constitutional Law ⇐306

When full hearing on petition for removal of district judge is granted, fact that it is based upon unsworn pleading is not a denial of due process. Vernon's Ann.Civ.St. art. 5981; Vernon's Ann.St.Const. art. 15, § 6.

4. Judges ⇐11

Frivolous charges, or charges involving no more than mistakes of judgment honestly arrived at, or the mere erroneous exercise of discretionary power entrusted by law to district judge, will not be entertained by Supreme Court as grounds for removal of judge. Vernon's Ann.St.Const. art. 15, § 6.

5. Judges ⇐11

Removal of district judge cannot be predicated upon acts antedating his election, which acts in themselves are not disqualifying under the constitution and laws of the state, when such acts were matters of public record or otherwise known to electors and were sanctioned and approved or forgiven by them at the election. Vernon's Ann.St.Const. art. 15, § 6; Vernon's Ann.Civ.St. art. 5986.

6. Judges ⇐11

Removal proceeding against district judge may not be resorted to as means of satisfying personal animosities growing out of disappointing litigation results, or to equate political factions or to settle political differences which properly find their solution at the ballot box. Vernon's Ann.St.Const. art. 15, § 6.

7. Evidence ⇐23(1)

In proceeding for removal of district judge, Supreme Court could take judicial notice of political turmoil in area of state where judge presided. Vernon's Ann.St.Const. art. 15.

8. Attorney and Client ⇐14

When lawyers appear before the Supreme Court they appear as officers of the court.

9. Evidence ⇐83(1)

In proceeding for removal of district judge, it would be presumed that lawyers who filed petition for removal did so with full understanding and consciousness of legal, moral and ethical obligations, inherent in their office and imposed by their oaths, to honestly demean themselves in their profession. Vernon's Ann.St.Const. art. 15, § 6.

10. Constitutional Law ⇐306

Constitutional provision delegating power of removal of district judge to Su-

ATTACHED EXHIBIT 3

preme Court and prescribing method by which power may be invoked is not in itself a denial of due process under federal Constitution. Vernon's Ann.St.Const. art. 15, § 6; U.S.C.A.Const. Amend. 14.

11. Judges ⇐11

Although taking of testimony in proceeding for removal of district judge may be entrusted to master with directions to file findings of fact, the right and duty to decide whether evidence taken supports charges cannot be entrusted to the master or any other agency but belongs alone to the Supreme Court. Vernon's Ann.St.Const. art. 15, § 6.

12. Judges ⇐11

The charges alleged as grounds for removal of district judge need be sustained only by preponderance of evidence, but evidence must be clear and convincing. Vernon's Ann.St.Const. art. 15, § 6.

13. Judges ⇐11

Evidence in proceeding for removal of district judge must establish charges as laid in presentment of causes for removal, and it is not sufficient for removal that evidence establish some uncharged dereliction or that it establish misconduct on part of some other public official. Vernon's Ann. St.Const. art. 15, § 6.

14. Judges ⇐11

District judge's discharge of grand jury because of apprehension that, unless discharged, grand jury might indict judge's brother, constituted such partiality and "official misconduct" as to justify and require removal of judge from office. Vernon's Ann.St.Const. art. 15, § 6.

See publication Words and Phrases, for other judicial constructions and definitions of "Official Misconduct".

15. Judges ⇐11

Removal of district judge would not debar him from election to office or from holding office for unexpired term if elected. Vernon's Ann.St.Const. art. 15, §§ 4, 6, 8.

Hyde, Barber & Shireman, by Wm. H. Shireman, Corpus Christi, Elton M. Hyder, Jr., Fort Worth, for relators.

Small, Small & Craig, C. C. Small and C. C. Small, Jr., Austin, for respondent.

CALVERT, Justice.

This proceeding for the removal of C. Woodrow Laughlin, Judge of the District Court in and for the 79th Judicial District, had its origin in Article XV, § 6 of the Constitution of Texas, Vernon's Ann.St., which reads as follows:

"Sec. 6. Any judge of the District Courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge; or who shall fail to execute in a reasonable measure the business in his courts may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the Supreme Court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable."

As originally filed the petition for removal contained twelve Causes, each presenting separate incidents said to constitute grounds for removal.

On exceptions filed by respondent, this Court dismissed Causes Nos. Six, Nine, Ten and Eleven and, proceeding under the delegated power to prescribe all needful

ATTACHED EXHIBIT 3

rules to give effect to the foregoing section of the Constitution, appointed Honorable D. B. Wood, Judge of the 26th Judicial District as Master, with extensive powers, to hear testimony on the remaining Causes and to report his findings to this Court. In due course and after much labor the Master filed his report with this Court in which findings of fact were made, said by the Master to be upon clear and convincing evidence, sustaining Causes One, Two, Three, Seven and Eight. As to Causes Four, Five and Twelve, he found the evidence insufficient to show grounds for removal.

As originally filed, and subsequently amended, the Causes were presented upon the oaths of eleven lawyers, practicing in the court held by respondent and otherwise satisfying the constitutional requirements, and were founded upon the knowledge of such lawyers as to the facts charged in Causes Three, Four, Five, Eight and Twelve and upon the written oaths of single witnesses as to each of Causes One, Two and Seven.

Respondent challenges now, as he did originally, the sufficiency of the oaths of the witnesses to Causes One, Two and Seven to invoke the jurisdiction of the Court to hear and determine those Causes. In response to this challenge, relators have filed a motion for leave to file an amendment to their petition for removal and in connection with this motion have tendered for filing an amended presentment conforming the oaths to Causes One, Two and Seven with those made to Causes Three, Four, Five, Eight and Twelve.

[1-3] We have concluded that the amendment may and should be allowed.

While a proceeding of this character involves the imposition of a penalty in that it may result in depriving one of a public office and the emoluments thereof, it is not, strictly speaking, a crminal proceeding. McDaniel v. State, Tex.Civ.App., 9 S.W.2d 478, writ refused; Glavecke v. State, 44 Tex. 137; and the rules of law preventing amendment of criminal indictments do not apply. Rather, it is supplementary of the constitutional and statutory provisions for the removal of other public officers in which it is specifically provided and held that the trial and proceedings connected therewith shall be conducted as far as is possible in accordance with the rules and practice in other civil cases. Article 5981, Revised Civil Statutes, 1925; Poe v. State, 72 Tex. 625, 10 S.W. 737. In the absence of a showing of prejudice, our rules governing procedure in civil actions are extremely liberal in allowing amendment to cure defects, faults or omissions in a pleading, either of form or substance. Rule 66, Texas Rules of Civil Procedure. Under this Rule it has been held that amendment should be allowed to supply a necessary verification of a pleading. Ramsey v. Cook, Tex.Civ.App., 231 S.W.2d 734, no writ history.

Causes One, Two and Seven contained detailed allegations of facts pertinent thereto. The Court directed the Master to receive and the parties to present evidence thereon. In obedience to that order the parties presented their evidence and there is no showing that respondent was deprived of a full and fair hearing on any of the charges, or that in the presentation of his defense to the causes he would suffer any prejudice by virtue of the amendment. When a full hearing is granted, the fact that it is based upon an unsworn pleading is not a denial of due process. Ex parte Winfree, Tex.Sup., 263 S.W.2d 154. Relators' motion for leave to file their amended presentment of causes is granted. As amended, the nature of the oaths to the enumerated causes is undoubtedly sufficient to invoke the jurisdiction of this Court to act on respondent's removal.

Respondent has presented a motion to dismiss the proceeding in its entirety on the ground that the nature of the proceeding as prescribed by Article XV, § 6 of the Constitution of Texas constitutes a denial of due process under the Fourteenth Amendment to the Constitution of the United States. His argument in support of this contention suggests that due process is denied because our constitutional provision permits private attorneys, who may be disgruntled practitioners before the judge, to impinge upon or interfere with the in-

ATTACHED EXHIBIT 3

dependence of the judiciary on vague and general charges of partiality, unfitness, and negligence. It is said that due process can only be guaranteed through proceedings initiated on behalf of the public by public agencies. We do not agree.

The Constitution of Texas provides three methods for the removal of judges of the District Courts. One is by impeachment by the House of Representatives, the articles of impeachment to be tried by the Senate, as provided in Sections 1, 2, 3, 4 and 5 of Article XV. A second is by the Governor on address of two-thirds of each House of the Legislature as provided in Section 8 of Article XV. The other is as provided in Section 6 of Article XV, above quoted. In each the judge is guaranteed a full and fair trial on the charges preferred against him, whether the charges be by way of articles of impeachment preferred by the House of Representatives and tried by the Senate, or by way of legislative address to the Governor, or by way of a presentment of causes filed by lawyers and tried by the Supreme Court. Ferguson v. Maddox, 114 Tex. 83, 263 S.W. 888; Gordon v. State, 43 Tex. 330, 339.

[4-7] Neither proceeding may be resorted to lightly nor may its consequences be lightly regarded. Frivolous charges, or charges involving no more than mistakes of judgment honestly arrived at or the mere erroneous exercise of discretionary power entrusted by law to a district judge, will not be entertained by this Court as grounds for removal. Neither may removal be predicated upon acts antedating election, not in themselves disqualifying under the Constitution and laws of this State, when such acts were a matter of public record or otherwise known to the electors and were sanctioned and approved or forgiven by them at the election. This holding is in harmony with the public policy declared by the Legislature with respect to other public officials. Article 5986, R.C.S. 1925, Vernon's Ann.Civ.St. It was in keeping with the foregoing policy that Causes Six, Nine, Ten and Eleven were dismissed without putting respondent to the expense and concern of a hearing thereon. Nor may a removal proceeding against a district judge be resorted to as a means of satisfying personal animosities growing out of disappointing litigation results; nor to equate political factions or settle political differences which properly find their solution at the ballot box. While we should not close our eyes to the political turmoil in the area of the State where respondent presides, a condition of which we may take judicial notice, Seay v. Latham, 143 Tex. 1, 182 S.W.2d 251, 155 A.L.R. 180, no more should we lend ourselves to the idea in exercising our judicial function of passing on the merits of a case before us, that the court should become a party to a movement to dispel that condition.

On the other hand, the people residing in a judicial district are rightfully entitled to be relieved of the impositions of a judge who, though chosen by them, proves by his official conduct to be partial to some and oppressive to others, or unfit or incompetent to hold his office, or neglectful of its duties. Since they cannot relieve themselves before the expiration of the incumbent's full term of office, and since a session of the Legislature from whence must come removal by impeachment or by address may be neither in progress nor imminent when the need for relief arises, we think it not unreasonable and not a denial of due process that the coordinate and cumulative power to grant relief is delegated to the supreme judicial agency of the state.

[8, 9] When lawyers appear before this Court they appear as officers of the Court, and it must be presumed that relators filed this proceeding with a full understanding and consciousness of the legal, moral and ethical obligations inherent in their office and imposed by their oath to honestly demean themselves in their profession.

If it can be supposed that this Court would abuse its power by arbitrarily and summarily removing a district judge without fair notice of the charges against him or without an opportunity on his part to appear and defend against the charges in a full and open hearing, the exercise of the power of removal might well amount to a denial of due process under the Fourteenth

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Amendment. We have no such case before us.

The charges against respondent were presented and fully argued in this Court, both orally and by brief, before the taking of testimony was ordered. Thereafter, a motion by relators that they be permitted to bring new charges into the proceeding was denied. A motion by the State Bar of Texas that it be permitted to intervene in aid of the prosecution of the charges, to be represented by the Attorney General of Texas and by private counsel, was denied. A district judge with a background of learning and experience and a reputation for impartiality and fairness was appointed Master. The Master was ordered to gather all evidence pertinent to the charges, and pursuant to the order he conducted an open hearing of many days' duration at which respondent appeared in person and by able counsel and offered all testimony and evidence he wished to offer. The respondent testified in his own behalf, occupying the witness chair for several days. He was confronted by the witnesses against him. Following the filing of the Master's report, a motion by relators to suspend the respondent from office while the Court had the Master's findings under consideration was denied. The parties were given thirty days from the date of filing of the Master's report in which to except thereto and to file briefs on the questions raised thereby. Later, the parties were granted twice the time customarily allowed in civil cases in which to present oral argument on the findings of the Master and the law questions arising therefrom. Every safeguard, conceivable to the Court, was erected around the respondent to protect him against unfounded charges, personal animosities and recriminations, and politically-inspired persecution.

[10] We conclude that the constitutional provision delegating the power of removal to this Court and prescribing the method by which the power may be invoked is not in itself a denial of due process and that there has been no denial of due process in the manner of the exercise of the power. The motion to dismiss on this ground is overruled.

[11-13] We come now to a consideration of the merits of the charges against respondent and to a weighing of the evidence adduced in support thereof. While the taking of testimony was entrusted to the Master who was directed to file findings of fact, it is recognized that the ultimate right and duty to decide whether the evidence taken supports the charges and constitutes grounds for removal could not be entrusted to the Master or to any other agency. That right and duty belongs alone to this Court. The decision must be the Court's decision. In reaching our decision, we agree with the rule followed by the Master that while the charges need be sustained only by a preponderance of the evidence, as distinguished from the rule in criminal cases of proof beyond a reasonable doubt, the serious nature of the proceeding in depriving one of a public office to which a majority of the electors have chosen him and in nullifying the choice of the electors ought, at the very least, to require proof by clear and convincing evidence. We are also of the opinion that the evidence must establish the charges as laid in the presentment of causes. It is not sufficient for removal that the evidence establish some uncharged dereliction or that it establish misconduct on the part of some other public official.

[14] Cause One charges respondent with having been guilty of partiality, or in the alternative, official misconduct, in that, without just cause or authority in law, he discharged a grand jury of Jim Wells County after it had returned two indictments against him and while it was yet investigating the conduct of his brother, W. M. Laughlin, County Commissioner of Precinct No. 4 of Jim Wells County, it being alleged that respondent "was apprehensive that unless such Grand Jury was discharged, it might indict his brother, W. M. Laughlin, for the illegal sale to said County of certain private property in violation of the Penal Laws of the State of Texas."

The Court is of the opinion that the order entered by respondent on January 1, 1953,

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discharging the Grand Jury of Jim Wells County was entered, under the circumstances of this case, without lawful authority, and that the evidence is clear and convincing that the order of discharge was entered by respondent because of his apprehension that, unless discharged, the Grand Jury might indict his brother. The Court is therefore of the opinion that the charges against respondent contained in Cause One are supported by clear and convincing evidence and that, as established, these charges constitute such partiality and official misconduct as to justify and require his removal from office. A brief summary of the evidence on which this conclusion is based follows. That which follows immediately is without substantial dispute.

Respondent was elected to a four-year term as Judge of the 79th Judicial District composed of Starr, Brooks, Duval and Jim Wells Counties at the General Election held on November 4, 1952, the term to begin on January 1, 1953.

On October 6, 1952, a grand jury was duly empaneled for the October, 1952, Term of the District Court in Jim Wells County and it thereafter entered upon an investigation of certain illegal transactions between the County and certain public officials, including respondent and his brother, W. M. Laughlin, who was a member of the Commissioners Court of the County. Both were called before the grand jury and both were aware that their official conduct was under investigation.

On December 2, 1952, the grand jury filed an interim report in which it called attention to a number of illegal transactions between the County and certain public officials, including the respondent, the most severely criticized transactions, however, being some to which respondent's brother, W. M. Laughlin, was a party, some of which involved the sale by W. M. Laughlin to the County of certain personal property. Both respondent and his brother were acquainted with the contents of this report. On December 29th the grand jury returned two indictments against respondent growing out of the sale by him to the County of his law library and sought, and received, permission to recess until February 16, 1953.

On December 26th respondent, accompanied by his family, left for the State of New Mexico where he vacationed until December 31st, learning by radio while there of the indictments returned against him on the 29th. On December 31st he drove to Alpine, Texas, where he received a long-distance telephone call from his brother and where he took his oath of office before his father-in-law shortly after midnight. He testified that he had made up his mind before leaving home that he would discharge the grand jury and that such an order was written in longhand while in Alpine on December 27th. Shortly after taking his oath of office he left for his home in Alice, Jim Wells County, stopping en route at Laredo for a short period of time where he visited friends and had the order discharging the grand jury reduced to typewritten form. He arrived in Alice on January 1st at about 1:30 p. m., and after posting bond in the cases against him went immediately to the home of the District Clerk (January 1st being a legal holiday) and filed with the Clerk his oath of office and the order discharging the grand jury, requesting the Clerk at the same time to advise the grand jurors that they had been discharged. At the time the order was entered respondent thought the grand jury was in a three-day recess and would be back in session on January 2nd. Although importuned to do so, respondent would not cancel the order of discharge until a proceeding had been filed in this Court seeking a writ of mandamus to compel him to do so.

Although there is some dispute of some of the matters now to be stated, we are satisfied by the evidence that following the interim report of the grand jury on December 2nd respondent expressed his fear for the fate of his brother at the hands of the grand jury to a member of the Commissioners Court; that thereafter W. M. Laughlin visited individual members of the grand jury seeking to forestall his indictment, and that on December 29th he appeared voluntarily before the grand jury to request that he not be indicted, offering to

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do whatever was necessary to prevent indictment.

In spite of respondent's testimony that he had no such fear, the foregoing facts and circumstances lead our minds unerringly to the conclusion that when respondent returned to Alice on January 1st and entered his discharge order both he and his brother were apprehensive that, unless discharged, the grand jury would indict the brother.

The evidence taken by the Master in this proceeding covers 2,765 pages with many additional exhibits. The Master's report covers 64 pages. Having concluded that the evidence in support of the charges in Cause One is such as to justify and require respondent's removal from office, no good purpose, present or future, would be served by a discussion of the other Causes.

It is accordingly ordered that C. Woodrow Laughlin be, and he is hereby removed from the office of Judge of the 79th Judicial District, this order to be effective at 12 o'clock noon, March 17, 1954.

[15] Citing State ex rel. Thompson v. Cramp, 134 Tenn. 121, 183 S.W. 505, L.R.A. 1916D, 951, relators suggest that our order of removal should extend to and include the limits of respondent's present term of office so as to debar him from election to or the holding of any unexpired portion of that term. What was said by the Supreme Court of Tennessee in the cited case is not without certain logic and reason. But the question is not an open one in this state. The precise question was presented to and decided by this Court with relation to a county official (sheriff) directly contrary to relators' suggestion. Gordon v. State, 43 Tex. 330, 332-340. In that case the court treated the suggestion as one of disqualification and stated that the suggested course "was unsupported by anything in the Constitution or the law." There can be no sound basis for saying that a different rule should apply when the official removed is a district judge. Section 4 of Article XV of the Constitution specifically provides that a district judge impeached by the Senate shall be disqualified "from holding any office of honor trust or profit under this State" but there is no such provision in Section 6 dealing with removal by this Court or in Section 8 dealing with removal by the Governor on address of the Legislature. Neither is there any statute making removal of a district judge a ground of disqualification for the remainder of the current term of office or otherwise.

No motion for rehearing will be entertained. Rule 515, Texas Rules of Civil Procedure.

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00042

NO. B-24674 Filed 10-28-68

M. GUERRA & SON	I	IN THE 93RD DISTRICT COURT
VS.	I	OF
CLINTON MANGES, ET AL.	I	HIDALGO COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO SAID HONORABLE COURT:

This suit is brought by M. GUERRA & SON, a limited partnership, Plaintiff and by Plaintiffs M. A. GUERRA and R. R. GUERRA, general partners in such partnership. This suit is brought against CLINTON MANGES and VANNIE E. COOK, JR., Defendants and against the Defendants J. C. GUERRA, VIRGIL H. GUERRA and VIRGINIA G. JEFFRIES. H. P. GUERRA, JR. is joined as Plaintiff. For cause of action, the Plaintiffs who bring this suit respectfully show the Court as follows:

1.

Plaintiff, M. GUERRA & SON, is a limited partnership duly constituted and existing under the Texas Uniform Limited Partnership Act (Article 6132a of the Revised Civil Statutes of Texas). A copy of the limited partnership agreement of M. Guerra & Son is filed simultaneously with this petition as Plaintiff's Exhibit 1, and is incorporated herein by reference as if the same were fully and at large set forth at this point. Clinton Manges is a resident of Bexar County, Texas, and Vannie E. Cook, Jr. is a resident of Hidalgo County, Texas. M. A. Guerra, R. R. Guerra, H. P. Guerra, Jr., J. C. Guerra, Virgil H. Guerra and Virginia G. Jeffries are residents of Starr County, Texas.

2.

For over 50 years prior to August, 1968, the Plaintiff, M. Guerra & Son, has operated as a family business. One of its principal activities has been that of ranching, and its principal asset consists of over 70,000 acres of land in several counties. The principal part of this land was deeded to the said partnership by Horace P. Guerra, Deceased, who was the father of all of the present partners in M. Guerra & Son. This deed from Horace P.

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Guerra is dated on or about December 13, 1956, and is recorded in the Deed Records of Starr County, Texas, in Volume 220, beginning at Page 448 and the Deed Records of Jim Hogg County, Texas at Volume 37, Pages 393-413. In addition to the ranch lands owned by the said partnership, the partnership owns or has interest in town lots, stocks, cattle, horses and other livestock and other properties, real and personal. Because of the nature of the partnership business, it is necessary, despite the partnership's large assets, to conduct part of its operations on credit and the said partnership has developed valuable sources of credit throughout the State of Texas. In August of 1968, the partnership owed certain monies on notes and accounts, but the value of its assets exceeded and presently exceeds the amount of its liabilities many times, so that in August, 1968, the M. Guerra & Son partnership was (and at present still is) a large and going business.

3.

During 1967, the Defendant Vannie E. Cook, Jr. attempted to purchase substantially all of the ranch properties owned by the Plaintiff M. Guerra & Son. Some of the partners refused to sell the said properties at the price Cook offered, believing that such price was inadequate and was below the fair market value of the said properties. Other partners were opposed to a sale of the properties at any price since it was their intention that if the partnership should ever be dissolved and the assets distributed, such partners wished to receive part or all of their distribution in land so that their families could continue in the ranching business.

4.

In late 1967 or early 1968, Vannie E. Cook, Jr. had concluded that it was impossible to acquire the properties in question by arm's length negotiations with the Plaintiff partnership and its members, and accordingly he and Manges entered into a combination to attempt to acquire the partnership's ranch, in excess of 70,000 acres, through the following plan, scheme or device: (1) Cook agreed to furnish Manges the financing necessary to induce one or

more of the partners in M. Guerra & Son to violate their partnership agreement, the Texas Uniform Limited Partnership Act and various agreements which the partnership had with its creditors, thus to impair the partnership's credit, cloud the partnership's title to the lands in question and slander the same and place the partnership and the partners who bring this suit in such a position that they would be forced to sell the property in question at a price below its fair market value or that the scene would be set for a partition action, partnership dissolution or receivership which would have the same effect, to wit: a forced sale of the property in question and the opportunity for Cook and Manges to acquire the same at less than its market value.

(2) Manges, in the furtherance of said scheme then enlisted into the combination the Defendant J. C. Guerra, one of the general partners, who in turn procured the entry into the combination of Virgil H. Guerra, another general partner, and Virginia G. Jeffries, a limited partner. The cooperation of the three Defendant partners was induced by the payment to them of monies provided by the Defendant Cook. In this connection, Plaintiffs allege that at the time of the filing of this petition, they know of some $117,500 which has been paid in cash to J. C. Guerra, Virgil H. Guerra and Virginia G. Jeffries in order to wrongfully induce such persons to violate their partnership agreement, Article 6132a Section 10 (a) (4) and Article 6132a Section 2 (a) (4) of the Texas Uniform Limited Partnership Act and to further violate at least two other contracts which are hereinafter more fully described.

(3) Manges as a part of the scheme, design and combination then procured from J.C.Guerra, Virgil H. Guerra and Virginia G. Jeffries the following documents, copies of which are filed herein as Plaintiffs' Exhibits and incorporated herein by reference as if the same were fully set out herein. The execution and delivery of these instruments and the recordation in the Deed Records of Starr County, Texas of the instruments described in paragraphs (d) and (e) below constituted a knowing and deliberate violation of the partnership contracts and the fiduciary relationship owed by the partnership to each other. The documents in question are:

(d) A "Real Estate Sales Contract" purportedly executed by

Attached Exhibit No. 4

and Clinton Manges as "Purchaser", purportedly executed on or about August 14, 1968. Such contract, which is filed contemporaneously among the papers of this cause as Plaintiff's Exhibit 2, is in the possession of the McAllen State Bank as Escrow Agent, which is also holding $15,000 of funds provided by Cook in connection with such contract, and has already disbursed $5,000 of such funds provided by Cook to Manges to cover a draft of Manges to Virginia G. Jeffries and James A. Jeffries, which is labeled as an "Advance against Virginia G. and James A. Jeffries-Clinton Manges Escrow Account."

(b) A "Real Estate Sales Contract," executed by Virgil E. Guerra and his wife, Lydia S. Guerra, and Clinton Manges, on or about August 26, 1968, which is filed among the papers of this cause as Plaintiff's Exhibit 3. The original of such document is being held by the McAllen State Bank as Escrow Agent, and such bank is also holding $20,000 in escrow funds provided by Cook in connection with such contract.

(c) A "Real Estate Sales Contract," executed by J. C. Guerra and his wife, Corine W. Guerra, and Clinton manges, on or about August 14, 1968, which is filed among the papers of this cause as Plaintiff's Exhibit 4. The original of such document is in the possession of the McAllen State Bank as Escrow Agent, and such bank as Escrow Agent is also holding $20,000 in escrow funds provided by Cook in connection with such contract.

(d) A document executed by Virgil E. Guerra and Lydia S. Guerra on or about August 30,1968, which purports to be a deed to an undivided 1/8th interest in and to the property in question which is owned by the partnership. A copy of such document is filed among the papers of this cause as Plaintiff's Exhibit 5, and the same was caused to be recorded by the Defendants, Manges and Cook, in Vol. 335, pages 401-402 of the Deed Records of Starr County, Texas.

(e) A document executed by J. C. Guerra and wife, Corine W. Guerra, on or about August 31, 1968, which purports to be a deed to an undivided 1/8th interest in and to the property in question which is owned by the partnership. A copy of such document is filed

Attached Exhibit No. 4

among the papers of this cause as Plaintiff's Exhibit 6, and the same was caused to be recorded by the Defendants, Manges and Cook, in Vol. 318, pages 401-408 of the Deed Records of Starr County, Texas.

6.

At all times material herein, Manges and Cook had actual and constructive notice of the terms and conditions of the Limited Partnership Agreement of M. Guerra & Son (Plaintiff's Exhibit 1), and they knew that they had no lawful right to procure the foregoing documents from J. C. Guerra, Virgil H. Guerra and Virginia G. Jeffries. In this connection, Manges and Cook specifically knew that J. C. Guerra, Virgil H. Guerra and Virginia G. Jeffries had no authority, actual or implied, to assign or transfer any rights to any of the partnership property to Manges and Cook for the personal benefit of such partners, and such individuals, by their dealings with Manges and Cook as herein set forth, were acting in violation of the partnership agreement, and of Article 6132a, Section 10(a)(4) of the Texas Limited Partnership Act by assigning or purporting to "assign their rights in specific partnership property for other than a partnership purpose." In this connection, Manges and Cook further acted unlawfully in causing $117,500.00 to be paid to J. C. Guerra, Virgil H. Guerra and Virginia G. Jeffries up to the time of the filing of this petition in order to wrongfully procure the execution and delivery of the instruments herein set forth from such individuals. Such payment was made by the Defendants, Manges and Cook, with full knowledge that J. C. Guerra, Virgil H. Guerra and Virginia G. Jeffries would not account to the partnership or any of the remaining partners herein joined as Plaintiffs, for all or any part of such funds, in further violation of the partnership agreement, the laws of the State of Texas, and other agreements made by the partnership with creditors, as herein set forth. Defendants are hereby called upon to produce the originals of all of the foregoing documents or secondary evidence of same will be offered.

7.

At all times material herein and in connection with all of the transactions and dealings as herein set forth, Clinton Manges was

Attached Exhibit No. 4

duly acting as the agent of Vannie E. Cook, Jr., within the scope of his authority from Vannie E. Cook, Jr., and was subject to the control of Vannie E. Cook, Jr. In this connection, up to the time of the filing of this petition, Cook has advanced in excess of $55,000 in cash in addition to the $75,000 in escrow funds which are presently being held by the McAllen State Bank pursuant to the contracts herein described, and two other so-called "Earnest Money Contracts" procured by Manges in May 1968 and which relate to the purported acquisition by Manges of certain interests in the V. C. Guerra Estate which are more or less contiguous to the properties in question owned by the partnership. In the alternative, if Manges was not acting as the agent for Vannie E. Cook, Jr., he was acting as his joint adventurer at all times material herein.

8.

At all times material herein, in addition to the partnership agreement, Plaintiff's Exhibit 1, Manges and Cook had notice of the fact that a certain portion of the property in question was mortgaged to Southwestern Life Insurance Company as reflected by the terms and provisions of a deed of trust dated October 28, 1964, duly executed by all of the partners of M. Guerra & Son, which deed of trust is recorded in Vol. 60, pages 103-112 of the Deed of Trust Records of Starr County, Texas. Notice is hereby given that a certified copy of such deed of trust will be offered in evidence upon a trial of this cause. A copy of such deed of trust is filed contemporaneously with this petition as Plaintiff's Exhibit 7, and incorporated herein by reference as if the same were fully and at large set forth at this point. Such deed of trust contained a provision, which is usual and customary, to the effect that the grantors "! . .will not sell or convey the above premises unless the purchaser assumes and agrees to pay the indebtedness hereby secured." Manges and Cook have not assumed and agreed to pay the unpaid balance on the partnership indebtedness to Southwestern Life Insurance Company, which was

Attached Exhibit No. 4

in the original amount of $400,000, represented by such deed of trust, and the Defendants, J. C. Guerra, Virgil M. Guerra and Virginia G. Jeffries, knew that they would be violating the contract with Southwestern Life Insurance Company by their transactions with Manges and Cook as herein set forth, and the Defendants, Manges and Cook, knowingly induced such contractural violation. Further, prior to the payment of all or any part of approximately $117,500 to J. C. Guerra, Virgil M. Guerra and Virginia G. Jeffries, as herein set forth, Manges and Cook knew that the M. Guerra & Son partnership had a contract with the National Bank of Commerce at San Antonio, Texas, dated May 14, 1968, a copy of which is filed contemporaneously with this petition as Plaintiff's Exhibit 8 and is incorporated herein by reference as if the same were fully and at large set forth at this point. Such contract, which was duly executed by M. Guerra & Son partnership and by all of the partners individually, provided in paragraph 1:

> "1. If any of the lands of M. GUERRA & SON are sold prior to the maturity or complete payment of the said promissory note of even date herewith, M. GUERRA & SON will apply all of the proceeds of each such sale (after deducting costs of sale actually incurred and paid) to the liquidation of that promissory note; and. . ."

At all times material herein, Manges and Cook knew that all monies paid and to be paid by them to J. C. Guerra, Virgil M. Guerra and Virginia G. Jeffries, Defendants, would be applied by them to their own use and would not be delivered to the M. Guerra & Son partnership and would not be paid for the liquidation of the promissory note in question to the National Bank of Commerce of San Antonio, as required by Plaintiff's Exhibit 8. By their conduct, as herein set forth, Manges and Cook knowingly and deliberately induced the Defendants, J. C. Guerra, Virgil M. Guerra and Virginia G. Jeffries, to violate their contract with the National Bank of Commerce of San Antonio, (Plaintiff's Exhibit 8), and such conduct on the part of Manges and Cook was in furtherance of their wrongful and unlawful contract, combination and scheme as herein set forth.

Attached Exhibit No. 4

Acting further in the attempted execution of the unlawful contract, combination and arrangement, the Defendant Manges caused the filing of Cause No. 3958 entitled "Clinton Manges v. M. A. Guerra, et al," in the 79th District Court of Starr County, Texas, in which Clinton Manges, as Plaintiff, claims to be an owner in fee simple of an undivided 2/5ths interest in the properties in question referred to herein, and asserting that his purported propert interests are in danger by reason of the alleged inability of the partnership to meet its obligations. Further, Manges in the Starr County suit asked the Court to "impound" the partnership funds, and to appoint a receiver to take charge of all the partnership property including, presumably, all of its personal property which th Defendant Manges does not even claim. Such attempted application of the harsh remedy of receivership by Manges in the Starr County suit was not made in a bona fide effort to secure legitimate relief, but rather was made as a means to further harrass the M. Guerra & Son partnership as a going business, and to attempt to make it impossible for the partnership to meet its obligations and conduct its affairs in the hope and expectation that the remaining general partners who are joined as Plaintiffs herein, would become discouraged and would dissolve the partnership, and thereby enable Manges and Cook to acqui the properties in question at a bargain price.

10.

At the present time, as part of the unlawful contract, combination and arrangement, as herein set forth, and for the purpose of acquiring the properties in question at a reduced price, as herein set forth, it is the intention of Manges to attempt to become the owner of any outstanding partnership obligations which might be available for sale by any of the creditors of the partnership who might become uneasy as a result of the conduct of the Defendants and the transactions which are herein set forth. Manges has announced such intention publicly and further, at least one of the partners who is herein joined as a Defendant, has stated

Attached Exhibit No. 4

publicly that he and Manges, acting jointly, will drive certain of the remaining partners into the ground. Such threats, as herein set forth, by Manges and such conduct by Manges and his co-Defendants as herein set forth all constitute a part of the wrongful and unlawful contract, combination, design and scheme which is herein described.

11.

The Plaintiffs say that in addition to the damages already incurred by the partnership and Plaintiff partners, it is their belief that it is the intention of the Defendants herein to pursue and scheme and design by further damaging the partnership's credit reputation, further slandering the partnership's title to the real estate in question by placing additional instruments on record to cloud the same and by seeking "receivership", "impoundment of funds" and other actions of such nature.

Plaintiffs say that the partnership, M. Guerra & Son, is entitled to the following relief against the Defendants and all of them:

(1) The partnership has been damaged to date in the amount of $500,000 by reason of the act of the Defendants in deliberately clouding the title of the partnership to the some 70,000 acres of ranch land belonging to the partnership and in so clouding the partnership's title, the Defendants have maliciously slandered the partnership's title. Immediately prior to the recordation of the instruments in question, the ranch lands could have been sold upon the open market to a willing buyer for $500,000 more than the properties can presently be sold to a willing buyer. The partnership has, therefore, been damaged in such amount by reason of the combination above described and the acts done by the Defendants pursuant to such scheme and all of the Defendants are jointly and severally liable to the said partnership and the partner Defendants are further liable by reason of their breach of their fiduciary relationship to the partnership and their fellow partners.

(2) The partnership has further been damaged by the payment of the amount of $117,500 which has been paid over by the Defendants

Attached Exhibit No. 4

Cook and Manges to the Defendants J. C. Guerra, Virgil M. Guerra and Virginia G. Jeffries with the knowledge, on the part of Cook and Manges that such monies would not be delivered into the partnership but would be used by the Defendant partners for their own benefit and obligations and said money was received by the Defendant partners with the intent to deprive the partnership of the same and to place it beyond the reach of the partnership. In this connection, Plaintiffs say that such funds construe a trust in favor of the partnership and that any properties acquired with such funds by any of the Defendant partners are likewise impressed with the trust in favor of the partnership and if any of said funds have been applied to liens on any property standing in the name of any of the Defendant partners, that such Defendant partners hold such property in trust for the partnership to the extent that such liens have been paid or partially paid through the use of monies received in contravention of the partnership rights.

(3) As previously stated, the partnership owes $150,000 plus accrued interest to the National Bank of Commerce of San Antonio, Texas, which indebtedness is evidenced by a promissory note and a letter agreement dated May 14, 1968. Under the conditions of this obligation, the partnership is entitled to extend the said note for one year from its due date by giving a first deed of trust lien on a sufficient number of acres of M. Guerra & Son lands to secure said obligation with the loan value of such lands being specifically stated at $25 per acre. Plaintiffs say that additional damages will accrue if this loan and other outstanding obligations cannot be extended by reason of the actions of the Defendants as hereinabove set out.

(4) Plaintiffs are entitled to a declaratory judgment that by reason of the actions of the Defendant partners in concert and combination with the Defendants Cook and Manges, all in violation of their partnership agreements and the fiduciary relationship that they owed and owe to the partnership and their partners, that

Attached Exhibit No. 4

such Defendant partners are not entitled to exercise any rights of management over the partnership affairs but are defaulting partners.

(5) Plaintiffs say that as a result of the actions of the Defendants as herein set out, the partnership has suffered special damages in the amount of $15,000 for attorneys' fees and expenses incurred by the partnership to date in protecting the partnership assets and attempting to preserve the same by reason of Defendants' actions.

12.

The undersigned attorneys do not represent H. P. Guerra, Jr. and do not purport to file this petition in his behalf, but this petition is intended to join H. P. Guerra, Jr. herein as a party Plaintiff for the reason that the said H. P. Guerra, Jr. as a general partner has been damaged by the actions of the Defendant partners and their co-Defendants.

WHEREFORE, Plaintiffs pray that citation issue to the Defendants and all of them and upon final trial hereof, Plaintiffs have judgment against the Defendants jointly and severally for the amounts above set out and Plaintiffs further pray that they have further relief by declaratory judgment as above set out and for cost of suit and further relief to which Plaintiffs may show themselves to be entitled.

CARTER, STIERNBERG, SKAGGS & KOPPEL
P. O. Box 2367, Harlingen, Texas

By Jack Skaggs
Of Counsel

Attached Exhibit No. 4

*[363 US 370]

*GEORGE B. PARR et al., Petitioners,

v

UNITED STATES

363 US 370, 4 L ed 2d 1277, 80 S Ct 1171

[No. 391]

Argued April 28, 1960. Decided June 13, 1960.

SUMMARY

Defendants who, through their control of a Texas school board, misappropriated funds of the school district, used the mails in connection with the collection of school taxes; they were convicted, in a prosecution in the United States District Court for the Southern District of Texas, of violating the federal mail fraud statute (18 USC § 1341), which bars the use of the mails for the purpose of executing a scheme to defraud or obtain money or property by false or fraudulent pretenses. Their convictions were affirmed by the United States Court of Appeals for the Fifth Circuit. (265 F2d 894.)

On certiorari, the United States Supreme Court reversed the judgment of the court below. In an opinion by WHITTAKER, J., speaking for six members of the court, it was pointed out that the mailings in question were made or caused to be made by the school board under the imperative command of duty imposed by state law, and that the amount of taxes collected by the board was not shown to have been in excess of the school district's needs or to have been padded or in any way unlawful, and it was held that in this situation there is no violation of the mail fraud statute, even though some of those who were required by state law to do the mailing for the school district planned to steal some of the district's money.

FRANKFURTER, J., joined by HARLAN and STEWART, JJ., dissented, viewing defendants' conduct as falling precisely within the scope of the mail fraud statute.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Taxes § 218 — school tax — assessment — review.

1. Under Texas law the valuation of properties within school districts and the fixing of the tax rate, within a prescribed limit, and the making of assessments, lie within the discretion of the school boards, and their determinations, made within the prescribed limit, are not judicially reviewable, except that enforcement may be enjoined for fraud.

Appeal and Error § 1112.5 — question not raised below — mail fraud — school taxes.

2. In reviewing a federal mail fraud conviction of defendants charged with using the mails in connection with a scheme to misappropriate taxes collected by a school district which was controlled by certain of the defendants, the United States Supreme Court will not consider the question whether the amount of particular assessments made by the controlled school board may be collaterally attacked, even for fraud, in a federal mail fraud case, where the indictment charging mail fraud did not expressly or impliedly charge, and there was no evidence tending to show, that the taxes assessed were excessive, "padded," or in any way illegal, nor did the trial court submit any such issue to the jury.

Post Office § 48 — mail frauds — state law.

3. The fact that a scheme may violate state laws does not exclude it from the proscriptions of the federal mail fraud statute (18 USC § 1341).

Post Office § 38.4 — exclusion — power of Congress.

4. Congress may forbid any mailings in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not.

Post Office § 48 — mail frauds — other laws.

5. Congress, in enacting the statute (18 USC § 1341) forbidding and making criminal any use of the mails for the purpose of executing a scheme to defraud or to obtain money by false representations, left generally the matter of what conduct may constitute such a scheme for determination under other laws, the intention of Congress having been to prevent the post office from being used to carry such schemes into effect.

Post Office § 48 — mail frauds — extent of use.

6. The federal mail fraud statute (18 USC § 1341) does not purport to reach all frauds, but only those limited instances in which the use of the mails is an integral part of the execution of the fraud, leaving all other cases to be dealt with by appropriate state law; only the mailings which are an integral part of the execution of the fraud, or incident to an essential part of the scheme, fall within the ban of the statute.

Post Office § 48 — mail frauds — public officials.

7. Immunization from the ban of the mail fraud statute (18 USC § 1341), is not effected by the fact that those causing the mailings were public officials.

Post Office § 48 — mail frauds — innocent articles.

8. Immunization from the ban of the mail fraud statute (18 USC § 1341) is not effected by the fact that the things caused to be mailed were innocent in themselves, so long as their mailing was a step in a plot.

Courts § 761; Post Office § 48 — mail frauds — new situations.

9. The mere absence of any reported decision involving similar factual circumstances or legal theories does not require determination that no violation of the mail fraud statute (18 USC § 1341) is shown in a particular case.

Post Office § 48 — mail frauds — school officials — collection of taxes.

10. The federal mail fraud statute (18 USC § 1341) forbidding and making criminal any use of the mails for the purpose of executing a scheme to defraud or obtain money or property by false or fraudulent pretenses is not violated by the conduct of defendants, some of whom controlled a school board, in using the mails in connection with collection of school district

ANNOTATION REFERENCES

1. Criminal charge under mail fraud statute as affected by contention of completion of fraudulent scheme before use of mail by person privy to fraud, 157 ALR 247.

2. Mailing false information as basis for credit as offense of using mail to defraud, 62 ALR 392.

3. Use of mail by innocent person rather than defendant as affecting criminal offense predicated upon mail fraud statute, 151 ALR 757; 157 ALR 416.

taxes which defendants misappropriated, where it appears (1) that the school board was legally required to assess and collect taxes, (2) that the indictment did not charge nor the proof show that the taxes assessed and collected were in excess of the school district's needs or that they were padded or in any way unlawful, and no such issue was submitted to or determined by the jury, and (3) that the school board was compelled to collect and receipt for the taxes by state law, which compelled it to use and cause the use of mails for those purposes.

Post Office § 48 — mail frauds — state law.

11. Mailings made or caused to be made under the imperative command of duty imposed by state law cannot be held criminal, within the meaning of the federal mail fraud statute (18 USC § 1341), notwithstanding that some of those who are so required to do the mailing plan to steal some indefinite part of money paid as a consequence of the mailings.

Indictment, Information, and Complaint § 74; Post Office § 48 — mail frauds — school taxes — misappropriation.

12. Defendants who, through their control of a school board, misappropriated taxes paid to the board, cannot be held to have violated the federal mail fraud statute (18 USC § 1341) by using the mails to obtain money by false pretenses, where (1) the indictment charging the crime refers to no mailings constituting false pretenses and misrepresentations to obtain money but mentions only letters giving notice of the modification of an assessed valuation and of valuation hearings, a letter complying with a property owner's request for an auxiliary tax notice, and mailings of checks and covering letters of taxpayers in payment of taxes which were in all respects lawful obligations; and (2) the mailings of reports, containing false entries, to the state Commissioner of Education in order to obtain the amount per pupil allowed by the state to the school district, were not charged as offenses in the indictment.

Post Office § 48 — mail frauds — school officials — purchases — credit card.

13. The federal mail fraud statute (18 USC § 1341) is not violated when an oil company mails invoices to a school district whose credit card was used by defendants to obtain gasoline and other filling station products and services for themselves, notwithstanding that defendants knew or could be charged with knowledge that the oil company would use the mails in billing the district for those things; in this situation, the fraudulent scheme reaches fruition when defendants receive the goods and services complained of, and hence it cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires.

[*See annotation references* 1–3]

Conspiracy § 3.5; Indictment, Information, and Complaint § 94 — sufficiency — conspiracy.

14. A conviction of conspiracy to commit a substantive offense cannot stand where, on the facts presented, the count of the indictment charging the substantive offense in question cannot be sustained.

Post Office § 48 — mail frauds — state crimes.

15. The showing, however convincing, that state crimes of misappropriation, conversion, and embezzlement and theft were committed does not establish the federal crime of using the mails to defraud in violation of 18 USC § 1341.

Constitutional Law § 831 — due process — crimes.

16. Under our vaunted legal system, no man, however bad his behavior, may be convicted of a crime of which he was not charged, proven, and found guilty in accordance with due process.

APPEARANCES OF COUNSEL

Abe Fortas and T. Gilbert Sharpe argued the cause for petitioners.

Malcolm Richard Wilkey argued the cause for respondent.

Briefs of Counsel, p 2184, infra.

OPINION OF THE COURT

Mr. Justice Whittaker delivered the opinion of the Court.

Petitioners, nine individuals and two state banking corporations,[1] were indicted in 20 counts in the
*[363 US 372]
United *States District Court for the Southern District of Texas, Houston Division, for mail fraud and conspiracy to commit mail fraud. The first 19 counts charged that petitioners devised, prior to September 1, 1949, and continued to February 20, 1954, a scheme to defraud the Benavides Independent School District ("District") of Duval County, Texas, the State of Texas, and the taxpayers of each, and that they used the mails for the purpose of executing the scheme, in violation of 18 USC § 1341.[2] The twentieth count charged that petitioners conspired to commit the substantive offense charged in the first count, in violation of 18 USC § 371.[3]

After their various motions, including one challenging venue and asking transfer of the action to the Corpus Christi Division of the court, and one for a bill of particulars, were denied, petitioners entered pleas of "not guilty" and in due course the case was put to trial before a jury. The jury returned ver-
*[363 US 373]
dicts finding petitioners *guilty as charged—some of them on all counts and others on only some of the counts. After denying timely motions in arrest of judgment and for a new trial the court entered judgments upon the verdicts, convicting petitioners and sentencing them to imprisonment.[4] On appeal, the judgments were affirmed, 265 F2d 894, and, to determine questions of importance relative to the scope and proper application of § 1341, we granted certiorari, 361 US 912, 4 L ed 2d 182, 80 S Ct 254.

Petitioners' principal contentions here are: (1) that, although the indictment charged and the evidence tended to show that petitioners devised and practiced a scheme to defraud the District by the local or state crimes of misappropriating and embezzling its money and prop-

1. The petitioners are George B. Parr, D. C. Chapa, B. F. Donald, Octavio Suenz, Jesus G. Garza, Santiago Garcia, Oscar Carrillo, Sr., O. P. Carrillo, Jesus Oliveira, Texas State Bank of Alice and San Diego State Bank, all of Duval County, Texas, in the Corpus Christi Division of the United State District Court for the Southern Division of Texas.

2. Section 1341 provides, in pertinent part, as follows:

"Whoever, having devised . . . any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses . . . for the purpose of executing such scheme . . . places in any post office or authorized depository for mail matter, any matter . . . to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon . . . any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both." 18 USC § 1341.

3. Section 371 provides, in pertinent part, as follows:

"If two or more persons conspire . . . to commit any offense against the United States, . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both. . . ." 18 USC § 371.

4. Footnote on following page.

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ATTACHED EXHIBIT 5

erty, neither the indictment nor the proofs support the judgments, because the indictment did not charge, and the proofs did not show, any use

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of the mails "for the purpose *of executing such scheme" within the meaning of that phrase as used in § 1341, and (2) that the court's charge did not submit to the jury any theory or issue of fact that could constitute use of the mails "for the purpose of executing such scheme." The nature of these contentions requires a detailed examination of the indictment, the evidence adduced, and of the issues of fact actually tried and submitted to the jury, for its resolution, by the court in its charge.

We turn first to the indictment. Summarized as briefly as fair statement permits, the first count alleged that the District is a public corporation organized under the laws of Texas to acquire and hold the facilities necessary for, and to operate, the public schools within the District,[5] and, for those purposes, to assess and collect taxes; that the laws of Texas vest exclusive control of the property and management of the affairs of the District in its Board of Trustees, consisting of seven members; that prior to September 1, 1949, petitioners devised, and continued to February 20, 1954, a scheme to defraud the District, the State of Texas, and the taxpayers of each, and to obtain their money and property for themselves and their relatives.

It then alleged that, as part of the scheme, petitioners would falsely represent that district checks were issued, and its funds disbursed, only to persons and concerns for services rendered and materials furnished to the District, and that its Annual Reports to the State Commissioner of Education were correct.

It next alleged that, as a further part of the scheme, seven of the petitioners would establish and

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maintain *domination and control of the District;[6] that three of them would acquire and maintain control of petitioner, the Texas State Bank of Alice, which was the authorized depository of the District's funds,[7] and that one of them would acquire and maintain control of petitioner, the San Diego State Bank.[8]

Names	Counts on which convicted	Sentences
George B. Parr	All	Aggregate of 10 years and $20,000 fine.
D. C. Chapa	All	Aggregate of 5 years.
H. F. Donald	1–14, 17–20	Aggregate of 4 years.
Jesus G. Garza	All but 7	3 years, but suspended on probation.
Santiago Garcia	4, 5, 8, 13, 14, 15, 17–19	3 years, but suspended on probation.
Octavio Saenz	All but 7	Aggregate of 3 years.
Oscar Carrillo, Sr.	All	Aggregate of 4 years.
O. P. Carrillo	20	2 years, but suspended on probation.
Jesus Oliveira	20	2 years, but suspended on probation, and fine of $7,000.
Texas State Bank of Alice	All	Fine of $2,000.
San Diego State Bank	1–3, 7, 10–12, 16, 20	Fine of $900.

5. The District operates the public schools in the towns of Benavides and Freer in Duval County, Texas. The schools in each town have slightly more than 1,000 pupils.

6. The persons named in the allegation were petitioners Parr, Chapa, Oscar Carrillo, Sr., O. P. Carrillo, Saenz, Garza and Garcia.

7. The persons named in the allegation were petitioners Parr, Donald and Oliveira.

8. The allegation was that control of the San Diego State Bank would be maintained by petitioner Parr.

It then alleged that it was a further part of the scheme that petitioners would send or cause to be sent letters, tax statements, checks in payment of taxes, and receipted tax statements, through the United States mails; that the checks and moneys received by the District from taxpayers and others would be deposited to the credit of the District in the authorized depository bank, against which petitioners would issue district checks payable to fictitious persons, and to existing persons, without consideration (falsifying the District's records to show that such checks were issued in payment for services or materials), and would cash such checks, upon forged endorsements or without endorsements of the payees, at the depository bank and convert the proceeds; that they would open accounts and deposit checks received in payment of taxes in unauthorized banks, and that petitioner Chapa would withdraw and convert the funds; that they would convert and cash checks received by the District in payment of taxes and keep the proceeds; that they would obtain merchandise for themselves on the credit and at the expense of the District; that they would prepare, and the Board of Trustees would approve, false Annual Reports of the District and mail them to the State Commissioner of *Education at Austin, Texas; that they would conceal their fraudulent misuse of district funds by destroying canceled checks, bank statements and other records of the District and the microfilmed records of the petitioner banks showing the fraudulent checks drawn against and paid out of the District's accounts.

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The last paragraph of the count—the only paragraph purporting to charge an offense—charged that petitioners on September 29, 1952, for the purpose of executing the scheme, caused to be taken from the post office, in the Houston Division of the court, a letter addressed to Humble Oil & Refining Company, Houston, Texas.[9]

Each of Counts 2 through 19 adopted by reference all allegations of the first count, except those contained in the last paragraph of that count which charged a specific offense against petitioners, and then proceeded to allege that on a stated date the petitioners, for the purpose of executing the scheme, "caused" a particular letter, tax statement, check, tax receipt or invoice to be placed in or taken from an authorized depository for United States mail in the Houston Division of the

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court.[10] Doubtless *the charge in

9. The letter referred to was one by the District of Sept. 26, 1952, to Humble Oil & Refining Co., Houston, Texas, giving notice of a modification in the assessed value of the latter's property in the District to $2,542,920 for the year 1952, and advising that the amount of tax, at the rate of $1.75 per $100, was $44,501.10.

10. The second count described a letter by the Secretary of the Board of Equalization of the District, dated July 18, 1952, to Humble Oil & Refining Co., Houston, Texas, giving notice of a hearing to be held by that Board at Benavides on Aug. 1, 1952, to determine the taxable value of the latter's lands in the District for the year 1952.

The third count described a check of Humble Oil & Refining Co., Houston, Texas, dated Sept. 26, 1952, payable to the Tax Collector in the amount of $43,166.07, and the accompanying letter of the taxpayer, dated Sept. 29, 1952, advising that the attached check was in payment of "the correct taxes [of] $44,501.10" on the taxpayer's property in the District for 1952, less "the 3 per cent discount for September payment of $1,335.03 leaving a net of $43,166.07 as evidenced by our check."

The fourth count described a check of

each of these counts was so limited, in the light of Rule 18 of Federal Rules of Criminal Procedure fixing venue over crimes in the District

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and *division* where *committed,"[11] in order to give the Houston Division venue over this action, and consequently the indictment does not count upon petitioners' full uses of the mails, for the were principally made in Duval County in the Corpus Christi Division of the court.

The twentieth count charged that throughout the relevant period petitioners feloniously conspired and agreed among themselves and with others to commit "the offenses . . . which are fully described and set out in the first count of this indictment," and that, to effect the object of the conspiracy, petitioners committed specified overt acts.[12]

*[363 US 379]

*We now look to the evidence. Condensed to pith, the 6,000 pages of evidence disclose that the District, acting through its Board of Trustees of seven members, operated the public schools in the towns of Benavides and Freer, each having slightly more than 1,000 pupils. From time to time the Board met to appoint (a) an assessor-collector, (b) an independent firm of engineers and accountants to assist the assessor-collector in determining the ownership and valuation of the property—particularly mineral lands and complex fractional interests therein—in the District, (c) a Board of Equalization, and (d) a depository of the District's funds, and also met (e) to consider and propose to the electorate the authorization and sale of bonds in 1949 ($265,000) and in 1950 ($362,500) to finance the construction of new school facilities.

In actual operations the engineering-accounting firm would annually prepare and submit to the assessor-collector a list showing the ownership and its appraisal of the value of the various properties and mineral interests in the District, from which, after the Board of Equalization had completed its work thereon (in June and July), the assessor-collector would prepare the tax rolls for the current year and therefrom prepare and send out the tax statements by mail, and on receipt of checks in payment of taxes (the great majority of which were received in the mails) would—with exceptions later noted—deposit them to the credit of the District in the depository bank, and then mail receipts to the taxpayers.

Three members of the Board resided in Freer, and the other four resided in Benavides. Aside from the

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meetings *for the purposes above stated, the Trustees rarely met as a board. Each group, rather independently, operated the schools in its town, and the actual costs of operation were about the same in each town.[13] But the Benavides members handled generally the day-to-day business of the District, including the staffing and operation of its office, the keeping of its books and records, the making of its contracts, its relations with the assessor-collector, the Annual Report to the State Commissioner of Education (to obtain from the State the amount per pupil prescribed to be paid to such school districts by the Texas law) and the routine disbursement of its funds.

Petitioners Saenz, Garza and Garcia were three of the four Benavides members of the Board. Petitioners Oscar Carrillo, Sr., and O. P. Carrillo were, respectively, the secretary of and the attorney for the Board. Petitioner Chapa was the assessor-collector. Petitioner Parr was the president and principal stockholder of petitioner Texas

Humble Oil & Refining Co., Houston, Texas, dated Sept. 24, 1953, payable to the Tax Collector in the amount of $53,-807.35, and the accompanying letter of the taxpayer, dated Sept. 24, 1953, advising that the attached check was in payment of taxes for the year 1953.

The fifth count described a letter by the Secretary of the Board of Equalization, dated May 20, 1953, to Humble Oil & Refining Co., Houston, Texas, giving notice of a hearing to be held by that Board at Benavides on June 2, 1953, to determine the taxable value of the latter's property in the District for the year 1953.

The sixth count described a check of Humble Oil & Refining Co., dated Sept. 25, 1951, payable to the Tax Collector in the amount of $34,285.09, and the accompanying letter of the taxpayer, dated Sept. 26, 1951, advising that the attached check was in payment of taxes for the year 1951.

The seventh count described a letter of Dec. 3, 1952, by the District to C. W. Hahl Co., Houston, Texas, complying with a request for an "auxiliary tax notice covering Surface Fee in the Rosita Townsite."

The eighth, ninth and tenth counts described checks of C. W. Hahl Co., Houston, Texas, dated Sept. 25, 1953, Sept. 21, 1951 and Sept. 26, 1952, respectively, payable to the Tax Collector in the amounts of $541.21, $555.25 and $451.70, respectively, and accompanying letters of the taxpayer advising that the attached checks were in payment of taxes on certain property in the District for the years 1953, 1951 and 1952, respectively.

The eleventh, twelfth and thirteenth counts described voucher checks of the Texas Company, Houston, Texas, dated Sept. 27, 1951, Sept. 26, 1952, and Sept. 30, 1953, respectively, payable to the Tax Assessor in the amounts of $13,532.64, $13,-078.72 and $14,665.04, respectively, in payment of taxes on certain property in the District for the years 1951, 1952 and 1953, respectively.

The fourteenth count described a check of the Texas Pipe Line Co., Houston, Texas, dated Sept. 30, 1953, payable to the Tax Collector in the amount of $330.84, and the taxpayer's accompanying letter advising that the attached check was in payment of taxes for the year 1953.

The fifteenth and sixteenth counts described checks of J. E. Beall, Houston, Texas, dated Sept. 30, 1953 and Oct. 24, 1952, respectively, payable to "Benavides Indep. School Dist." in the amounts of $415.72 and $355.55, respectively, in payment of taxes for the years 1953 and 1952, respectively.

Count 17 described an invoice or statement of Continental Oil Co., Houston, Texas, dated May 25, 1953, to the District for merchandise in the amount of $273.85; Count 18 described a check of the District dated Mar. 31, 1953, payable to Continental Oil Co. in the amount of $353.02, and Count 19 described a statement of Continental Oil Co., dated Mar. 20, 1953, to the District for merchandise in the amount of $353.02, which was paid by the District's check described in Count 18.

11. Rule 18 of Fed Rules Crim Proc provides:

"Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed, but if the district consists of two or more divisions the trial shall be had in a division in which the offense was committed."

12. The overt acts alleged were the sending by mail of tax receipts to Humble Oil & Refining Co., at Houston, Texas, on Oct. 4, 1951, to the Texas Co. at Houston, Texas, on Oct. 11, 1951, and Oct. 15, 1953, and to the Texas Pipe Line Co. at Houston, Texas, on Oct. 7, 1952; the deposit by the Texas Pipe Line Co. in the mails at Houston, Texas, on Sept. 30, 1952, of a letter and attached check for $325.07 addressed to the assessor-collector at Benavides, Texas; that D. C. Chapa converted and cashed at the Merchants Exchange Bank, Benavides, Texas, checks payable to the District assessor-collector, (1) of J. E. Beall for $355.55 on Nov. 8, 1952, (2) of Barbara Oil Co. for $361 on Nov. 16, 1952, (3) of O. W. Greene for $298.43, (4) of Peal Properties for $230.92, (5) of Allen Martin for $300.82 on Nov. 22, 1952, and (6) of Jones-Laughlin Supply for $320.16 on Oct. 17, 1952.

13. The actual costs of operating the schools at Freer were about $200,000 per year. They were estimated to be approximately the same amount at Benavides. Although there was evidence estimating the District's total tax assessment, not collections, at about $400,000 for 1949, at about $650,000 for 1952, and the tax rolls show a total tax assessment of $519,013.51 for 1953, the Board's records show tax collections of $310,840.59 for 1949, $295,161.25 for 1950, $370,852.42 for 1951 and $385,-084.96 for 1952. The Board had other income, including payments from Duval County and the pupil per capita amount paid by the State, of about $140,000 per year.

State Bank—the authorized depository of the District's funds—and of petitioner San Diego State Bank, and there was evidence that, although having no official connection with the District, he practically dominated and controlled its affairs, kept its books and records in his office, outside the District, until July 1951, and countersigned all its checks after June 1950. Petitioner Donald was the cashier and administrative man-

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ager of the Texas *State Bank, and petitioner Oliveira was a director of that bank.

There was evidence that throughout the relevant period the District's funds, in large amounts, were misappropriated, converted, embezzled and stolen by petitioners. It tended to show that four devices were used for such purposes:

(1) At least once each month numerous district checks were issued against both its building and maintenance accounts in the depository bank payable to fictitious persons and were presented in bundles, totaling from $3,000 to $12,000, to the depository bank and, under the supervision of petitioner Donald, were cashed by it, without endorsements, and the currency was placed and sealed in an envelope and handed to the presenting person for delivery to petitioner Parr. The evidence tended to show that no less than $120,000 of the District's funds were misappropriated in this way. However, no one of these acts is charged as an offense by the indictment.

(2) At least once each month large numbers of district checks were issued to petitioners, other than Donald and the two banks, often in assumed names or in the names of members of their families, purporting to be in payment for services rendered or materials furnished to the District but which were not rendered or furnished, which checks were presented to the depository bank and, under the supervision of petitioner Donald, were cashed by it, often without or upon forged en-

*[363 US 382]

dorsements.[14] The *evidence tended to show that no less than $65,000 of the District's funds were misappropriated in this way. But again no one of these acts is charged as an offense by the indictment.

(3) Petitioner Chapa converted district checks received by mail in payment of taxes, cashed the same—some at a local bank and some at the depository bank—upon unauthorized endorsements, and misappropriated the proceeds.[15]

(4) Petitioners Oscar Carrillo, Sr., and Garza obtained gasoline and oil for themselves upon the credit card and at the expense of the District.[16] Use of the mails by "causing" the oil company to place its invoices for these goods in the mails and to take the District's check in payment from the mails in Houston, constitutes the basis of Counts 17, 18 and 19 of the indictment.[17]

14. Petitioners Saenz, Garcia, Garza, Oliveira and Chapa regularly received district payroll checks, sometimes in their own names but usually under one or more fictitious names, for services not rendered. Saenz regularly received eight payroll checks in various names; Garcia regularly received payroll checks in the name of his daughter, so did Garza; Oliveira regularly received such checks, sometimes payable to him and at other times to his implement company. Chapa regularly received three such checks each month in various names. All of the checks mentioned were for from $100 to $125. A payroll check for $500 was issued monthly in the name of Parr's brother-in-law, who rendered no services for the District.

15. Included in the checks so converted and cashed by Chapa were the checks of J. E. Beall for $415.72 and for $356.55, described in the fifteenth and sixteenth counts, but there was evidence that he similarly converted and cashed other district checks totaling about $25,000.

16. There was evidence, too, that petitioner O. P. Carrillo procured the remodeling of his law office and new office furniture and equipment on the credit and at the expense of the District to the extent of about $2,500.

The letters, checks and invoices which Counts 1 through 19 of the indictment charge were "caused" by petitioners to be placed in or taken from the mails in Houston, were all offered and received in evidence. Having fully stated the substance of them in notes 9 and 10, we do not repeat it here. The evidence also tended to prove the overt acts alleged in the twentieth count of the indictment.[18]

*[363 US 383]

*We now proceed to examine the court's charge to determine what theories and issues of fact were predicated by the court and submitted for resolution by the jury.' Relative to Counts 1 through 19 of the indictment, the court, after reminding the jury that the indictment had been read to them at the beginning of the trial and that they would have it with them for study during their deliberations in the jury room, read aloud § 1341, defined numerous words and phrases, cautioned on many scores, including the weight to be given to the testimony of "accomplices," stressed the Government's burden of proof, and then proceeded to give the one verdict-directing charge covering those counts which, in pertinent part, was as follows:

"Applying the law to the first 19 counts of the indictment, if you believe beyond a reasonable doubt that the defendant George B. Parr and the other defendants charged and triable in Count One of the indictment considering each separately, did the things that it is alleged that he did do in the first count of the indictment, and at the time that it occurred there existed a scheme to defraud, and that, as a result of such scheme, the mails were used necessarily or incidentally to the carrying out of that scheme, and, as a result thereof, . . . he did cause the defrauding or obtaining of property by false pretenses and representations in any of the particulars set forth therein . . . and that he used the United States Mails as set forth in Count One, . . . then it becomes your duty . . . to find such defendant or defendants guilty as charged in the first count of the indictment and so find by your verdict. . . . The same reasoning and instructions apply to each of the first nineteen counts of the indictment and as to each of the defendants charged and triable in each of the first nineteen counts of the indictment."

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*Relative to the twentieth count, the court, after reading to the jury § 371, telling them that the essence of the charge "is an agreement to use the mails to defraud," defining "conspiracy," commenting on "circumstantial evidence," and stressing the Government's burden of proof, proceeded to give the one verdict-directing charge covering that count which, in pertinent part, was as follows:

"Therefore, with reference to the 20th count, if you believe as to any of the alleged conspirators that that person, together with at least one other, did the things charged against him in such count . . . to effect the objects of the alleged conspiracy, and thereafter there was done one or more of the overt acts set forth in such count . . . then it becomes your duty under the law as to such defendant or defendants that you so believe as to such 20th count were guilty, to so say by your verdict . . . ."[19]

17. See note 10 re Counts 17, 18 and 19.

18. See note 12.

19. Before the giving of the charge, petitioners' counsel, among numerous requests

*[363 US 385]

*In the light of this review of the indictment, the evidence adduced and the court's charge to the jury, we return to the questions presented by petitioners. There can be no doubt that the indictment charged and the evidence tended strongly to show that petitioners devised and practiced a brazen scheme to defraud by misappropriating, converting and embezzling the District's moneys and property. Counsel for petitioners concede that this is so. But, as they correctly say, these were essentially state crimes and could become federal ones, under the mail fraud statute, only if the mails were used "for the purpose of executing such scheme."[20] Hence, the question is whether the uses of the mails that were charged in the indictment and shown by the evidence properly may be said to have been "for the purpose of executing such scheme," in violation of § 1341. Petitioners say "no." The Government says "yes."

Specifically, petitioners' position is that the School Board was required by law to assess and collect taxes for the acquisition of facilities for, and to maintain and operate, the District's schools; that the taxes, assessed in obedience to that duty and for those purposes, were not charged in the indictment or shown by the evidence to have been in any way illegal, and must therefore be assumed to have been entirely lawful; that to perform its duty to assess and collect such taxes, the Board was both legally authorized and compelled to cause the mailing of the letters and their enclosures (tax statements, checks and receipts) complained of in the indictment, and hence those mailings may not be said to have been "for the purpose of executing such scheme," in violation of § 1341.

The Government, on the other hand, contends, first, that it was not necessary to charge or prove that the taxes were unlawful, for it is its

*[363 US 386]

view that once the scheme to *defraud was shown to exist, the subsequent mailings of the letters and their enclosures, even though legally compelled to be made, constituted essential steps in the scheme and, in contemplation of § 1341, were made "for the purpose of executing such scheme"; but it asserts that, in fact, it was *impliedly* charged in the indictment and shown by the evidence that the taxes were illegal in that they were assessed, collected and accumulated in excess of the District's needs in order to provide a fund for misappropriation, and, second, that the indictment charged and the evidence showed that the mailings *impliedly* pretended and falsely represented that the tax moneys would be used only for lawful purposes, and, hence, those mailings were caused for the purpose of obtaining money

for charge, had requested the court to charge the jury as follows:

"You are further instructed that if the use of the mails involved in each of the first 19 counts of the indictment was solely for the purpose of collection of taxes by the Benavides Independent School District, or for the purpose of payment of same by taxpayers, or if you have a reasonable doubt in regard thereto, you will find the Defendants and each of them, 'Not Guilty,' as to each of the first 19 counts of the indictment."

A similar charge was requested with respect to the twentieth count. Both requests were denied.

After the court's charge, counsel for petitioners excepted to the charge on the grounds, among others, that it did "not apply the law given to the facts in any way," was "an abstract instruction which nowhere applies the complete law . . . to the facts in this case," and, with particular reference to the twentieth count, did not instruct the jury "as to the exact essential elements of the offense involved in the first count of the indictment."

20. 18 USC § 1341, quoted in note 2.

by false pretenses and misrepresentations, in violation of § 1341.

After asserting complete novelty of the Government's position and that no reported case supports it, counsel for petitioners point to what they think would be the "explosively expanded" and incongruous results from adoption of the Government's theory, e. g., making federal mail fraud cases out of the conduct of a doctor's secretary or a business concern's billing clerk or cashier in mailing out, in the course of duty, the employer's lawful statements with the design, eventually executed, of misappropriating part of the receipts—the aptness of which supposed analogies, happily, we are not called on to determine. But petitioners' counsel concede that if such secretary, clerk or cashier—and similarly a member of a School Board—improperly "pads" or increases the amounts of the statements and causes them to be mailed to bring in a fund to be looted, such mailings, not being those of the employer (or School Board), would not be duty bound or legally compelled and would constitute an essential step "for the purpose of executing [a] scheme" to defraud, in violation of § 1341. They then repeat and

*[363 US 387]

stress their *claim that here the indictment did not allege, and there was no evidence tending to show, that the taxes assessed and collected were excessive, "padded" or in any way illegal, that the court did not submit any such issue to the jury and that such was not the Government's theory.

It is clear and undisputed that the School Board was under an express constitutional mandate to levy and collect taxes for the acquisition of facilities for, and to maintain and operate, the schools of the District, Constitution of Texas, Art 7, § 3,[21] and was required by statute to issue statements for such taxes and to deliver receipts upon payment.[22]

Headnote 1

The Texas laws leave to the discretion of such school boards the valuation of properties and the fixing of the tax rate, within a prescribed limit, in the making of their assessments,[23] and their determinations, made within the prescribed limit as here, are not judicially reviewable, Madeley v Trustees of Conroe Independent School Dist. 130 SW2d 929, 934 (Tex Civ App), except enforcement may be enjoined for fraud.[24]

Headnote 2

But the question whether the amount of such an assessment might be collaterally attacked, even for fraud, in a federal mail fraud case is not presented here, for after a most careful examination we are compelled to say that the indictment did not expressly or impliedly charge, and there was no evidence tending to show, that the taxes assessed were excessive, "padded" or in any way illegal. Nor did the court submit any such issue to the jury. Indeed, the court refused a charge proffered by counsel

*[363 US 388]

for petitioners *that would have submitted that issue to the jury.[25] Such was not the Government's theory. In fact, the Government took the position at the trial, and argued to the jury, that the taxes assessed and collected were needed by the District for a new "science hall," "office building," "plumbing facilities [and] all sorts of things," and that peti-

21. Madeley v Trustees of Conroe Independent School Dist. 130 SW2d 929, 934 (Tex Civ App).
22. Vernon Tex Rev Civ Stat art 2784e.
23. Vernon Tex Rev Civ Stat arts 2784e, 2827.
24. Madeley v Trustees of Conroe Independent School Dist., supra (130 SW2d, at 932); Kluckman v Trustees of Raymondville Independent School Dist. 113 SW2d 301, 303 (Tex Civ App).
25. See note 19.

tioners' misappropriations not only deprived the District of those needed things but left it "two and one-half years in debt"—a sum several times greater than that said to have been misappropriated by petitioners.

The theory that it was *impliedly* charged and shown that the taxes were illegal in that they were assessed, collected and accumulated in excess of the District's needs in order to provide a fund for misappropriation, was first injected into the case by the Court of Appeals. That court rested its judgment largely upon its conclusion that the assessments were designed to bring in not only "enough money . . . to provide for the legitimate operation of the schools [but also] enough additional . . . to provide the funds to be looted." 265 F2d, at 897. We think that theory and conclusion is not supported by the record. As stated, no such fact or theory was charged in the indictment, shown by the evidence or submitted to the jury, and moreover the Government negatived any such possible implication by taking the position at the trial that the assessed taxes were needed for new school facilities and improvements and that the misappropriations deprived the District of those needed things and left it "two and one-half years in debt."

Nor does the Government question that the Board, to collect the District's taxes (largely from nonresident property owners), was required by the state law to use the mails. Indeed, it took the position at the trial, and argued to the jury, that the Board could not "collect these

*[363 US 389]

taxes *from Houston, from the Humble, from The Texas Oil Company, and from the taxpayers all over the State of Texas without the use of the United States mails." The Court of Appeals thought that such legal compulsion placed petitioners "on the horns of a dilemma" because they could not at once contend that the law compelled them to cause the mailings and deny that they did cause them. 265 F2d, at 898.

The crucial question, respecting Counts 1 through 16 of the indictment, then comes down to whether the legally compelled mailings of the lawful—or, more properly, what are not charged or shown to have been unlawful—letters, tax statements, checks and receipts, complained of in those counts, properly may be said to have been for the purpose of executing a scheme to defraud because those legally compelled to cause and causing those mailings planned to steal an indefinite part of the receipts.

The fact that a scheme may violate state laws does not exclude it from the proscriptions of
Headnote 3
Headnote 4
the federal mail fraud statute, for Congress "may forbid any . . . [mailings] . . . in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not." Badders v United States, 240 US 391, 393, 60 L ed 706, 708, 36 S Ct 367. In exercise of that power, Con-
Headnote 5
gress enacted § 1341 forbidding and making criminal any use of the mails "for the purpose of executing [a] scheme" to defraud or to obtain money by false representations—leaving generally the matter of what conduct may constitute such a scheme for determination under other laws. Its purpose was "to prevent the post office from being used to carry [such schemes] into effect . . . ." Durland v United States, 161 US 306, 314, 40 L ed 709, 712, 16 S Ct 508. Thus, as
Headnote 6
its terms and purpose make clear, "[t]he federal mail fraud statute does not

purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud, leaving all other cases to be dealt with by

*[363 US 390]

appropriate *state law." Kann v United States, 323 US 88, 95, 89 L ed 88, 96, 65 S Ct 148, 157 ALR 406. Therefore, only if the mailings were "a part of the execution of the fraud," or, as we said in Pereira v United States, 347 US 1, 8, 98 L ed 435, 444, 74 S Ct 358, were "incident to an essential part of the scheme," do they fall within the ban of the federal mail fraud statute.

The Government, with the support of the cases, soundly argues that immunization from the ban
Headnote 7
Headnote 8
of the statute is not effected by the fact that those causing the mailings were public officials[26] or by the fact that the things they caused to be mailed were "innocent in themselves," if their mailing was "a step in a plot." Badders v United States, supra (240 US at 394).[27] It then argues that the jury properly could find that the mailings, complained of in the first 16 counts—namely, the letter notice of a modification is assessed valuation, two letters giving notice of hearings before the Board of Equalization to determine taxable value of property, one letter complying with a property owner's request for an "auxiliary tax notice," and 12 checks of taxpayers and their letters of transmittal[28]—were, even if innocent in themselves, each "a step in a plot" or scheme to defraud, and that they were caused to be made "for the purpose of executing such scheme" in violation of § 1341. But it cites no case holding that the mailing of a thing which the law required to be mailed may be regarded as mailed for the purpose of executing a plot or scheme to defraud. In-

*[363 US 391]

stead, it frankly concedes *that there is no such case. It says that "there is no reported case exactly like this," but expressly its view that this case rests on a factually "unique situation."

We agree that the factual situation is unique, and, of course, agree, too, that the fact there
Headnote 9
is no reported decision involving similar factual circumstances or legal theories is not determinative. But in the light of the particular circumstances of this case, and especially of the facts (1) that the School Board was legally required to assess and collect taxes, (2) that the indictment did not charge nor the proofs show that the taxes assessed and collected were in excess of the District's needs or that they were "padded" or in any way unlawful, (3) that no such issue was submitted to, nor, hence, determined by, the jury, (4) that the Board was compelled to collect and receipt for the taxes by state law, which, in the circumstances here, compelled it to use and *cause* (here, principally by permitting) the use of the mails for those purposes, we
Headnote 10
must conclude that the legally compelled mailings, complained of in the first 16 counts of the indictment, were not shown to have been unlawful "step[s] in a plot," Badders v United States, supra (240 US, at 394), "part[s] of the execution of the fraud," Kann v United States,

26. Bradford v United States, 129 F2d 274, 276 (CA5th Cir); Shushan v United States, 117 F2d 110, 115, 133 ALR 1040 (CA5th Cir). See also Steiner v United States, 134 F2d 931, 933 (CA5th Cir).

27. United States v Earnhardt, 153 F2d 472 (CA7th Cir); Holmes v United States, 134 F2d 125, 133 (CA8th Cir); Mitchell v United States, 126 F2d 650 (CA10th Cir); Stephens v United States, 41 F2d 446 (CA 9th Cir). See also Ahrens v United States, 265 F2d 514 (CA5th Cir).

28. See notes 9 and 10.

supra (323 US, at 95), "incident to an essential part of the scheme," Pereira v United States, supra (347 US, at 8) or to have been made "for the purpose of executing such scheme," within the meaning of § 1341, for we think it cannot be said that mailings

Headnote 11

made or caused to be made under the imperative command of duty imposed by state law are criminal under the federal mail fraud statute, even though some of those who are so required to do the mailing for the District plan to steal, when or after received, some indefinite part of its moneys.

Nor, in the light of the facts in this record, can it be said that the mailings complained of

Headnote 12

in the first 16 counts of the indictment constituted false pretenses and *misrepresentations to obtain money. Surely the letters giving notice of the modification of an assessed valuation and of valuation hearings to be conducted by the Board of Equalization, constituting the basis of Counts 1, 2 and 5, contained no false pretense or misrepresentation. We fail to see how the letter complying with a property owner's request for an "auxiliary tax notice," constituting the basis of Count 7, could be said to be a misrepresentation. And the mailings complained of in the remaining counts, even though "caused" by petitioners, certainly carried no misrepresentations by petitioners for they were checks (and covering letters) of taxpayers in payment of taxes which, so far as this record shows, were in all respects lawful obligations. On this phase of the case, the Government has principally relied on the fact that the Annual Reports of the Board and the depository bank to the State Commissioner of Education, apparently necessary to obtain the amount per pupil allowed by the State to such districts, contained false entries. But the fact is those mailings were not charged as offenses in the indictment, doubtless because they were, as shown, between Benavides and Austin, Texas, and therefore not within the Division, nor hence the venue, of the court.[29]

*[363 US 392]

Counts 17, 18 and 19 of the indictment relate to a different subject. They charged, and there was evidence tending to show, that petitioners Oscar Carrillo, Sr., and Garza fraudulently obtained gasoline and other filling station products and services for themselves upon the credit card and at the expense of the District knowing, or charged with knowledge, that the oil company would use the mails in billing the District for those things. The mailings complained of in those counts were two invoices, said to contain amounts for items so procured by Carrillo and Garza, mailed by the

*[363 US 393]

oil company, at Houston, to *the District, at Benavides, and the District's check mailed to the oil company, at Houston, in payment of the latter invoice. We think these counts are ruled by Kann

Headnote 13

v United States (US) supra. Here, as in Kann, "[t]he scheme in each case had reached fruition" when Carrillo and Garza received the goods and services complained of. "The persons intended to receive the [goods and services] had received [them] irrevocably. It was immaterial to them, or to any consummation of the scheme, how the [oil company] . . . would collect from the [District]. It cannot be said that the mailings in question were for the purpose of executing the scheme, as

29. Rule 18 of Fed Rules Crim Proc, quoted in note 11.

the statute requires." 323 US, at 94.

Inasmuch as the twentieth count charged petitioners with conspiring to commit the offense

Headnote 14

complained of in Count 1, and inasmuch as, on the facts of this record, that count cannot be sustained, it follows that petitioners' convictions upon the twentieth count cannot stand.

In view of our stated conclusions, it is unnecessary to discuss other contentions made by petitioners.

The strongest element in the Government's case is that petitioners' behavior was shown to have been so bad and brazen, which, coupled with the inability or at least the failure of the state authorities to bring them to justice,[30] doubtless persuaded the Government to undertake this prosecution. But the showing, however convincing, that

Headnote 15

Headnote 16

state crimes of misappropriation, conversion,

*[363 US 394]

embezzlement *and theft were committed does not establish the federal crime of using the mails to defraud, and, under our vaunted legal system, no man, however bad his behavior, may be convicted of a crime of which he was not charged, proven and found guilty in accordance with due process.

Reversed.

SEPARATE OPINION

Mr. Justice Frankfurter, whom Mr. Justice Harlan and Mr. Justice Stewart join, dissenting.

The petitioners, nine individuals and two banks, were indicted for violations of, and conspiracy to violate, the Mail Fraud Act, 18 USC § 1341. All were convicted on the conspiracy count, and all but two, who were exonerated on all of the substantive counts, were convicted of eight or more of the nineteen specific mailings charged.

Together these petitioners controlled a public body created under Texas law, the Benavides Independent School District (hereinafter called the District), which administered the public schools within its geographical confines, and dominated the bank serving as depository of the District, designated as such pursuant to statute. Vernon Tex Rev Civ Stat arts 2763, 2763a. Through their control of the District's fiscal affairs they looted it of at least $200,000 between 1949 and 1953.

The District was vested by Texas law with a limited taxing power, Vernon Tex Rev Civ Stat art 2784e, and the annual collection of taxes was the primary source of revenue for maintaining its public schools. The District, and therefore these petitioners exercising the powers of the District, assessed and collected an ad valorem property tax which was by law to be devoted exclusively to the maintenance of the public schools. They were empowered to fix the rate of taxation according to projected needs, whether for expenditures or reserves. Vernon Tex Rev Civ Stat arts 2784e, 2827. Apart from their

30. Petitioners Parr, Chapa and Donald were several times tried in the state court on charges growing out of matters involved in this case. Parr and Donald were ultimately found guilty but their convictions were reversed. Donald v State, 165 Tex Crim 252, 306 SW2d 360 (1957); Parr v State, — Tex Crim —, 307 SW2d 94 (1957). Chapa was tried on two other indictments returned in the state court, both charging fraudulent conversion of the District's funds. He was acquitted on the first indictment and convicted on the second but his conviction was reversed. Chapa v State, 164 Tex Crim 564, 301 SW2d 127 (1957).

*[363 US 395]

*duty to confine the tax to school purposes, petitioners' discretionary power to fix the rate was unlimited, except that a maximum rate was fixed by statute. Vernon Tex Rev Civ Stat art 2784e. In 1951, petitioners raised the tax rate to the statutory maximum, and thereafter taxed at that rate. Pursuant to a scheme devised in 1949, they regularly spent less than the amount collected on the schools, created no reserves, and appropriated a portion of the proceeds to their own uses. When their domination of the District ceased in 1954, school expenditures sharply rose, while tax collections remained substantially unchanged.

Conduct or transactions fall under the Mail Fraud Act if it be established that there existed "any scheme or artifice to defraud" and that the mails were used "for the purpose of executing such scheme or artifice or attempting so to do." Of the nineteen substantive violations charged in this indictment, sixteen were mailings in connection with the tax-collection process carried out by petitioners. As to those counts this case presents the question whether the Act is violated by a public officer vested by law with a discretionary power to levy taxes for the purpose of providing funds estimated to meet projected expenditures for a statutorily defined public need for the satisfaction of which the power is entrusted to him, who exercises that power over several years to collect through the mails sums which could as a matter of law be so expended, but a portion of which he at all times, throughout successive years of fixing the tax rate and utilizing the proceeds, actually intends to and does appropriate to his own uses.

Petitioners urge that because the amounts they collected each year were credited to the taxpayers on the District's books, and were not in excess of what they might, had they lawfully applied the proceeds, have expended for school maintenance, the collections were in effect lawful and did not constitute a fraudulent

*[363 US 396]

scheme *in the collection of the taxes, so that there was no wrong doing, nothing illicit, till they misapplied the innocently collected funds. Their case is that it must therefore be concluded that the mailings, which occurred in the course of the exercise of the District's lawful taxing power, were not for the purpose of "executing" their scheme within the meaning of the Act, regardless of the fact that it was established beyond peradventure that their abuse of the District's powers was a seamless fraudulent scheme, conceived and executed as such with every element of the enterprise interdependent with every other.

Insofar as the defense rests on the lawfulness of the isolated act of mailing as a claim of immunity from the Mail Fraud statute, it is without substance. It has long been established that under this Act "[i]ntent may make an otherwise innocent act criminal, if it is a step in a plot." Badders v United States, 240 US 391, 394, 60 L ed 706, 709, 36 S Ct 367. In fact the heart of petitioners' effort to escape their conviction is the claim that the skulduggeries of which the jury found them guilty do not fall within the scope of the Mail Fraud statute because in sending out the tax bills they were the neutral vehicles of legal compulsion, although at the time that they sent them out, and having full governmental control of the process of controlling revenue and expending it, they had predetermined that the proceeds were not to be fully applied to school purposes but were in part to be diverted into their private pockets. It bespeaks an audacious lack of humor to suggest that the

law anywhere under any circumstances requires tax collectors who sent out tax bills, and who also have complete control over the returns, to send out bills to an amount which they predeterminedly design to put in part to personal uses. That is certainly not the law of Texas in any event. While it may be assumed that, since the maintenance of the schools was the duty of the District, petitioners were obligated to collect some amount of ad valorem tax for

*[363 US 397]

*that purpose, it is undisputed that how much was to be expended, and therefore how much was to be collected, was determined not by Texas law but by the discretion, the voluntary act, of petitioners themselves. No Texas statute required them to collect what they intended to spend to keep the schools running, plus an amount which they intended to misappropriate, and that is precisely what the proof established and the jury found that they did.

Petitioner's claim raises the further question whether, even if the mailings were not immune in themselves, they were too remote from the purpose of the fraudulently designed scheme to be deemed in "execution" of it. Whether a mailing which occurs in discernible relation to a scheme to defraud is an execution of it is a question of the degree of proximity of the mailing to the scheme. The statute was enacted "with the purpose or protecting the public against all such intentional efforts to despoil, and to prevent the post office from being used to carry them into effect . . . ." Durland v United States, 161 US 306, 314, 40 L ed 709, 712, 16 S Ct 508. Whether the post office was so used must be the Court's central inquiry. If the use of the mails occurred not as a step in but only after the consummation of the scheme, the fraud is the exclusive concern of the States. Kann v United States, 323 US 88, 89 L ed 88, 65 S Ct 148, 157 ALR 406. The adequate degree of relationship between a mailing which occurs during the life of a scheme and the scheme is of course not a matter susceptible of geometric determination. In United States v Young, 232 US 155, 58 L ed 548, 34 S Ct 303, we said that it is not

*[363 US 398]

necessary *that the scheme contemplate the use of the mails as an essential element, and in Pereira v United States, 347 US 1, 8, 98 L ed 435, 444, 74 S Ct 358, we found a mailing to be in execution of a scheme because it was "incident to an essential part" of it. The determining question is whether the mailing was designed materially to aid the consummation of the scheme, as, for example, in Pereira v United States (US) supra, by the obtaining of its proceeds through the innocent collection of defendant's fraudulently obtained check by his bank.

For the purposes of the statute, the significance of the relationship between scheme and mailing depends on the interconnection of the parts in a particular scheme. Ordinarily, once the fraud is proved its scope is not a matter of dispute. But when, as here, the fraud involves the abuse of a position of public trust, closer analysis is required. Petitioners seek to denude their scheme of its range and pervasiveness. They construct an artifact whereby their fraudulent scheme was, as it were, intramural, unre-

1. See Madeley v Trustees of Conroe Independent School Dist. (Tex Civ App) 130 SW2d 929, 932, and Kluckman v Trustees of Raymondville Independent School Dist. (Tex Civ App) 113 SW2d 301, 303, both stating that an action will lie to enjoin the collection of taxes on the ground of the Trustees' fraud; and Stephens v Dodds (Tex Civ App) 243 SW 710, suggesting that a referendum conferring on the Trustees the power to tax may be void if the tax is not for the statutory purpose.

lated to taxpayers to whom they sent the tax bills, and so the mails, the ingenuous argument runs, were not used in the fraud because the wrongdoing only arose after the mails had fulfilled their function by bringing the returns. The wrong is thus nicely pigeonholed as embezzlement, without any prior scheme.

The fraudulent episodic, petty-cash peculations of a clerk at a regulatory agency are frauds upon that agency, and although taxpayers generally are injured by the fraud and in that sense are the ultimate objects of it, the mailings by which the tax proceeds are collected which constitute the vast government funds out of which the agency's funds are taken, are, as a matter of practical good sense by which law determines such issues of causation, see Gully v First Nat. Bank, 299 US 109, 117, 118, 81 L ed 70, 74, 75, 57 S Ct 96, too remote from the scheme to be deemed in execution of it. But to analogize petitioners'

*[363 US 399]

scheme to a conventional *case of peculation by an employee, whether public or private, is to disregard the facts of this case.

The petitioners themselves controlled the entire conduct of the District's fiscal affairs, and their own decision, limited only by a statutory ceiling, determined the amount of the tax that would be collected. Petitioners' exercise of their power to fix the amount of the tax, an exercise which ultimately assured to themselves an excess of funds over their intended expenditures or reserves for school purposes, was necessarily central to their scheme. Such control obliterates the line they seek to draw between themselves and the entity it was their duty to serve. By demanding and collecting what they intended to misappropriate they made the process of collection an inseparable element of their scheme.

The petitioners' control of the District and therefore of its tax rate, similarly disposes of their contentions that one or another element of a technical fraud upon the taxpayers of the District is absent. The suggestion that in the collection of taxes there was no representation by petitioners to the taxpayers of the District might be pertinent were the system a self-executing tax structure under which the time for, and amount of, the payment due and the payee to whom it is to be made are designated by statute, so that the tax collector, serving as an automatic conduit, does nothing to cause collection of the tax. These collectors, however, were the prime actors in the structure. They not only billed the taxpayers but also fixed the rate of the tax itself. For that reason it cannot be said that the taxpayers paid their taxes solely under compulsion of Texas law, and not at all in reliance upon the implied false representation of petitioners that the amounts assessed were collected to meet projected expenditures. The taxpayers necessarily depended upon petitioners' setting of the rate for knowledge of what amount was to be paid. Each tax-

*[363 US 400]

payer who testified revealed *that he awaited his bill before making payment. The fact, much relied on by petitioners, that an available Texas procedure for challenging the tax was not invoked, establishes not, as is argued, the legality of the tax, but the reliance of taxpayers on petitioners' implied representations in the collection of it.

The intention of petitioners to have their bills paid is beyond dispute. But they urge an absence of detriment to the taxpayers who did rely since their payments were ordinarily credited to them on the District's books. The claim is frivolous. Whether they are viewed as having overpaid for school services, or having been deprived of services for which they paid, the detriment to the taxpayers is self-evident. It is in part for this reason that petitioners' attempted analogy between this case and the case of a doctor's secretary who sends out just bills but intends to steal from the proceeds is to urge that a mountain is a molehill. Even if the secretary, rather than her principal, is regarded as making the representation to patients that they may pay her, they are not injured by so doing, and they are not defrauded. The result would be very different, as petitioners concede, if the bills so sent out were padded by her. Here inescapably the bills were padded by the predetermined increase, which, though within technical legal limits, was for fraudulent ends.

Although this analysis appropriately disposes of this case it goes beyond the requirements of the statute. While the Mail Fraud Act is directed against the utilization of the mails in carrying out a fraudulent scheme, the penal prohibition of the use of the mails for a fraud does not turn on the niceties of the common-law offense of obtaining money or goods under false pretenses, see Durland v United States, 161 US 306, 312, 313, 40 L ed 709, 711, 16 S Ct 508. The statute sought to forbid the use of the mails

*[363 US 401]

as a vehicle for a fraudulent *enterprise in the ordinary sense of a fraud—a dishonest and cheating enterprise. It is significant that the Act was amended in 1909 by adding to the outlawry of a "scheme or artifice to defraud" the expanding condemnation, "obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 35 Stat 1130. While of course penal criminal statutes must not be extended beyond the fair meaning of English words, they must not be artificially and unreasonably contracted to avoid bringing a new situation within their scope which plainly falls within it in light of "the evil sought to be remedied." Durland v United States, supra (161 US at 313).. The lay, commonsensical way of interpreting condemnation of aspects of fraud in federal penal legislation is illustrated by the settled doctrine that the prohibition against defrauding the United States in 18 USC § 371 extends far beyond the common-law conception of fraud in that financial or property loss is not an ingredient of the offense. Haas v Henkel, 216 US 462, 480, 54 L ed 569, 577, 30 S Ct 249, 17 Ann Cas 1112; see also United States v Plyler, 222 US 15, 56 L ed 70, 32 S Ct 6. If the fraudulent enterprise of which this record reeks is not a scheme essentially to defraud the taxpayers who constitute the District rather than a disembodied, abstract entity called the District, English words have lost their meaning.

Petitioners finally urge as to these counts that their convictions cannot be sustained because, even if the facts were sufficient to sustain a conviction, the indictment did not allege, the proof did not show, the conduct of the trial and the summations to the jury did not reveal, and the charge to the jury did not present, such a case either as to fact or law. It is apparent however that every aspect of this prosecution was focused on the Government's basic assertion that because petitioners controlled the District's affairs, continuously schemed to and did misappropriate funds while continuing

*[363 US 402]

to collect falsely *represented revenues from taxpayers by mail, the use of the mails to collect taxes was

in execution of a scheme to defraud the District and its taxpayers.

The indictment in every substantive count expressly alleged "a scheme and artifice to defraud the BISD, persons obligated by the laws of the State of Texas to pay taxes to the BISD (hereinafter called taxpayers), the State of Texas, and . . . to obtain the money and property of the BISD and the taxpayers for themselves . . . ." The primary devices allegedly undertaken to effectuate the scheme were the obtaining and maintaining of control of the District and its depository bank, and the collection of taxes by mail from District taxpayers during the period of the scheme.

The Government's proof established a design of petitioners to obtain control of the political and fiscal mechanism of the District, and that, having obtained control and being the dominus of the District, they sent out tax bills of the returns from which, year after year, they took a portion for themselves. The proof thus established a continuing course of conduct constituting, by the very nature of the systematic continuity of the practice, a conscious scheme to utilize their powers of government, of which setting the tax rate was one, for fraudulent purposes, in the execution of which the mails of the United States were a necessary instrument. Objections to government evidence offered on the substantive counts as to events before 1951 were overruled on the well-settled ground that the offers were admissible to show the continuing scheme to acquire, maintain and abuse control of the District.

In its summation the Government repeatedly characterized the scheme which it had sought to prove as one to employ petitioners' comprehen-

*[363 US 403]

sive control to maximize *District revenues with a view to stealing funds,[2] and the charge adequately placed the issues of the indictment and trial before the jury.

The remaining three substantive counts of the indictment charged that as part of the same scheme to control and defraud the District the petitioners used the District's charge account to obtain gasoline for their personal use, which acts resulted in the use of the mails by the vendor to present the appropriate bills to the District. The mailings of two such bills and of one payment by the District were charged as separate offenses. Two matters are to be noted. First, it is suggested that there was no misrepresentation by the petitioners, because only the correct bill of the vendor was sent to the District. No reason appears however why a bill which the jury could have found petitioners knowingly caused to be sent to the District constitutes less of a represen-

2. "A continuing scheme year after year, send out the tax notice, rake in the harvest through the mails, and then milk it by several methods as outlined." "[T]his was a continuing scheme to defraud. This was not a scheme which these defendants thought up 'I will take one check and convert it to my own use,' but it went on, '48, '49, '50, '51, '52, '53, in order to draw out more fraudulent checks, more money from the depository banks they had to replenish the supply." "It is the Government's theory of this case that these defendants took over a mail-order business. . . . The defendants knew that; they had to know it." "What is the function of the School District? The function of the School District is to provide for the public education, the free education of the students, all the children who live in their district. . . . The trustees are someone in whom confidence . . . trust and reliance are placed by the taxpayers. . . . What was the school district used for in this instance? . . . it was used as a personal vehicle for the fraudulent designs and purposes of these defendants."

tation by them that the gasoline consumed was used for the District's purposes than a voucher directly submitted by them for reimbursement for cash purchases.

*[363 US 404]

*Second, it is urged that, under the rationale of Kann v United States, 323 US 88, 89 L ed 88, 65 S Ct 148, 157 ALR 406, the mailings, even if caused by petitioners, were not in execution of a scheme to defraud because the scheme was consummated once they received the gasoline. Kann v United States found an appropriate instance of such a limitation; but it also expressly excepted from the force of the rule situations in which the subsequent mailing has the function of affording "concealment so that further frauds which are part of the scheme may be perpetrated," supra (323 US at 94, 95). Here the jury might properly have found that consumption of gasoline for private purposes was but one device of petitioners for turning their control of the District to their personal advantage, and that the continuing presentation and payment of the bills, and not merely the receipt of the gasoline, was the purpose of the scheme.

Petitioners raise no substantial objections to the conspiracy convictions that are not disposed of by what has already been said. The petitioners' other attacks against the verdict require no more discussion than given below. 265 F2d 894.

I would affirm the judgments.

00064

NO. 3953

CLINTON MANGES		IN THE DISTRICT COURT
VS.		229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL		STARR COUNTY, TEXAS

REQUEST FOR ADMISSIONS
UNDER RULE 169

TO: Hon. O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas, Duval County Courthouse, San Diego, Texas

GREETING:

On behalf of defendants, Ruben R. Guerra and M. A. Guerra, you are hereby requested under the provisions of Rule 169 of the Texas Rules of Civil Procedure to admit the truth of the matters of fact set forth below. Each of the matters of which an admission is requested shall be deemed admitted unless a sworn statement is delivered to us or to our attorney of record at the address below not more than thirteen (13) days after these requests are delivered to you either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why you can not either admit or deny those matters. Any admission made by you pursuant to this request is for this pending "Motion for Disqualification or Recusation" only and neither constitutes an admission by you for any other purpose nor may be used against you in any other proceeding. The requested admissions are as follows:

1. That you are now serving as a Director of the First State Bank and Trust Company of Rio Grande City, Texas by virtue of election by the stockholder of the Bank, or appointment of the Board of Directors thereof.

2. That you have served as a Director of the First State Bank and Trust Company of Rio Grande City, Texas during all or part of the time between the time of the annual stockholders' meeting held in January 1971 and the present time.

3. The First State Bank and Trust Company of Rio Grande City, Texas pays monthly directors fees to its directors.

4. You have received payment of directors fees from said First State Bank and Trust Company of Rio Grande City, Texas, for all or part of the time you have so served as director.

5. As Judge of the 229th District Court you approved the application of the Receiver of M. Guerra and Son to convey part of the ranch lands of said partnership to Clinton Manges, Plaintiff herein.

6. Subsequent to the approval of the conveyance to said Plaintiff, Clinton Manges, you have been permitted to graze a number of your cattle on lands so acquired by said Clinton Manges under such conveyance.

7. On or about the month of January 1971, the Plaintiff, Clinton Manges, delivered to you a cadillac automobile.

8. The cadillac automobile so delivered to you by Plaintiff, Clinton Manges, as stated in No. 7 above, was a gift from Plaintiff, Clinton Manges, to you.

Respectfully submitted

RUBEN R. GUERRA AND M. A. GUERRA,
DEFENDANTS

BY Garland F. Smith
Garland F. Smith of
Smith, McIlheran, McKinney & Yarbrough
Attorneys for Defendants
R. R. Guerra and M. A. Guerra

CERTIFICATE OF SERVICE

I, Garland F. Smith, of counsel for defendants, Ruben R. Guerra and M. A. Guerra, have this day served a copy of the above and foregoing requests for admission on Hon. O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas, by placing a copy thereof as certified mail in the U. S. Post Office in Weslaco, Texas this 23rd day of January 1973 addressed to him at the Duval County Courthouse, San Diego, Texas 78384. At the same time and in like manner by certified mail I also served copies hereof on all other parties hereto by placing the same in the U. S. Post Office

ATTACHED EXHIBIT 6

in Weslaco, Texas addressed to such parties as indicated below.

Garland F. Smith

Copies to:

1. Hon. Arnulfo Guerra
   Attorney at Law
   Drawer 905
   Roma, Texas 78584
   Attorney for J. C. Guerra, V. H. Guerra
   and Virginia Jeffries

2. Mr. H. P. Guerra, Jr., Defendant
   Drawer G.
   Rio Grande City, Texas 78582
   Attorney for Self

3. Hon. William C. Church
   Messrs. Kampmann, Church, Burns and Brenan
   612 Milam Bldg.
   San Antonio, Texas

4. Hon. Dennis E. Hendrix
   Attorney
   Box 117
   Edinburg, Texas 78539
   Attorney for the Receiver, James S. Bates

5. Hon. Blas Chapa
   District Clerk
   Starr County Courthouse
   Rio Grande City, Texas 78582

NO. 00067
3953

CLINTON MANGES	I	IN THE DISTRICT COURT
VS.	I	229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	I	STARR COUNTY, T E X A S

STATEMENT IN RESPONSE TO
REQUEST FOR ADMISSIONS

TO: RUBEN R. GUERRA and M. A. GUERRA, DEFENDANTS IN THE ABOVE ENTITLED AND NUMBERED CAUSE:

In response to your Request for Admissions in this Cause, received on the 24th day of January, 1973, O. P. Carrillo, says that:

1. Yes, it is true that I am now serving as a Director of the First State Bank and Trust Company of Rio Grande City, Texas, by virtue of election by the Stockholders of the Bank or appointment of the Board of Directors thereof.

2. Yes, it is true that I have served as a Director of the First State Bank and Trust Company of Rio Grande City, Texas, during all or part of the time between the time of the annual stockholders' meeting held in January, 1971 and the present time.

3. Yes, it is true that the First State Bank and Trust Company of Rio Grande City, Texas, pays monthly directors' fees to its Directors, in the amount of $50.00 per month, as a token payment to help defray the actual expenses of travel, meals and time.

4. Yes, it is true that I have received payment of directors' fees from said First State Bank and Trust Company of Rio Grande City, Texas, for all or part of the time I have so served as director.

5. Yes, it is true that as Judge of the 229th District Court I approved the application of the Receiver of M. Guerra & Son to convey part of the ranch lands of said partnership to Clinton Manges, Plaintiff herein, upon the written request of the Receiver, joined therein by Ruben R. Guerra, J. C. Guerra, Viegilio H. Guerra, H. P. Guerra, Jr., and Clinton Manges.

6. Yes, it is true that subsequent to the approval of the conveyance to said Clinton Manges, I have been permitted to graze cattle on lands so acquired by said Clinton Manges under such conveyance under a lease agreement for three years providing for such at the rate of $5,000.00 per year payable at the end of said lease in cash or the equivalent in cattle at the option of said Clinton Manges.

ATTACHED EXHIBIT 6

7. No, it is not true that on or about the month of January, 1971, the Plaintiff Clinton Manges, delivered to me a Cadillac Automobile.

8. No, it is not true that the Cadillac Automobile was delivered to me by Plaintiff, Clinton Manges, as stated in No. 7 above, nor was it a gift from Plaintiff, Clinton Manges.

9. On further answer and explanation of the statements in 7 and 8 above, the following Statement is made. On October 12, 1970, I conveyed a House and lot in Benavides, Duval County, Texas, to Clinton Manges in exchange for ten (10) shares of Stock in the First State Bank and Trust Company of Rio Grande City, Texas, and the payment by Clinton Manges of the balance due on the purchase of a new car, which I had previously ordered from Riata Cadillac Co., in San Antonio, Texas. The Bank Stock was formally transfered to me on December 10, 1970, and the payment by Clinton Manges to Riata Cadillac Co., on my behalf was made in the amount of $6,915.55 on January 27, 1971. The car was picked up by me.

O. P. Carrillo

THE STATE OF TEXAS I

COUNTY OF DUVAL I

BEFORE ME, the undersigned authority, on this day personally appeared O. P. CARRILLO, known to me to be a credible person, who being by me first duly sworn, on oath says that he has read the foregoing Statement in Response to Request for Admissions, designed to be used in the above entitled and numbered cause, and knows the contents of such, and that such and every statement and allegation thereof are true and correct.

O. P. Carrillo

SUBSCRIBED AND SWORN TO BEFORE ME by the said O. P. CARRILLO, on this 5th day of February, 1973, to certify which witness my hand and seal of office.

Notary Public in and for Duval County, T E X A S

Copies to: Hon. Blas Chapa
District Clerk
Starr County Courthouse
Rio Grande City, Texas

2. Hon. Arnulfo Guerra
Attorney at Law
Drawer 905
Roma, Texas 78584

3. Mr. H. P. Guerra, Jr., Defendant
Drawer G.
Rio Grande City, Texas 78582
Attorney for Self

4. Hon. William C. Church
Messrs. Kampmann, Church, Burns and Brenan
612 Milan Bldg.
San Antonio, Texas

5. Hon. Dennis E. Hendrix
Attorney at Law
Box 117
Edinburg, Texas 78539
Attorney for the Receiver, James S. Bates

6. Hon. Garland Smith
Smith, McIlheran, McKinny & Yarbrough
Attoeneys at Law
Professional Building
Fifth & Missouri Avenue
Weslaco, Texas 78596

ATTACHED EXHIBIT 6

THE COURT: Gentlemen, do you wish to present any argument?

MR. SMITH: Your Honor, since that was presented under a bill, we will make no answer to it. I believe the matter, as far as we are concerned, has been adequately taken care of as far as proof. I think the evidence that has come in today has been irrelevant, and I don't believe has touched the matter of the disqualification of Judge Carrillo. I think the sort of thing they are thinking of, that possibly some people agreed to it, or submitted it, does not in any way affect the disqualification. The parties cannot by agreement make him qualified if he is disqualified. Otherwise, I believe our briefs are adequate.

MR. BATES: I have nothing, your Honor.

MR. CHURCH: I have no argument.

THE COURT: Well, gentlemen, it is kind of hard for a Judge to make this decision regarding a fellow Judge, but it is the opinion of the Court that Judge Carrillo is disqualified as of - - - well, say the first of February, 1971. I don't want my ruling in any wise to prejudice the rights of any of the parties or reflect on anyone. But I feel that the promiscuous - - - Judge Carrillo, I think, has been honest. I don't think he feels he is disqualified or has done anything wrong. But the fact remains that he

Attached Exhibit #7

unquestionably - - - the negotiations with reference to the sale of the - - - or the transfer of the house and lot in Benavides, took place after - - - that is, it originally took place before he went in office, and was finally consummated after he was in office. Also, there was a lease on a number of acres of land, I don't know now how many acres -- you might say a free lease for a short period of time, I don't remember how long, which would have amounted to a gift. Then the lease on some five or six thousand acres of land at a price of $5,000.00 per year for three years, payable at the end of the term, and also for the right of Mr. Manges to terminate at any time he wished, would be a financial interest that would go with this case. It would be expensive for him to move his cattle. And he would have to pay up what was owing on the lease at that time. Also, Mr. Manges is by far the greatest controlling stockholder of the bank, and the appointment as a director would have been a financial interest to him, even though small in comparison with the amounts involved in this law suit. And then the fact that Mr. - - - that the bank, in which the litigant, Mr. Manges owned possibly three-quarters interest in it, by far the controlling interest, was making loans to him up to two or three hundred thousand dollars. As I recall, one of the notes, for two or three hundred thousand dol-

Attached Exhibit #7

lars, was payable in one year, and the fact that the note could easily be demanded to be paid at maturity, or extended at the will of Mr. Manges. All of those things, and other matters, are like the sword of Damocles, hanging over the head of the Judge by a thin hair. I don't see how a person in that predicament could possibly render an impartial judgment. I couldn't. It's bad, but this is a matter that can be raised at any time. It could be raised after judgment, and it would have to be done all over again. It would be just wiped out. If you have another Judge hear it, he could go over this matter, and vindicate the decisions of Judge Carrillo, if that is correct, or render whatever judgment is correct. That is the reason I don't want in any manner to make any ruling that would in anywise be construed as either ratifying and confirming, or the opposite, holding that there was anything unjust. In my opinion, in other words, what I am saying is I am not accusing - - - no, that's not exactly the word — I don't mean to hold any of his decisions are not correct. I have no way of knowing that. The fact that they were correct or not correct, in my opinion, does not touch the question of disqualification. It goes to the root of our system itself. Our Courts are under pressure and subject to criticism on many things that are unjust. And our Courts are the very foundation of our system of society.

Attached Exhibit #7

And if our Courts become corrupt, then there is no justice in the land. And where there is no justice in the land, the only recourse is revolution and bloodshed, and then all people suffer. We, as Judges, must be like Caesar's wife, above and beyond reproach. It is hard enough to render justice and meet the criticism of people on decisions we are called on to make that are controversial, without the burden of anything else that can at all be questionable. I like Judge Carrillo. I have always thought a lot of him. He is young, and he is inexperienced on the bench, but he was kind of caught in a web of circumstances that bound him in this particular case. So it will be the judgment of the Court that he is disqualified.

MR. BATES: Please the Court, on behalf of the Receiver, I ask the Court to make findings and conclusions of law, and give such notice as is necessary in open Court at this time, to appeal the judgment.

THE COURT: I don't know whether you can appeal it or not. I hope you can.

MR. BATES: Well, if we can't, we will try the mandamus route.

THE COURT: I hope you can. Either way I decide on this, the appellate Court can decide the opposite.

MR. BATES: Should I make a more formal request

Attached Exhibit #7

than I make now for findings and conclusions, or will that suffice.

THE COURT: I think that will be sufficient. All right, gentlemen, Court is adjourned.

- - o - -

Attached Exhibit #7

No. 00075
3953

CLINTON MANGES, Plaintiff	}	IN THE DISTRICT COURT
VS	}	229th JUDICIAL DISTRICT
M. A. GUERRA, ET AL, Defendants	}	STARR COUNTY, TEXAS

ORDER ON MOTION FOR
DISQUALIFICATION OF JUDGE

BE IT REMEMBERED that on the 15th day of January 1973, there came on to be heard before Honorable O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas the motion of defendants, R. R. Guerra and M. A. Guerra that the Judge recuse or disqualify himself from sitting in this cause, and the said Judge O. P. Carrillo, after hearing testimony, evidence and arguments of counsel on said motion, on February 5, 1973 requested Honorable J. R. Alamia, Presiding Judge of the Fifth Judicial Administrative Judicial District to appoint another judge to hear and decide said motion; and the said Judge Alamia appointed the undersigned, Judge Magus F. Smith, Judge of the District Court of Hidalgo County, 93rd Judicial District to hear and decide said motion; whereupon, hearings were held thereon by the undersigned Judge on the 20th day of February, 1973, March 30, 1973 and April 23, 1973, at the conclusion of which hearing said movants R. R. Guerra and M. A. Guerra, rested, as did the Plaintiff, Clinton Manges, who opposed said motion. The Plaintiff, Clinton Manges was given until May 7 to answer briefs filed by movants, and the movants were given until May 14 to file a rebuttal brief, after which the matter was submitted for decision. On May 11, 1973, the Receiver, James S Bates filed a motion to re-open the hearing for additional testimony, which motion was set down for hearing on Friday, May 18, 1973, and on such date the motion was heard and granted.

Attached Exhibit #7

IT IS THE OPINION OF THE COURT, after considering all of the relevant evidence, the briefs and arguments of counsel, that the law and facts support the motion to disqualify ; that the transactions between the Judge and the Plaintiff, Clinton Manges invest the judge with a disqualifying interest in the case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Honorable O. P. Carrillo, Judge of the 229th District Court of Starr County, Texas is disqualified to sit as judge in the above styled and numbered cause as of February 1, 1971.

SIGNED AND ENTERED THIS the 21 day of May, 1973.

Judge Presiding

Attached Exhibit #7

NO. 00077
3953

CLINTON MANGES		IN THE DISTRICT COURT
VS.		229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL		STARR COUNTY, TEXAS

INTERLOCUTORY ORDER GRANTING MOTION OF M. A. GUERRA FOR SUMMARY JUDGMENT AGAINST PLAINTIFF, CLINTON MANGES

On the 13th day of September 1973 there came on to be heard the motion of defendant and cross-plaintiff M. A. Guerra for Summary Judgment against plaintiff and cross-defendant Clinton Manges in the above entitled and numbered cause, wherein Clinton Manges is a plaintiff and a cross-defendant, and M. A. Guerra is a defendant and cross-plaintiff; and it appearing to the court that such motion has been made in proper form and time, and that proper notice thereof has been made, and that the parties, M. A. Guerra and Clinton Manges, being the only parties involved in said motion, are before the court; and it appearing further that Clinton Manges has filed answers to such motions, but without attaching opposing affidavits, and that such answers have been served and are before the court, and the court having considered the pleadings, depositions, record and affidavits on file, finds that they show an absence of any genuine issue as to any material fact to the extent hereinafter specified that this Summary Judgment should be rendered for defendant and cross-plaintiff, M. A. Guerra, who is entitled to such judgment as a matter of law.

In support of this judgment, the court makes the following findings of facts and conclusions of law, to-wit:

1. That the contract executed by Clinton Manges and Guerra on December 8, 1970 is a valid contract.

2. That under the terms of said contract, the plaintiff Clinton Manges shall take M. A. Guerra's place in the

Attached Exhibit "B"

ship of M. Guerra & Son, and in the dissolution thereof Clinton Manges will be responsible for any amounts that may be due by M. A. Guerra.

3. That M. A. Guerra's interest in the partnership of M. Guerra and Son so sold to plaintiff Clinton Manges is 17.66%.

4. That Clinton Manges is liable for the 17.66% of the internal and external debts of M. Guerra & Son applying to such interest of M. A. Guerra including liability for 17.66% of all costs of receivership.

5. That presuming the acceptance by the Court of the settlement contracts made between plaintiff Clinton Manges and the original partners of M. Guerra & Son as a voluntary partition of the assets of M. Guerra & Son, the Court in adjusting accounts between the partners; in case of a deficiency, must look first to the 17.66% of the assets of M. Guerra & Son claimed by Clinton Manges under the contract of December 8, 1970 between Manges and M. A. Guerra, before seeking to collect the 17.66% of such deficiency from the assets reserved to M. A. Guerra as part of the consideration for such sale to Clinton Manges.

6. That plaintiff Clinton Manges in assuming the "tax liability on any income tax that may be due by M. A. Guerra on the sale of his interest in the partnership of M. Guerra & Son" has paid to the Director, Internal Revenue Service the sum of $118,256.86, and is liable under said contract to pay or reimburse M. A. Guerra for such additional tax as may be assessed by the Internal Revenue Service on the theory that the $118,256.86 paid by Manges is income to M. A. Guerra on which an income tax is due. The court finds however, that upon payment of such additional assessment Clinton Manges will have satisfied his liability under said contract insofar as income taxes are concerned.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that in the dissolution of M. Guerra and Son that M. A. Guerra be conveyed an undivided 17.66% of the undivided

Attached Exhibit #8

one-half (½) of minerals owned by M. Guerra & Son as of October 11, 1968, subject to executory rights in Clinton Manges, together with 17.66% interest in town lots in Rio Grande City and Roma, Texas and lands in Goliad County Texas owned by M. Guerra & Son, free and clear of all internal and external debts of M. Guerra & Son and of all costs of receivership, which debts and costs to the extent of the liability therefor of M. A. Guerra's 17.66% interest, are to be paid by plaintiff, Clinton Manges; and the 17.66% of the assets of M. Guerra & Son acquired by Clinton Manges under said contract of December 8, 1970 shall be charged with M. A. Guerra's liability for such internal and external debts and for M. A. Guerra's liability as to cost of court and the receivership.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that this order be and it is interlocutory in nature to be carried out and executed under direction of the Court upon completion of the final accounting and closing of the receivership and dissolution of the partnership of M. Guerra & Son.

SIGNED AND ENTERED this 2d day of ~~September~~ OCTOBER, 1973.

Judge Presiding

Filed 3rd day of Oct
A.D. 1973 at 10:55
o'clock A M
District Clerk
Starr County, Texas
Deputy

Vol. "V" pages 284/286

Attached Exhibit #B

Tarja G.78

CLINTON MANGES	(00080	IN THE DISTRICT COURT
VS.	)	229TH JUDICIAL DISTRICT
M. A. GUERRA, ET AL	(	STARR COUNTY, TEXAS

FINAL JUDGEMENT

On this the 11th day of June, 1974 came on to be heard the above styled and numbered cause wherein Clinton Manges is Plaintiff and M. A. Guerra, R. R. Guerra, J. C. Guerra, V. H. Guerra, Virginia G. Jeffries and H. P. Guerra, Jr. are Defendants, and all parties announced to the Court that a jury had been waived by all parties and that they were ready for trial.

Parties further announced to the Court that all matters in controversy had been fully and finally settled.

It further appearing to the Court that the receivership created in this case still owes the amount of $241,653.95, together with the costs of court incurred herein.

The Plaintiffhas represented to the Court and the Court finds that the Plaintiff will pay to the Receiver $225,000.00. In addition thereto, the Defendant R. R . Guerra has agreed to pay to the Receiver $4,935.65; the Defendant H. P. Guerra $7,002.43; the Defendant J. C. Guerra $3,908.02, and the Defendant V. H. Guerra $4,557.67.

It further appearing to the Court that on the 10th day of June, 1974 Interlocutory Orders were signed by this Court therein granting title to V. H. Guerra a certain tract of land situated in Starr and Jim Hogg County, Texas, the description of which is set forth by meets and bounds in the Interlocutory Order and granting to H. P. Guerra, Jr. certain lands situated in Starr County, Texas as described in Exhibit A to said Interlocutory Order, which description and orders are made a partof this judgement by reference for all purposes.

It is therefore ordered, adjudged and decreed that title vests in Virgil H. Guerra and wife, Lydia Guerra to the 11,460.4 acres of land situated in Starr and Jim Hogg County, Texas, and parcicularly described in the Interlocutory Order signed and entered on the 10th day of June, 1974.

Attached Exhibit #9

It is therefore ordered, adjudged and decreed that title vests in H. P. Guerra, Jr. to the 7595.44 acres of land situated in Starr and Jim Hogg County, Texas, and particularly described in the Interlocutory Order signed and entered on the 10th day of June, 1974.

It further appearing to the court that there was conveyed to the plaintiff Clinton Manges certain tracts of land situated in Starr and Jim Hogg Courties, that the land so conveyed to the plaintiff by the defendants in this cause is particularly described in that certian deed executed by James S. Bates, receiver of M. Guerra and Son, a partnership, J. C. Guerra, Virgil H. Guerra, R. R. Guerra and H.P. Guerra, Jr., and dated August the 20th, 1974; that said deed, together wth the description thereof has been duly recorded on September the 7th, 1971 in volume 60, pages 341-353 of the deed records of Jim Hogg County, Texas, and also recorded in the deed records of Starr County, Texas on September the 8th, 1971 in volume 359, pages 622-634.

It is ordered, adjudged and decreed that the receiver's deeds as herein above described to the plaintiff Clinton Manges, be and they are hereby ratified and confirmed by the court.

It further appearing to the court that the receiver, James S. Bates, together with the plaintiff Clinton Manges and defendants J. C. Guerra Virgil H. Guerra and H. P. Guerra, Jr. executed a deed to R. R. Guerra of certain property situated in the County of Starr, State of Texas, and being particularly described in said deed, which deed contains 13,269.559 acres of land, which deed has been duly recorded in volume 359, pages 635-639 of the deed records of Starr County, Texas.

It is therefore ordered, adjudged and decreed that the receiver's deeds as herin above described to the defendant R. R. Guerra, be and they are hereby ratified and confirmed by the court.

It further appearing to the court that a mineral deed was executed by the plaintiff Clinton Manges on the 16th day of March, 1971 to the defendant R. R. Guerra describing certain minerals situated on the land in Starr County, Texas, which land and mineral interests therein is more fully described in that certain deed dated August 20th, 1971, executed by Clinton Manges to R. R. Guerra and filed of record on the

Attached Exhibit #9

7th day of September, 1971 in Volume 359 at pages 642-643 of the deed records of Starr County, Texas.

It is therefore ordered, adjudged and decreed that the mineral deed herein above described to the Defendant R. R. Guerra, be and it is hereby ratified and confirmed by the Court.

The Court further finds that each of the party Defendants, save and except Virginia Jeffries, in all transactions with the Plaintiff Clinton Manges reserved unto themselves their respective interest in one-half of the minerals under the ranch lands and all of the fee simple title to all of the town lots in Roma and Rio Grande City, Texas and to all Goliad County land owned by the partnership of M. Guerra and Son; the Court finds that the Plaintiff has made no claim to the interest so reserved by the Defendants R. R. Guerea, M. A. Guerra, H. P. Guerra, Jr., J. C. Guerra, Virgil H. Guerra and Virginia Jeffries, the said Virginia Jeffries reserving unto herself one-fourth of her percent of the minerals under the randh lands and reserved for herself her percent of the fee simple title in the town lots and Goliad County land owned by M. Guerra and Son.

The Court further finds that the Plaintiff Clinton Manges did acquire the right to make and execute, without the joinder of said M. Guerra and Son, all leases, permits, unitization and pooling agreements and division orders therefor, for the exploration for and production of oil, gas, and other minerals, provided that no such lease shall reserve less than one-eight (1/8) of the oil, gas and other minerals produced as a royalty, but the right reserved in M. Guerra and Son, a partnership, includes the right to participate and share as its interest may appear in all bonuses, rentals, royalties, overriding royalties and payments out of production; however all of themineral rights in and to the town lots in Roma and Rio Grande City, Texas, and any and all real estatesituated in Goliad County, Texas belong exclusively to the surface ownership. The Court further finds that the following parties have the percent interest in and to the above described minerals under the hereinafter ranch land: Ruben R. Guerra 16.667%, Virgil H. Guerra 16.667%, H. P. Guerra, Jr. 16.667%, Joe C. Guerra 16.667%, M. A. Guerra 17.667%, Virginia G. Jeffries 6.8325%. The Plaintiff Clinton Manges has acquired fifty percent of the interest formerly owned by Virginia Jeffries and his interest in the above described minerals is 6.8325 percent

Attached Exhibit #9

It is therfore ordered, adjudged and decreed that the following parties ar the owners of fifty percent of the minerals under the ranch lands owned by M. Guerra and Son situated in Starr and Jim Hogg Counties and their undivided interest is setforth by percentage following their names, to-wit:

Ruben R. Guerra	18.667%
Virgil H. Guerra	16.667%
H. P. Guerra, Jr.	16.667%
Joe C. Guerra	16.667%
M. A. Guerra	17.667%
Virginia G. Jeffries	6.8325%
Clinton Manges	6.8325%

and are owners in the above percentagesof one-hald(1/2) of the minerals acquired by M. Guerra and Son under a certain deed from Horace P. Guerra to M. Guerra and Son dated December 13, 1956 as recorded in Volume 220, geginning at page 448 of the Deed Records of Starr County, Texas and in Volume 37, beginning at page 393 in the Deed Records of Jim Hogg County, Texas, SAVE AND EXCEPT subdivided city and town lots in Roma and Rio Grande City, Texas, and any and all real estate situated in Goliad County, Texas.

It is further ordered, adjudged and decreed that the following Defendants own the percent fee simple undivided interest indicated after their names, in and to the subdivided city and town lots in Rome and Rio Grande City in Starr County, Texas, and all lands in Goliad County, Texas, owned by the partnership of M. Guerra and Son: (MWB)

Ruben R. Guerra	18.666%
Virgil H. Guerra	16.667%
H. P. Guerra, Jr.	16.667%
Joe C. Guerra	16.667%
M. A. Guerra	17.666%
Virginia G. Jeffries	13.667%

It further appearing to the Court that all parties have agreed that each of the actions and cross-actions filed by the Plaintiff and each of the Defendants against any party in this case be in all things dismissed with prejudice.

It if further ordered by the Court that the sum of $3,615.04 now on deposit with the clerk of this Court and representing a tender of shut in gas royalty made by Jake L. Hamon on the 9th day of November

Attached Exhibit #9

1973, shall remain on deposit with the clerk without prejudice to the rights or claims, if any, of the parties hereto until a determination is madeof the ownership of such fund and the intervention of Jake L. Hamon filedin this cause on November 9th, 1973 is hereby severed as a separate cause of action and is to be designated as 39538.

It is further ordered by the court that the receiver, James S. Bates and his attorney, Dennis E. Hendrix, be paid the sums of $50,000.00 and $10,000.00, respectively, for the services rendered by them herein since January 7th, 1971, and it is further ordered that the receiver, upon receipt of the funds hereinabove ordered to be paid by the parties, disburse same for payment of the following listedclaims:

J. C. Guerra	$113,108.96
G & G Lumber Co.	1,383.41
W. T. Shropshire	1,250.00
Estate of J. H. Guerra	18,862.65
Estate of F. D. Guerra	7,241.09
Arnulfo Guerra	500.00
Frank R. Nye, Jr.	693.36
Bates & Hendrix	3,836.52
Arturo Z. Flores	1,000.00
Richard L. Strawn	3,897.96

together with all court costs heretofore incurred herein; and it is further ordered that any funds then remaining on hand shall be divided equally between J. C. Guerra, H. P. Guerra, Jr., Virgil H. Guerra and R. R. Guerra.

It is further ordered that upon full payment by the parties of the hereinabove specified sums, the payment by the Receiver of the hereinabove listed claims and expenses, and the divisions of the excess or surplus, if any, the Receiver, James S. Bates, and the sureties on his official bond be and they are hereby released and discharged, and the partnership of M. Guerra and Son is terminated and dissolved.

SIGNED AND ENTERED this the 11th day of June, 1974

JUDGE PRESIDING

J. C. Guerra

APPROVED:

Clinton Manges

R. R. Guerra

M. M. Guerra

H. P. Guerra, Jr.

V. H. Guerra

Attached Exhibit #9

Duval: 00085
A Troubled Dukedom

One of America's oldest and most powerful political machines now faces a new crisis and struggle for survival.

Located in Duval County in South Texas, it dates back some 60 years when a man named Parr was labeled the first "Duke of Duval."

The veritable political and economic empire, dominated by the Parr family and its associates, has survived the onslaughts of federal and state authorities for decades.

Now the "Dukedom" is in trouble.

George Parr, the current "Duke," drew a 5-year sentence for income tax evasion. His nephew Archer has been sentenced to 30 years for perjury. Both cases are on appeal.

Dallas News readers will get the dramatic story on what may develop into a potentially violent struggle for survival in "Duval: A Troubled Dukedom." The report by a team of skilled writers will be coordinated by senior political analyst Robert E. Baskin.

The series will uncover answers to many explosive questions.

- ★ **How did the Duval Dukedom begin?**
- ★ **What effect will the federal convictions of George and Archer Parr have on their powerful political machine?**
- ★ **Should the two Parrs go to prison, who may gain control?**
- ★ **Who is the genuine mystery man emerging in the Parr story?**
- ★ **What are the facts behind the bizarre story of the alleged judicial persecution of the estranged wife of Archer Parr and her subsequent suicide?**

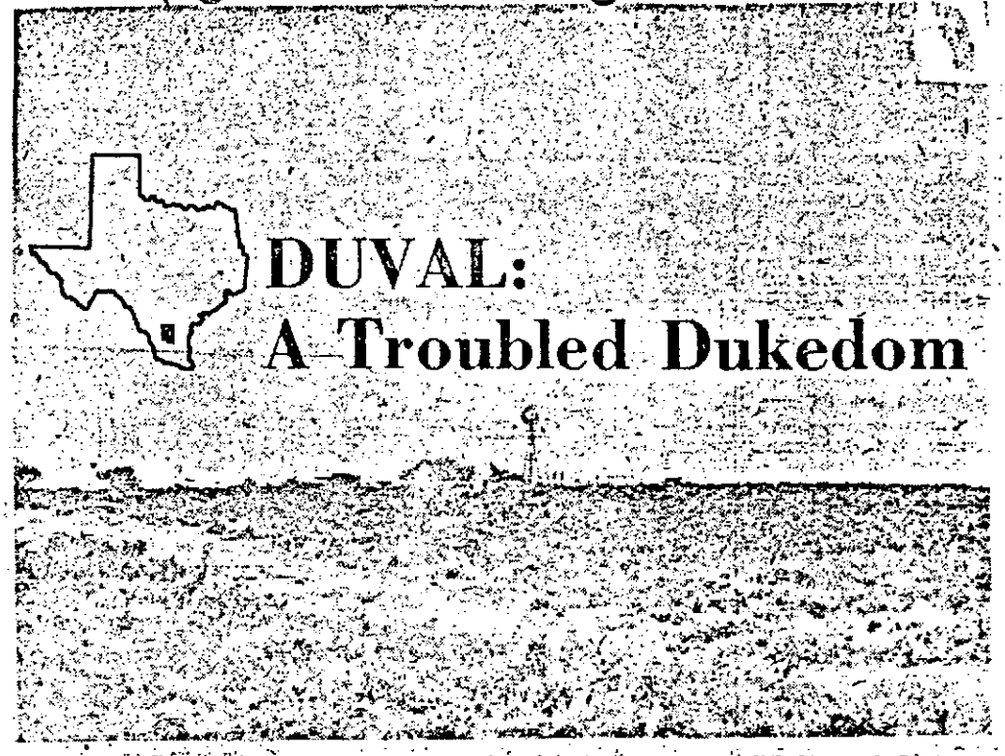
A DRAMATIC 7-PART SERIES

Starting Sunday in —

The Dallas Morning News

Sat. Aug. 17, 1974

The Dallas Morning News
Phone 748-8222 Circulation 748-8388 Classified 748-8329
Dallas, Texas, Sunday, August 18, 1974 9 Sections



DUVAL: A Troubled Dukedom

Duchy Hanging On During New Crisis

A team of veteran Dallas News reporters, headed by senior political analyst Robert E. Baskin, spent weeks digging through records and interviewing knowledgeable sources in a comprehensive look at the troubled dukedom of Duval County. Sam Kinch Jr. of the News' Austin Bureau, political writer Carolyn Barta and investigative reporter Dave McNeely joined Baskin in preparing this dramatic 7-part series.

By ROBERT E. BASKIN

The Duchy of Duval, believed to be the oldest political machine in the nation and one which has managed to survive the onslaughts of federal and state authorities for decades, today is in a new crisis and struggling for survival.

This troubled dukedom, which has held sway for so many years in the mesquite and cactus country of South Texas, in the last few months has had shattering blows to its power. But it is hanging on tenaciously, as it always has, despite the rise of usurpers and new convictions in the courts.

DUVAL COUNTY, statistically, is not impressive. Lying between San Antonio and Brownsville, it consists of 1,814 square miles and an estimated population in 1972 of only 12,700. But it has been a power in state politics at times that has surpassed that of Texas' metropolitan centers. Its tentacles have reached to Austin and even to Washington.

This is the feudal domain of the Parr family—the Dukes of Duval.

It is here that the dukes have reigned since 1912, with their influence and power spilling over into neighboring counties. The reign has been marked over the years by claims of vote frauds, embezzlement of public funds, gunfire from the "pistoleros" who have reputedly enforced the Parr edicts, and a paternal rule over the Mexican-Americans who constitute the vast majority of the citizenry.

This spring trouble fell heavily on the Parr regime:

George Parr, 73, the ruling duke, was convicted of income tax evasion on May 4 in federal court in Corpus Christi and sentenced to five years in prison and a $14,000 fine. The case has been appealed.

Archer Parr, 48, the heir apparent to the dukedom, was convicted on six counts of perjury in federal court in San Antonio on May 9 and sentenced to 30 years in prison and fined $60,000. This conviction, too, has been appealed.

BOTH CASES arose out of irregularities in the handling of funds of the Duval County Conservation and Reclamation District, the water supplier to much of the county.

For George Parr it was the third time in his turbulent career that he had been convicted in a federal court. But these actions have not deterred him. On a 1934 income tax conviction, on which he served nine months of a 2-year term, he ultimately received a pardon from President Truman in 1945. His conviction in 1956 on mail fraud in connection with funds of the Benavides School District was reversed by a 6-3 Supreme Court decision in 1960.

The Parr machine endured through all of this.

But today it is in trouble unlike any it has ever seen before— troubles that involve the loyalties of its oldtime retainers, personal tragedy and the emergence of a strange, new face in the South Texas power structure.

HERE ARE SOME of the elements:

The political leader of the Carrillo family, former State Rep. Oscar Carrillo, who formerly boasted of its allegiance to the Parrs for three generations, is openly declaring that he will take over the reins in Duval. His defection from the Parr machine poses the prospect of intense political conflict.

The tragic suicide on June 13 of Jody Martin Parr, who was engaged in a bitter divorce case with Archer Parr, shocked South Texas. Her attorney charged that she had been the victim of "judicial harassment" by a district judge friendly to the Parrs. Before she died, Jody Parr had been imprisoned for contempt of court, stripped of virtually all her material possessions and saw no way out of her legal tangle.

A GENUINE mystery man now figures heavily in the Parr struggle for survival. He is Clinton Manges, who in recent years has had phenomenal business successes in South Texas, including the takeover of the prestigious

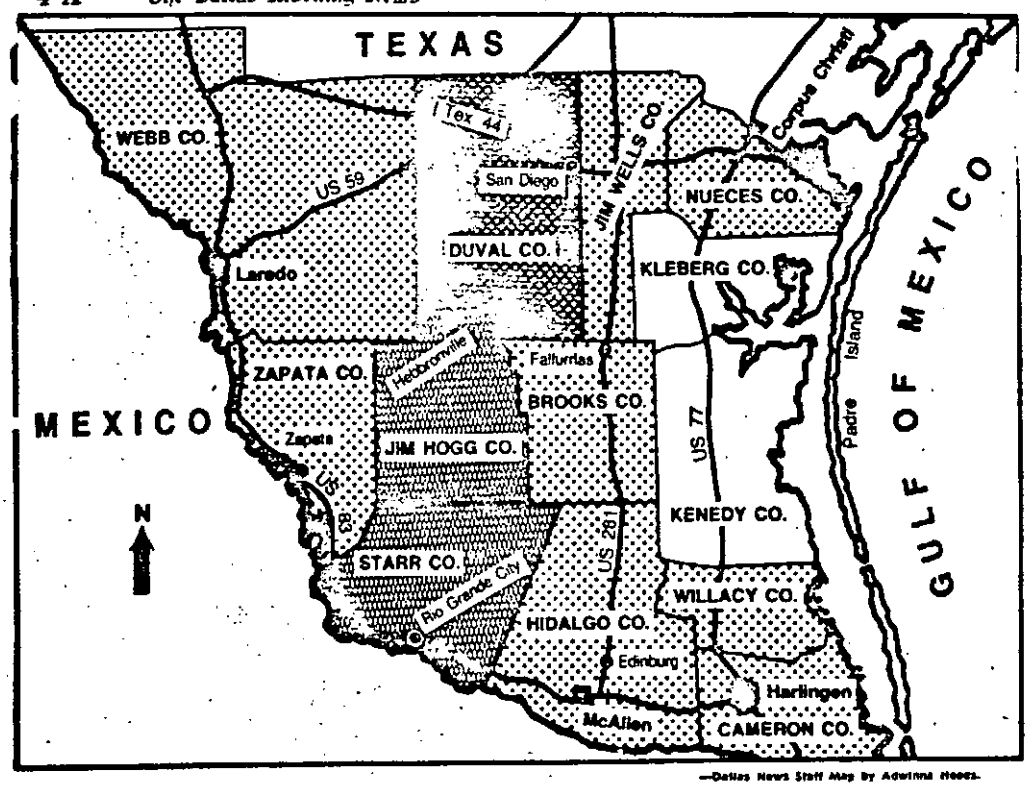
Groce National Bank in San Antonio. Manges is a large property owner in Duval County, and he has become a close friend of the Parrs, posting cash bonds for them after their convictions and lending them money. There is talk that he may take over the dukedom as a surrogate basis if the Parrs go to prison. Needless to say he has incurred the enmity of Oscar Carrillo.

Some longtime observers of the Duval County scene believe that a convulsion of perhaps violent nature is in the offing as a struggle for power intensifies.

Certainly, there is great tension there. Dallas News reporters who have visited the county seat, San Diego, in recent weeks report an atmosphere of some danger, including surveillance of outsiders, particularly members of the press.

The capacity of the Parrs to survive has been almost phoenix-like. In the middle 1950s there was every indication that this flamboyant and ruthless machine had been destroyed. George Parr had been convicted of mail fraud, his ranch had been placed on the auction block to settle income tax liens and he

See Parrs Thrived, Page 4A



—Dallas News Staff Map by Adwinna Hodges

The Duchy of Duval and Its Satellites

The heavily cross-hatched lines show Duval County, seat of the Dukes of Duval. The dotted counties are those which have been under the influence or domination of the Parr family at one time or another in the last six decades. Kleberg and Kenedy Counties, in white, are the domain of the famous King Ranch. The lightly cross-hatched counties, Jim Hogg and Starr, are still a part of the Parr dukedom.

Parrs Thrived Under LBJ

Continued from Page 1A

was under continuing attack from then Gov. Allan Shivers and then Atty. Gen. John Ben Shepperd.

BUT THE TIDE turned when the Supreme Court reversed his mail fraud conviction, and when a new Democratic administration took power in 1961, George Parr, the "Mr. Democrat" of South Texas, began to function as he had in the past.

Unquestionably, his long friendship with Lyndon B. Johnson helped restore him. It was the Parr-controlled votes in Duval and neighboring Jim Wells County that gave Johnson his 87-vote margin of victory over Gov. Coke Stevenson in the 1948 Senate race. Even though there was a loud outcry over the election, Johnson was appreciative to George Parr. He felt strongly that the mail fraud charges against Parr were drummed up by his own political enemies. Some say he actually "lobbied" the Supreme Court to reverse the decision.

Be that as it may, the Parrs were returned to a measure of respectability during the Johnson Administration. Archer Parr was a conspicuous figure at the Democratic National Convention in 1964 in Atlantic City. No federal actions were brought against the Parrs, as they had been in the Eisenhower administration and eventually were to be in the Nixon administration.

TODAY THE Duchy of Duval manifestly does not have the political power it once held. It does not have friends in the high ranks of the Democratic Party any longer. And it does not command as many votes in South Texas as it once did.

But its control is not shattered yet. George Parr still retains the loyalty of the Mexican-Americans. Archer Parr continues on as county judge of Duval County. Relatives and friends hold key spots in the county's political structure.

Over the years every important state Democratic political figure has had the support of the dukedom at one time or another. The Parrs have played their cards carefully, usually managing to go with the winners, although their support of Ralph Yarborough and George McGovern in 1972 may seem to belie that. Essentially, they have been loyalist Democrats without any particular ideology, except perhaps that of feudalism in their own realm.

Times have changed drastically since Archie Parr, the first Duke of Duval, established his rule in 1912. During the 1920s and 1930s most Texans viewed the vote returns from Duval County with wry humor. But they could be decisive in a state-wide race, as they proved to be so dramatically in 1948. Election reforms are slowly having an effect, even in Duval.

TODAY THIS FEUDAL remnant is locked in crisis. The story of its existence and the principal characters in it is one of the intriguing political stories of our time.

MONDAY: Archie Parr, the first Duke of Duval and the beginning of a dynasty.

The Dallas Morning News

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Archie Founded Dynasty in 1882

The Parr Empire became a Texas legend as its powerful leaders played a decisive role in state politics. Now, as a result of convictions in federal courts, it faces an uncertain future. This is the second report in a 7-part series.

By ROBERT E. BASKIN

On Oct. 18, 1942, old Archie Parr died at the age of 81 in Corpus Christi.

The Associated Press story telling of his death was a brief one. It described him as "a colorful political figure" and former state senator who was instrumental in establishing Texas A&I College at Kingsville and getting a breakwater for Corpus Christi.

There was a lot more to Archie Parr. He was the first Duke of Duval, the founder of a dynasty that has held vast political power in South Texas for more than 60 years.

TODAY IT is a troubled dynasty as the first duke's son, George Parr, and the heir apparent, grandson Archer Parr, struggle to hold the powers of the dukedom together in the face of federal convictions and other legal and political entanglements.

Old Archie, the records show, never had problems of such magnitude. From his takeover of the Duval County government in 1912 until his death 30 years later he ruled with a benevolent despotism that was never challenged effectively. There were frequent charges of voting irregularities in Duval, but old Archie was always able to beat them down.

DUVAL: A Troubled Dukedom

The Parr saga really started in 1882 when Archie moved from Calhoun County to Duval to take a job as a ranch foreman. He quickly began to take an interest in the Mexican-Americans who worked for him. He befriended them, he learned to speak Spanish fluently, and he came to be regarded not as a "gringo" or an "Anglo" but as one of them. His descendants were to follow the same pattern.

Gradually, Parr became involved in county politics as he acquired ranches of his own, and he seemed to have a knack for power.

STRAINS BETWEEN the Anglo-Americans and the Mexican-Americans had been increasing for some time, and they came to a head on May 18, 1912, when a band of Anglos shot down three Mexican-Americans at the Duval County courthouse in San Diego.

A bitter interracial feud for power developed, and Archie Parr took the side of the Mexican-Americans. By that time he was already a county commissioner and was learning the ropes of political power. He counseled the Latin-Americans not to retaliate with bloodshed. He knew the answer to their problem—it was through the vote. From that time on he was master of Duval County.

Prior to 1912 elections in Duval County had been close contests between Republicans and Democrats. Now, with Parr in command and directing the Mexican-American vote, it became lopsidedly Democratic and has remained so to this day.

Somehow Parr's benevolence waned as his despotism increased. He employed "pistoleros" to keep his subjects in line. Tax money went into the pockets of the Parr machine members, and this was eventually to lead to the income tax conviction of George Parr in 1934 following a check of his 1928 return.

But the Mexican-American voters through all of this continued to do Parr's bidding at the polls. In 1914 Parr was elected to the State Senate, and four years later he was to face his first vote fraud challenge.

HIS OPPONENT in 1918 was D. W. Glasscock in the 16-county district, and returns from 15 counties in the Democratic primary gave Glasscock 6,459 votes to Parr's 5,297. But then the Duval County vote came in, and it was 1,303 for Parr to 23 for Glasscock, giving Parr a 118-vote margin.

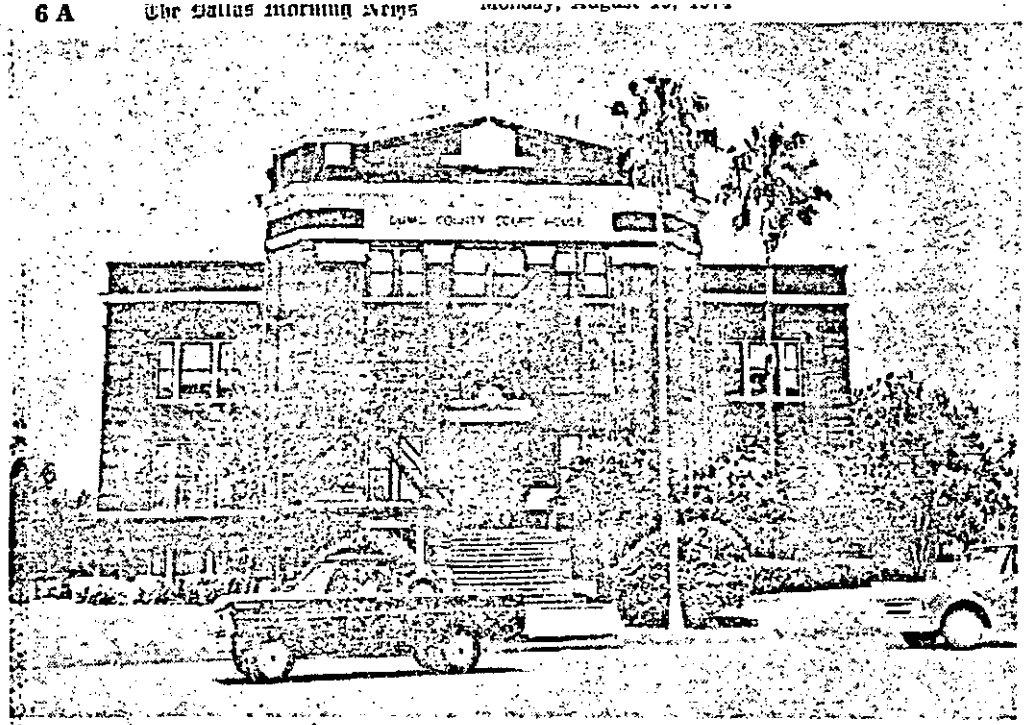
Seating of Parr was challenged in the State Senate, but it voted 16-14 to

See Elections Were, Page 6A

Archie Parr, the original Duke of Duval, pictured here as he appeared as a state senator in 1920

—Photo courtesy of Texas Senate.

Vol. 125—No. 323 1



—Dallas News Staff Photo by Dave McNeely.

The Duval County Courthouse, center of the empire of the Dukes of Duval. It was erected in 1916, four years after Archie Parr launched his political machine, and has served as the focal point of the Parrs' control since.

Elections Were Lopsided

Continued from Page 1A

seat him, and that was the end of the Glasscock affair, despite abundant evidence of highly irregular voting activities.

The Parr-Glasscock vote was a typical one for Duval County for many years. In 1948 the county gave Lyndon B. Johnson 4,622 votes to 40 for his Senate race opponent, Coke Stevenson. Johnson won the statewide election by only 87 votes.

IN LATER years the Duval votes were not as lopsided, but still of considerable effect. In 1956, for example, when the Parr machine was at low ebb, it was able to deliver 3,523 votes to Price Daniel in the second Democratic gubernatorial primary to 1,494 for Ralph Yarborough, a margin of 2,029 votes. Daniel carried the state by only 3,141 votes. The Duval vote helped immeasurably in that victory.

George Parr, the second duke, who was then in charge, had learned his political lessons well from his father.

In 1934 Archie Parr lost his bid for re-election to the State Senate, and the defeat came as the result of rather interesting circumstances.

For years the Kleberg family, owners of the fabulous King Ranch, had fought proposals to build a state highway through Kenedy County to connect the Corpus Christi area more directly with the Rio Grande Valley. Parr supported the Klebergs. But the people of South Texas favored the highway, and Parr was defeated by Jim Neal, another border country rancher.

This didn't diminish the duke's power in Duval and several neighboring counties, however. Although he was turning over much of the conduct of the dukedom's affairs to son George, he remained as the man to whom the Mexican-Americans looked for political guidance and also for occasional welfare benefits.

As state senator, Parr's influence was strong in just about every South Texas county, including Duval, Jim Wells, Jim Hogg, Nueces, Brooks, Starr, Cameron, Hidalgo, Webb, Willacy and Zapata. But in later years the power of the Duchy of Duval diminished or vanished in many of these counties. Today only Duval, Starr and Jim Hogg counties are considered solidly in the Parr domain.

POPULOUS WEBB County (Laredo) is ruled by the Martin and Kazen families, who have frequently had identical interests with the Parrs, but whose machine is considered more respectable.

Two other South Texas counties, Kleberg and Kenedy, are dominated by the Kleberg family's vast King Ranch operation.

In 1927 Archie installed son George as county judge of Duval, an office where power and control of tax revenues can be expertly handled. Today Archer Parr is the county judge, and his operations have followed rather closely the model set by his uncle, George Parr.

Archie Parr acquired large land, cattle and oil holdings during his days as Duke of Duval. These were inherited by his three sons and two daughters, but the sizable fortune left to George Parr was drastically reduced in the 1950s through income tax liens and litigation of various kinds.

Control of judges, district attorneys and grand juries was always claimed by many to be the Parr technique of avoiding prosecution. This worked well in state courts. But the Parrs were never able to block federal prosecutions, which led to convictions of George Parr in 1934, 1936 and again this year, and of Archer Parr, also this year.

One can speculate on how old Archie might have handled the problems that have befallen the Duchy of Duval today. His times were simpler. He could have ordered out his pistoleros to quell the rebellion of the Oscar Carrillo faction which has defected from the Parrs and hopes to take over the duchy. And in his days there were no fast communications. He could have settled everything speedily before it became known in the state press. After the fact, his benign presence might have been persuasive to those investigating him.

BUT THERE are holdovers from his day. Only a few months ago an automobile dealer in San Diego raised his voice against the Parrs. All of a sudden his water was cut off by the Parr-controlled Duval County Conservation and Reclamation District, and it remained cut off for 11 days without explanation. Subsequently, a few shots were fired in his vicinity out in the countryside. The message was quite clear

Old Archie would have loved that.

TUESDAY: George Parr is still the "Duke of Duval" but the Parr political machine is up against the ropes.

Like Medical Miracle

Parr Empire Somehow Avoids the Grave

Third in a Series

By SAM KINCH JR.
Staff Writer of The News

SAN DIEGO, Texas—People have been trying for at least two decades to declare the Parr political machine dead in South Texas.

But like a modern-day medical miracle, the corpse always seems to avoid the grave, hang on by a thread and then regain full use of its organs. Even today, the machine and its economic underpinnings are alive and well, though its area of operation has shrunk from years past.

The collapse-resurrection cycle has happened several times over the last 50 years, and some Duval County political observers think it will happen again in the future—despite the Parr family's current legal and financial problems.

George Berham Parr, the aging "Duke of Duval" kingpin of the machine, was sentenced in federal court May 4 to 3 years' hard time, 5 years' probation and a $14,000 fine on two counts of income tax evasion.

ARCHER PARR, the Duval County Judge and George's nephew would be the heir apparent to the political throne. But he was convicted May 9 on six counts of lying to a federal grand jury and later was sentenced to 30 years in prison and a $60,000 fine.

Both convictions are on appeal, of course, and nothing will be certain until the appeals are settled.

But for the time being, at least, the Parr machine, with all it represents, is up against the ropes.

Federal investigators are still combing South Texas. State agents aren't far behind. More criminal indictments against Parr operatives are expected, eventually, and civil litigation over property and finances probably will occupy the machine and its lawyers for years.

Bankruptcy, at least in a technical sense, is a very real possibility for Archer, despite hefty lists of assets and a legacy of wealth. In addition, if George and Archer convictions are upheld on appeal, they will both lose their remaining visible means of support—their law licenses.

TO MAKE matters worse, in the wake of the recent scandals—though they aren't called that in the Duval County area—a political uprising may be in the works. The revolt against the Parr system, now in its infancy but at least out in the open, comes both from within the machine and from outside.

For 73-year-old George Parr, who has seen and done a lot in his colorful life, it must seem like a late-night black-and-white movie re-run.

As short a time ago as 17 years, literally hundreds of indictments were pending against him, his close associates and their underlings. Now, as then, he considers his time in court harassment by his political enemies—conservative Democrats at the state level and Republicans at the federal level.

And now, as then, he vows to fight to the end. History has proved George Parr a hell of a fighter, even when he loses.

HE ACTUALLY spent nine months in jail one time—as a relative youngster of 35—but he has probably avoided other possible prison terms and he has been able to laugh off such nitpicking convictions as a $150 fine for carrying a pistol.

Parr came by his heritage honestly. His father, the late Sen. Archie Parr, began to set up the machine in 1912 as a fighter. Archie Parr was a struggling, though not poor, rancher in his late 40s when he fought through a violent local political struggle and emerged as peacemaker and public protector, particularly of the Mexican-American majority in Duval County. Archie wasn't a reformer, to be sure, but he treated the Chicanos fairly and with respect.

He also got rich—which is another part of George Parr's heritage.

At various times, the Parr family has been rich because of oil and gas, ranching and banking—even beer sales. They have lost money, too, like when George declared bankruptcy in the mid-1950s and dropped between $3 million and $5 million. On the whole, though, the family has prospered progressively over the last half-century.

But getting rich also can mean getting in trouble. For George, an income tax evasion conviction (he actually pleaded guilty) brought a 9-month confinement at the El Reno, Okla., federal reformatory, from July, 1938, to April, 1937. He asked for a presidential pardon from Franklin D Roosevelt in 1943, but didn't get it until Feb. 20, 1946, when Harry Truman consented.

On other occasions, however, George Parr was more fortunate—in part, some say, because of his political connections.

ONE TIME he was convicted, along with some cohorts, of raiding the Benavides School District for almost a quarter of a million dollars. But the U.S. Supreme Court said that while it was imbezzlement, it was not mail fraud, as had been charged. Another time, an income tax evasion charge was dropped when Parr proved he had made one small interest payment on a quarter-million-dollar "loan" from the Duval County Road and Bridge Fund that he used to buy a ranch.

So Parr has had his ups and downs in the courts. But with a few exceptions and for only short periods of time then, his political control has not been seriously shattered or even significantly reduced.

And it is a system of total control. Dissidents are allowed, but they are relatively ineffective when challenging the eco-political power of the Parr machine.

In 1949, however, an Alice radio newsman, Bill Mason, was gunned down when he got too explicit about corruption in Duval and Jim Wells Counties. Three years later, an anti-Parr lawyer's son was mistakenly killed in an ambush aimed at the father. The Parrs were never implicated.

But the violence has dwindled over the years. Indeed, in recent months the only shooting incidents with political overtones apparently have come from George Parr himself, harassing young people who make him nervous. (The gunfire has not been designated as fatal, obviously, because Parr reputedly is an expert marksman.)

No, the Parr operation doesn't rely on physical intimidation for its success any more. It relies almost entirely on the ability to use public money for private and political purposes.

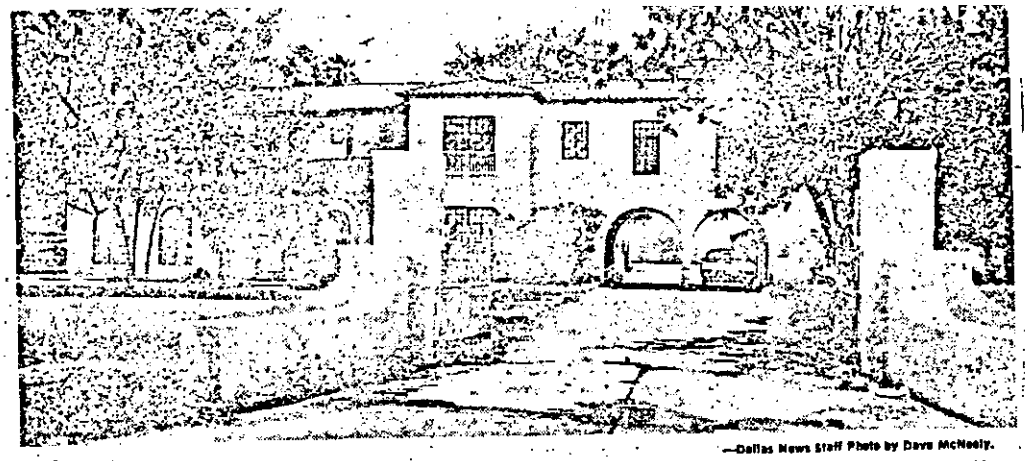
CALL IT corruption, for simplicity, and you won't be far off. But the Parr people and their supporters don't see it that way. They see it as a feudal system in which the public purse is, rightly, controlled by a small group for the benefit of the masses. The idea is to keep the peons happy and, therefore, under the thumb of the patron.

George Parr has always considered himself a liberal.

But it is not ideology that makes him tick. It's a genuine love for his mostly Mexican-American subjects and an earnest desire to be as rich as possible while still sharing the crumbs with them.

He has succeeded enormously—no one doubts that he is a fantastic politician. He is totally bilingual. He doesn't talk down to anybody, even the lowliest servant, and he has an apt, quick sense of humor. He knows names and family relationships to an incredible degree. He is shrewd in the use of power, which he regards somewhat like the rest of us think about property rights.

There's an old maxim that for every $10 George Parr gets, he gives away



—Dallas News Staff Photo by Dave McNeely.

This mansion in San Diego, county seat of Duval County, is where George Parr lives with his wife and 7-year-old daughter.

$5. And there's some truth in it. He has a soft spot for people in trouble and, without hesitation, gives cash to almost anybody who asks for it. In return, of course, he expects—AND GETS—absolute loyalty.

THE SAME is true of his public employes, many of whom are low-paid illiterates. They can make extra money, the Parrs say, by working on the Parr ranches or in their houses as servants—sometimes on county time, according to Parr opponents.

Additionally, literally thousands stay on the welfare rolls—up to one-third of the population at times. All of them, of course, are made aware of who makes the money and food and medical assistance available to them, and it ain't Uncle Sam who gets the credit.

Is it a master-slave relationship? To some extent, yes. But if the Parr machine were wiped out overnight, there would be economic chaos in Duval County. The political control is so interrelated with the economics of corruption that almost the whole county—other than the few wealthy landowners and nonpolitical professionals—depend on the system to exist. That reaches right down to the mom-and-pop stores, which couldn't survive without the Parr system of beneficent despotism.

ALL THIS welfare is expensive, of course, and the money has to be siphoned from somewhere. That's where the governmental budgets come in.

Duval County only has 13,000 inhabitants. But it has a budget so large that, on a per capita basis, it's more than three times as big as Dallas County's. Property taxes support it, and that means high rates and ever-increasing valuation of the fertile ranch land in the area. (Oil production has decreased but still is a big factor, too.)

For years, almost the entire tax burden was carried by the handful of rich ranchers and oilmen, with other property owners (particularly some county officials) paying far less than their share. In the first real uprising in years, the Duval County Taxpayers League is suing for further equalization of the property tax—and some voluntary steps already have been taken.

But the Duval County budget isn't the only one available for raiding. There's also the Duval County Conservation and Reclamation District, which is essentially a water supplier for the semi-arid area.

IN ADDITION to using the water district's money for private and public projects unrelated to supplying water, George and Archer Parr were milking the district for legal fees: George was on a retainer of $5,000 a month and Archer received $121,500 over a period of several years, allegedly for legal services he couldn't prove he performed.

That sort of dip into the public treasury was what got them into trouble on this last round of convictions.

Now George, a chunky, robust man for his 73 years, may be looking at the end of his long career. It started in 1925, when he became both a lawyer and Duval County Judge at age 25, while his father Archie was in his heyday of power.

He has been through a marriage-divorce-marriage-divorce with one woman, Thelma Duckworth, as well as a riches-rags-riches financial cycle.

Now he lives an extremely private life in a massive white Spanish villa with his attractive 30ish second wife, Eva, whom he married as a teen-ager and by whom he has a 7-year-old daughter, Georgette. Parr is extra-sensitive about his wife and is cautiously protective with her when she is in public.

BUT PARR doesn't think his control system is through. He has told friends he will survive this crisis just as he has done before.

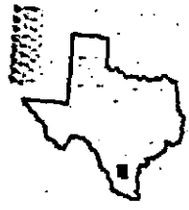
He still has the power, too, even as speculation rises that he is doomed. Only this spring, he overcame challenges to his power in two legislative races—one from within his political family and one against an upstart woman liberal.

—Associated Press Wirephoto.

George B. Parr . . . a fighter over the years.

—Dallas News Staff Photo by Dave McNeely.

Bill Mason, a radio newsman bent on exposing corruption in the South Texas empire of the Parrs in the late 1940s, was gunned down in 1949. This is his gravestone in a cemetery in Alice, Texas.



DUVAL: A Troubled Dukedom

The family feud pitted Oscar Carrillo, a maverick member of the Carrillo tribe that has co-ruled with the Parrs for 50 years, against incumbent Sen. John Traeger. Carrillo had broken his personal bond with Parr just this year, so the old man retaliated by beating Carrillo badly in the Democratic primary. (Traeger defeated Carrillo, then Parr-backed, in 1972 despite losing Duval County heavily.)

THE OTHER Spring challenge to Parrdom was from an Alice math teacher, Ernestine Glossbrenner, who ran against first-term Rep. Terry Canales of Premont. The Canales family also has been a long-time part of the Parr control system, and it would have been too much of an affront to the machine to lose that race. But Glossbrenner would have won the race if the Duval County vote hadn't gone so lopsidedly against her—and Jim Wells County analysts are convinced the election was stolen.

As with all his other problems, being charged with stealing an election isn't new to George Parr. In fact, it was an allegedly stolen election that elevated him to national infamy.

The Parrs had been dominating South Texas politics for years when the 1948 Senate race came along. But except for knowing winks and chuckles among the political cognoscenti, the Parr machine wasn't well known.

But national fame came quickly when post-election vote switches in Jim Wells County's box 13 threw the election to congressman Lyndon B. Johnson by a statewide margin of only 87 votes. (Actually, another 400 or so votes were added from Duval County, but box 13 got the most attention because it was subject to proof — the Duval ballots were burned.)

JOHNSON NEVER "won" the election contest, exactly, but his opponent, former Gov. Coke Stevenson, was unable to get the verdict reversed in the courts. Stevenson remained bitter about the matter for years, convinced that the election was stolen from him by the Parrs and that LBJ's Washington ties kept the case out of the U. S. Supreme Court.

In addition to winning fame beyond his duchy, the Duke of Duval won the lasting loyalty of LBJ—a loyalty that lasted through the Johnson presidency. It's all political mythology, impossible to prove, but "the word" is that LBJ got Parr and his operatives out of trouble with the federal government more than once, just because of that 1948 election help.

Parr never hit that peak of fame again, and his power has waned somewhat. For one thing, Parr is not as vigorous as he used to be. Also, he doesn't have a strong dynastic successor trained to take over—nephew Archer isn't the same kind of political animal—and the system demands strength from the top.

MOREOVER, EVEN if he avoids his 5-year prison term, Parr has troubles among his own ranks. Oscar Carrillo has already broken with the Parrs and wants to take over their machine. His brothers—Dist. Judge O. P. and Duval County Commissioner Ramiro—though caught in the middle, might join maverick Oscar if Archer goes to prison.

And a group of reformers has banded together again—as they did in the 1950s—in an attempt to oust the entire Parr-Carrillo machine. They are few in number, so far, but unlike the previous reform movements, they are attracting some of the younger, more professional people of Duval County.

But the deeper problem for the future of Duval County is that its populace hasn't known anything other than a feudal system. And that system is built on a combination of corruption, political manipulation and economic serfdom. If its leaders fall, the whole system collapses, and Duval County is so poverty-ridden that it might not be a viable eco-political unit without what the locals call "leadership."

Thus, George Parr may be more than just symbolic. He may truly represent what the county needs. That's why, when you ask a San Diego Chicano worker what will happen when Parr passes from the scene, you get a quick answer: "Quien sabe?" or "Who knows?"

The response to that is, nobody really knows. If Parr actually goes to prison —or dies first—the whole South Texas political scene will change, and not necessarily for the better.

WEDNESDAY: Archer Parr is less a politician, more a playboy than his predecessors in the Parr machine. But as Duval County Judge, he is still very much a part of the machine.

Beleaguered Parr Confident of Machine's Surviv

CC093

DUVAL: A Troubled Dukedom

Fourth in a Series

By SAM KINCH JR.
Staff Writer of The News

SAN DIEGO, Texas—Archer Parr, 48, has been in training for nearly 25 years to take over his family's political domination of Duval County.

Now, although he faces the prospect of up to 10 years in prison for perjury, he feels ready to take over the machine that his uncle and grandfather have built during the last half-century.

And even if he and his uncle, George Berham Parr, go to prison (George was sentenced to five years for income tax evasion), Archer Parr doesn't think things will change much.

"The Old Party will continue in power in Duval County, regardless of what happens to George and me," he predicts confidently. He doesn't know for sure who would take over the party machinery if both Parrs left the scene, but thinks it will be a "board of directors type operation."

THAT IN ITSELF would be change. One or more Parrs have ruled this hot, dry ranch and oil land since Archer's grandfather and namesake, the late Sen. Archie Parr, began his boss tenure in 1912.

A Duval County political operation without a Parr in charge, then, would be more than just a superficial thing. It would be downright revolutionary. And it seems increasingly likely to happen.

If Father Time doesn't catch up with George Parr before his appeals are exhausted, he stands a good chance of serving his first prison term since 1937, when he spent nine months in a federal reformatory for income tax evasion. And many attorneys think Archer Parr is headed for the pen because federal appeals judges aren't inclined to look behind a jury's decision on a perjury conviction—which is, basically, a trial of whom the jury believes, the witnesses or the defendant.

But if things go his way, Archer Parr expects to be in the driver's seat of the Duval County go-cart for years to come. His Uncle George, after all, is still a robust man at 73. His grandfather, the political godfather of the whole thing, lived a full and active life to 93.

THE LATE SEN. Archie had more than a symbolic impact on Archer, too. The younger Parr was born in Mexico City in 1925 of a Parr mother, George's sister. But it was the senator who took over, changed the boy's name to Archer Parr and raised him in the family tradition. That says a lot, considering the extent of the family's wealth and power at the time.

Archer Parr, then as now, didn't fit totally into the pattern. On an impulse at 17, he bugged out of South Texas and volunteered for the Marine Corps from 1942 to 1946. He apparently liked combat in the South Pacific because, by the time of the Korean War when he was called up, he became an officer and platoon leader, winning a batch of medals for battle operations.

He is still affected by the military mannerisms, particularly in his speech patterns.

But he's different in some other ways, too. He is a great deal more polished—almost sophisticated, in a rather simple land—than his uncle. And he doesn't appear to have the gut political instincts of George Parr, who is a gregarious, loud-talking politician of the old style.

NO, ARCHER PARR seems more like the successful small-town businessman who enjoys the clever chit-chat of a quiet tavern more than the rough-and-tumble of Duval County politics. His favorite watering holes, in fact, range from a neighborhood bar, Dolly's, in Alice to the swank Corpus Christi Yacht Club.

And despite his small-town background, Archer Parr can shift gears easily to move in faster social circles.

That's where he and his late wife Jody Martin Parr liked to move, when they were getting along well. She was a tall, jet-setty blonde who bailed out of the Parr family a year ago, saying she just couldn't take any more of it. After a year of legal hassle over a divorce from Archer, she shot herself June 13.

Archer Parr . . . maintains his innocence.

Jody claimed Archer had a "violent and ungovernable temper" and is "dangerous," and before her suicide had talked about the possibility of his killing her. Archer counter-claimed that Jody "disgraced" the "old, well-known and respected" name of Parr and "adversely reflected" on Parr's four daughters from three previous marriages.

The trial of the divorce produced often crude and explicit testimony about what they thought of each other, but money and sex were at the heart of the problems.

It was something of a shock to the community.

ARCHER PARR is a tallish, trimly medium-built man, bespectacled and balding in the way all Parrs seem to—a strong-looking figure, more like a Chamber of Commerce president than a political boss. But Jody painted a picture of a frustrated, intense, possibly impotent philanderer with a penchant for violence and a greed for money.

Hardly consistent with the public image of Mr. Good Guy, the quiet lawyerly socializer with a sharp tongue who often buys a round of drinks for all the patrons of the house without even taking credit for it.

Maybe he buys the drinks because he can afford it, because he definitely can. His assets amount to more than $1 million.

ished a degree in business at the University of Texas and started law school. Korea got in the way for two years, then he served his first political apprenticeship: He was Duval County sheriff for three years during the violence-prone early-to-mid-1950s era before he went back to get his law degree.

Archer practiced law in San Diego for a year before he took over the most important job in a small-county political system—county judge, a job he has held since 1959. (Even with all his legal problems in the newspapers daily, he was re-elected without opposition in the May 4 Democratic primary and has no race this fall.)

The county judge is the fulcrum of power in rural areas, because his control of the budget is almost absolute. In the case of Duval County, where political power is concentrated in the hands of a few, the county judge's job is more one of power broker than administrator.

But Archer Parr's on-the-job training is over now. He has been taught to respect the use of power, not to abuse it. He gets high marks for his execution skills, even if he isn't considered as fair and humane as his uncle, or as protective of the Mexican-Americans as his grandfather was.

And he clearly sees no reason to change the system, except perhaps to further shrink the machine's activities in order to concentrate all efforts on Duval County. "When you try to weed a neighbor's backyard, you get yourself in trouble," he says.

So he is sticking to his own backyard and still is in trouble.

AN UNSIGNED, unsworn alleged statement of his income in the divorce suit files showed, among other sources, money from Central Power and Light Co.; the huge South Texas utility, the beleaguered Coastal States Gas Co. (labeled "legal"); the Duval County Ranch Co., an auction company; a grain elevator, and a quarterhorse race track. That doesn't include his money from the water district or the $5,000 a month he allegedly got from the Duval County treasury, either.

Jody Martin Parr claimed that their community estate grossed "over $305,348.35" in 1972. A Parr lawyer said Archer's total assets were $1.1 million.

Yet shortly after Jody filed suit for divorce in Corpus Christi, Archer Parr filed for divorce in San Diego and was promptly joined in court by a number of his friends an associates' businesses seeking repayment of a quarter of a million dollars in debts. Among the friends was rancher Clinton Manges of Freer, owner of the Duval County Ranch Co. and a rich man who later put up nearly a quarter of a million dollars in bail bonds and fines for George and Archer Parr to keep them out of jail.

And even Duval County itself, with Archer Parr still sitting as county judge, filed suit against the couple seeking $440,000 illegally received from the county treasury.

They may have looked like "sweetheart" lawsuits, designed to deplete Parr's resources so he couldn't give Jody any money, but they had the effect of creating at least a technical bankruptcy. Even before the Duval County lawsuit, Parr's lawyers claimed he had liabilities of $1.5 million against his assets of $1.1 million.

Thus, Archer Parr, now wifeless and theoretically broke, convicted of a felony and probably headed for prison, likely to lose his law license, forges ahead in the old Duval County way. He does his job as county judge —even the judicial duties of it—and maintains his innocence, confident his conviction will be reversed on appeal.

And he has absolutely no intention of resigning.

So it goes in the land of the Parrs.

THURSDAY: Jody Martin Parr, onetime Corpus Christi model, committed suicide June 13, 1974, less than five years after she married Duval County Judge Archer Parr. Her attorneys claim she was a victim of "judicial harassment" by the "Parr-controlled courts," as she sought a divorce from Parr.

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HEN ARCHER got back
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THURSDAY, AUGUST 22, 1974

Bullet quickly ends jody's disenchantment

DUVAL: A Troubled Dukedor

By CAROLYN BARTA
Political Writer of The News

CORPUS CHRISTI—Jody Martin Parr was a willing member of the South Texas-famed Parr family for four years. She died trying to get out.

Her attorneys, family and close friends say she was a victim of "judicial harassment" and "economic oppression" and that, after a year of tangled legal actions centered around her stormy divorce from political leader and prominent rancher Archer Parr, she chose suicide rather than continuing to fight the "Parr-controlled courts."

During the months just prior to her death, Mrs. Parr was stripped of her material possessions, twice jailed on contempt of court charges and ordered released by the Texas Supreme Court.

WHILE HER TROUBLES stemmed from the divorce action, the legal battles included suits over debts and alleged damages, civil rights action, proceedings in federal bankruptcy court and receiverships, involving almost every court except the U.S. Supreme Court.

For whatever reason, the spunky, fortyish ex-model shot herself June 13 in her barren but once-luxurious Corpus Christi townhouse, leaving behind a trail of letters to friends and associates, including one which thanked her lawyers for "giving them hell in Duval."

"Duval" is the South Texas county which her husband, Archer, has served as county judge since 1959—where the Parr family has held the reins of government for more than 80 years.

JODY MARTIN, who had lived in Corpus since the second grade, and Archer Parr were married July 12, 1969, in Rio Grande City, Starr County. It was her second marriage, his fourth. She had been a model and then owned her own boutique called Jody Inc. from 1960 to 1965, when she sold it and began traveling and dabbling in real estate. (Her first marriage was to oilman William Asher Richardson Jr. in 1952. They were divorced about a year later, and Richardson was shot to death in the driveway of his Corpus home in an unsolved case in 1971.)

Archer and his bride, a striking blonde, traveled and partied a lot, moving easily in Corpus Christi Town Club and Yacht Club society. She never cared for Duval, where there was no social life, or living on the ranch. So the couple bought a townhouse in Corpus, and divided their time between the ranch and Corpus Christi.

SHORTLY AFTER Jody's death, her sister and close confidante, Mrs. Bonnie White of Corpus recalled: "My sister Duval County was the most foreign place she had ever been."

Jody's troubles started when she filed for divorce June 25, 1973. She filed in Nueces County, claiming she could never get a fair trial in Duval. Parr counter-filed July 8, 1973, in Duval County. A legal tug-of-war ensued, and Parr won the first of many rounds in court. It would be heard in Duval.

No one knows exactly why the bubble burst between Jody and Archer. Mrs. White said Archer drank too much, and Jody wanted out after finding out about his questionable financial and political dealings.

In Duval County court hearings, described by local reporters as "raunchy," Jody complained of Archer's sexual inadequacies. He retaliated with counter-charges about her promiscuity.

"THE FIRST TIME Jody went to Duval after she filed for divorce," recalled her sister, Bonnie. "Archer said he would see her in jail. He asked her if she wanted to open up the can of worms. She said, 'Let's get with it.' And a can of worms, it was. She wanted to write a book called, "Can of Worms." "

It was Jody who "blew the whistle" publicly on Archer Parr, accusing him in a 229th District Court hearing in Duval County last August of using county employes for personal work as ranch hands.

Mrs. Parr said she was not aware of his Parr's use of county employes or some of her other allegations until a few months before. "I found out, and that's the reason I'm asking for a divorce."

Her attorneys also introduced a sworn statement in 229th District Court July 19 that Jody would show Parr "receives what she believes to be illegal money which petitioner (Parr) calls 'billet-doux,' which amounts to $5,000 cash or more and which is delivered by one Sylvester Gonzales, a short time after each monthly meeting of the Commissioners Court in Duval County."

In a sworn statement at the Aug. 10 hearing in 229th District Court, Jody said Parr "often bragged about his power and ability to control political institutions including the judiciary, in Duval County, and that he can control the outcome of any judicial matter he is personally involved in, in Duval County."

PARR INVOKED the Fifth Amendment on the questions of whether he accepted money illegally and used county help on his ranch.

But the die was cast—nothing short of all-out war between Jody and Archer Parr, using "legal" weapons which turned out, for Jody, to be lethal as Parr, spreading the word that Jody was going to take him to the cleaners, advised some of his creditors to file suit, seeking collection of loans—some of which were not due until 1980— allegedly owed by the couple.

The First State Bank (of which Parr was an officer) demanded payment of $125,000 in loans. Alamo Lumber of Alice then sued for $8,534. Others intervened in the bank suit— suit—including Clinton Manges of Duval County Ranch Co. (South Texas power who was later to pay close to a quarter of a million dollars in fines and bonds for George and Archer Parr)—until a total of more than $200,000 was demanded.

THE DOMINOES began to fall when Dist. Judge O.P. Carrillo of the 229th District Court ordered that the Parr estate be frozen and put into receivership.

Mrs. Parr objected that collateral named in the notes was sufficient to secure them and there was no need for a receiver. Court testimony brought out that Parr's diversified holdings included the 1,600-acre ranch, several large parcels of land under lease, some 792 head of cattle, 1,200 Spanish goats and numerous oil and gas leases. Jody contended Parr sought out the creditors to try to get "her" property, leaving "his" intact.

Carrillo named a receiver—Emilio Davila of Laredo, who was described by a South Texas newspaperman as being "part of the Parr system." Davila proceeded to try to liquidate Mrs. Parr's property, often with the help and physical accompaniment of Archer Parr.

JODY, MEANWHILE, was prohibited from making any withdrawal from savings or checking accounts or disposing of any property—an order she later flaunted.

Last fall, Davila, accompanied by Parr, ousted Jody from the Corpus townhouse with only the white pant suit she was wearing. Davila demanded a 7-carat "engagement" ring, worth $20,000, Parr had given Jody before they married.

She put up a spirited resistance to the townhouse seizure, which included striking the receiver in the face. That, also, was to cause her more trouble down the line.

The following day, guards were posted at her mother's home. Mrs. Parr's attorney, William Bonilla, said at the time, "They don't have any court order; its just another harassment, a way of harassing Mrs. Parr by harassing her mother."

WHILE DAVILA was trying to get Mrs. Parr's car, her furs and jewels and the townhouse, he ignored Parr's furs and jewels, an extensive gun

collection, and his car.

Parr already had scheduled a cattle auction, before the divorce was filed. He went ahead with it, making $170,000, of which only $65,000 was applied to the original debt claimed by the creditors. Some of it went for guard service surveillance of Jody, ranch telephone bills and $7,000 on the ranch mortgage.

The bills never went before the court, complained Jody's sister, Bonnie White. Davila paid the bills, as told by Archer Parr. Then they went to the court and showed what bills had been paid.

—Associated Press Wirephoto.

For Jody, the "Parr connection" stopped being fun.

By October, Carillo took himself off the case, pleading lack of time. He had been accused of conflict of interest by Mrs. Parr's attorney, Bonilla. The case was assigned to Judge Magus Smith of Edinburg, who turned out to be just as tough or tougher on Jody.

It was Judge Smith who found Mrs. Parr in contempt of court Oct. 19 for failing to surrender some property, which included eight fur coats and 28 pieces of jewelry. She said she sold it but couldn't remember the name of the buyer.

He sentenced her to 90 days in jail, advising her, "If you have blue jeans, Mrs. Parr, I suggest you should put them on."

ON OCT. 31, Judge Smith upped the sentence to 150 days, after learning that she had invoked the Federal Bankruptcy Act and subjected the property to the exclusive jurisdiction of the bankruptcy court.

Mrs. Parr was placed in the Duval County jail, even though she said she feared for her life. She was afraid "an accident" would happen. (There was no nighttime attendant at the jail, and only one cell available for prisoners.)

After three days in jail, with her sister, Bonnie, sleeping overnight in her car outside, Mrs. Parr was released on a writ of habeas corpus from the Texas Supreme Court, which later overturned Judge Smith's increase of the sentence from 90 to 150 days.

To indicate the influence the Parrs had, George Parr (Archer's uncle) offered to let Jody stay overnight with him and his wife, rather than in jail. She declined that offer, as well as Archer's offer to put her up in a guest house belonging to the First State Bank. Clinton Manges also indicated if she would only say the word, he would have her

AT THAT TIME, Mrs. Parr was under subpoena to a Corpus Christi grand jury, which was investigating Archer and George Parr, so the U.S. attorney's office in Houston provided indirect protection, with a telegram from Asst. U.S. Atty. Anthony Farris of Houston to the Duval County sheriff, requesting:

"All state officials and others involved do all in their power to assure Mrs. Parr's safety and proper treatment."

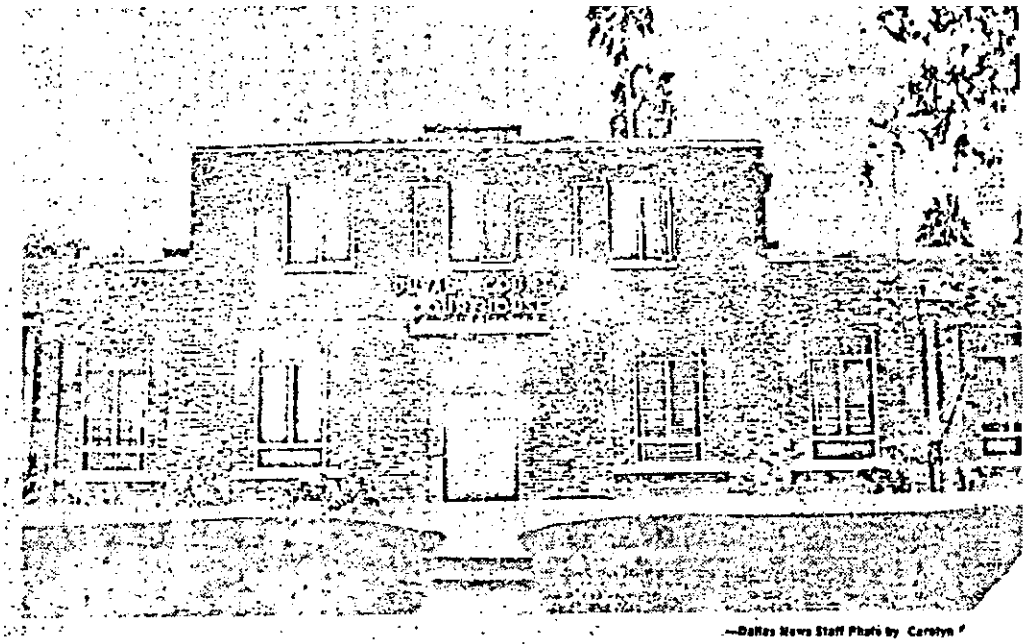
"We felt like one reason they were dragging out the divorce was to try and make her have a nervous breakdown," Bonnie White said, so that she couldn't testify before the grand jury against Archer "or any of those people down there."

In the meantime, a Duval County suit was filed by the county attorney seeking $220,000 from Archer and Jody, or half the funds she had accused Archer of receiving from the county on the $5,000 monthly "billet-doux." This suit is still pending.

—Associated Press Wirephoto.

Archer Parr . . . said he would see his wife in jail.

Texas Rangers escort Jody Martin Parr out of Austin where she sought a writ of habus corpus hearing from the Supreme Court.



—Dallas News Staff Photo by Carolyn

The Duval County jail on the second floor at the back of the county courthouse annex was the place Jody Parr feared most.

And Jody filed a civil rights suit in federal court in Corpus Christi seeking $4 million in damages, accusing Archer Parr, the county commissioners court, Judge Carrillo, George Parr, the First State Bank of San Diego and Emilio Davila and others of using the court system in Duval County to deprive her of her civil rights.

THE LEGAL merry-go-round continued, and in February, the Texas Court of Civil Appeals ordered the receivership dissolved, which was interpreted by the attorneys as a milestone in the legal battle.

Bonilla rejoiced that the next step would be to finally take up the divorce proceding. But it wasn't.

Mrs. Parr was hospitalized about this time from exhaustion, thyroid and neck problems, and Archer vowed he would see her back in jail. While in the hospital she received a gift of roll-your-own cigarettes. Her sister credited Archer.

He got his wish early in June. A June 4 Corpus Christi Caller-Times

She was apprehended June 6 by Texas Rangers in Austin, as she sought a habeas corpus hearing before the Texas Supreme Court to keep her out of jail.

On June 7, as she was transferred from the Nueces County jail in Corpus Christi to the Jim Wells County jail in Alice, she was asked by a reporter what was going to happen next.

"They're going to stack eight or nine charges against me and I'll get about two or three years in jail," she replied. Asked if she feared for her life, she said, "You're darn right. Anyone who goes through San Diego fears for their life. That's why everyone carries a gun there."

On June 11, Jody was released again from jail on a writ of habeas corpus from the Texas Supreme Court, but headlines noted, "Jody's freedom may be short-lived."

SHE FACED A hearing before the Supreme Court June 19, and if her case was not upheld, she could have been returned to jail to finish the original 90 days. She also faced additional contempt of court charges to be heard June 28 in Duval County, as a result of strik-

Another undated note carried one of the few bitter tones, as she criticized Judge Magus Smith for his control "over other people's lives."

WHY DID she finally throw in the towel? No one can say, exactly. But there are some indications.

Since she felt she could not get justice from the courts, Jody often turned (like Martha Mitchell) to the press. She called Corpus Christi Caller-Times reporter Joe Coudert in Alice almost nightly, to keep him informed.

Coudert later wrote that she "many times expressed fear about attending court sessions in Duval County. Even though she was physically shaking so hard she had difficulty getting out of her car, she went. Whether her fears were real or imagined, to her they were real."

She also was fun-loving. She liked to sing (even recorded "Born to Lose" 10 years ago) and write limericks, including one about the downfall of the Duval dukedom. She would sing, "I'm in the Jailhouse Now," to amuse acquaintances.

them, plus more time in jail, that wasn't her idea of fun.

One acquaintance said she thought Mrs. Parr "could handle the jail sentences and court, but this bankruptcy thing really got to her. She couldn't get her things back . . . This depressed her most of all. It was robbery—they took everything of hers and nothing of Archer's."

Jody, obviously, brought some of the problems on herself, by bucking the system. Instead of quietly handing over the property, she fought. She even tried to hang Archer up for $2,000 a month alimony, based on his over-$300,000 income the previous year.

CARRILLO CUT THAT figure to $300, however, and went on to indicate that Jody might wind up paying alimony to Archer, noting the Supreme Court ruling that it is "the duty of wives to support husbands as well as husbands to support wives. . . That's food for thought."

Jody never received any of the alimony, anyway. And, with no income and available property and funds tied up, she was living off Bonnie.

But those close to her say Jody was most of all concerned about the unpredictability of the conclusion of the whole mess.

"We had no way to predict when the cutoff would be," said one lawyer. "We had no control over the court situation, what would be heard, when. They would pull us into court, throw in something else that we had no opportunity to prepare for."

"EVERY TIME WE turned, we met an obstacle," Bonilla said, adding that he received more court orders and more subpoenas while representing Jody Parr than any other client in 21 previous years of law.

"The procedures they used were those that would take up time of the lawyers so we couldn't do routine work in the office. We had to face multiple lawsuits from multiple parties. While saving one lawsuit, we might lose three others."

Bonilla filed replies to all the suits filed. Archer's lawyers never filed a reply, Mrs. Parr's attorneys said. In addition, Archer did not have the legal bills his wife had.

Legal fees for the suits filed by the creditors were paid by them. Fees for the suit filed by Duval County to recover the money Archer had been accused of receiving in the billet-doux were paid by the county. Duval County authorized almost $24,000 in legal fees in November and December last year, mostly for services involved directly or indirectly with the complex Parr divorce.

JUST BEFORE Jody was returned to jail this June, her lawyers pleaded with Judge Smith to rule on the divorce. If the divorce proceedings had gone forward, there would have been a legal determination of what was community property, separate property or exempt. Jody's attorneys would have been satisfied if the divorce had been granted and all property given to Parr.

At least then, they would have been able to appeal the case and get it out of Duval County.

On the day of Jody's suicide, Bonilla said, "It was a bad day for the administration of justice. I hope the bar associations of the respective counties and the State Bar never forget what happened today."

Later, he added, "They think they're above the law in Duval County. They think they can do anything they want to and they do—most of the time. There are some wonderful people in Duval County, but if you have a case there, the best thing to do is get one of the local boys, a lawyer on the side of the people in power. And, you'd better know who's in power."

BONILLA CALLS the Duval system "prosecution of political enemies," only done "legally"—through the court. The 229th District Court was created by the Legislature in 1969, he contends "for no other reason than political. There was no need for that court. It was created for Carrillo." But it was viewed by the Legislature as "just a little local bill," the kind that generally passes without opposition.

"I hope the people of Texas will realize that what was fun to Archer Parr, what was fun to all those lawyers—all the lawsuits, court orders, subpoenas, getting all those transcripts—someday they will reflect and realize the harm and danger they did to themselves and to the administration of said justice," said Bonilla.

Already, he said, there is a "great deal of concern among attorneys across the state" in South Texas politics and political uses of the court system. "It's not going to be like that forever," he predicted.

AS FOR the Parrs?

Jody's sister, Bonnie, recounted that "from the very beginning (of the divorce action) Archer said he was going to destroy my sister, if he had to destroy himself."

Jody has been destroyed. Archer has been convicted of perjury before a federal grand jury on matters outside the divorce case and is appealing his 30-year sentence. And the dukedom appears to be in danger.

FRIDAY: Four years ago, Clinton Manges was virtually unknown in Duval County. Today, there is talk that he may be the heir apparent to the Parr machine.

DUVAL:
A Troubled Dukedom

A New Duke Ascending?

By DAVE McNEELY
Staff Writer of The News

FREER, Texas—When George and Archer Parr were sentenced to separate prison terms in recent months, the man who paid about a quarter million dollars in fines and bail for the two was Clinton Manges.

Manges was relatively unknown in South Texas a half-dozen years ago. But recently, his financial and political wake has been growing ever wider as he has somehow risen from a scrapping Raymondville land dealer to the owner of two large South Texas ranches and two banks.

And there is talk that he may be in line to take over the troubled dukedom of the Parrs should both of them indeed go to prison.

MANGES, 48, is a rather shadowy figure, whose close business associates often do not know where he is.

He is heavy set; seldom wears a tie, in the fashion of South Texas business folk; has relied heavily on people with political influence to represent him in his many court battles; never graduated from high school; and somehow has developed a nose for sniffing out properties that are in trouble and an ability to take them over.

He is described as a person who can be affable and gregarious—to a point. When that point is reached, he becomes either shy or withdrawn or both, and shuts people out.

HE ONCE scheduled a press conference in San Antonio to discuss his takeover of a bank there. Five minutes before it was set to begin, he ducked out a back door and was gone.

Repeated efforts to contact Manges for an interview in connection with this story were to no avail.

Manges' involvement with Duval County politics and the Parrs stems largely from the fact that Manges owns a lot of land there.

He bought controlling interest in the Duval County Ranch Co. in 1971; that company's holdings include about 82,000 acres in Duval County, according to the tax assessor-collector's office.

(Manges also pays taxes on 21,600 acres of land in Starr County, more than 17,000 acres of which is Duval County Ranch Co. land, and on 3,700 acres of Duval County Ranch Co. land in Jim Hogg County.)

At first, said one man who knows him, Manges indicated that he planned to stay out of the political games in Duval County, where the Parr machine has held relatively ironclad control for the past 62 years.

BUT EVENTUALLY, Manges became deeply involved; he said he found that buying a lot of land in Duval County automatically made it necessary to either be for or against the Parrs. He decided to be on the 'for' side.

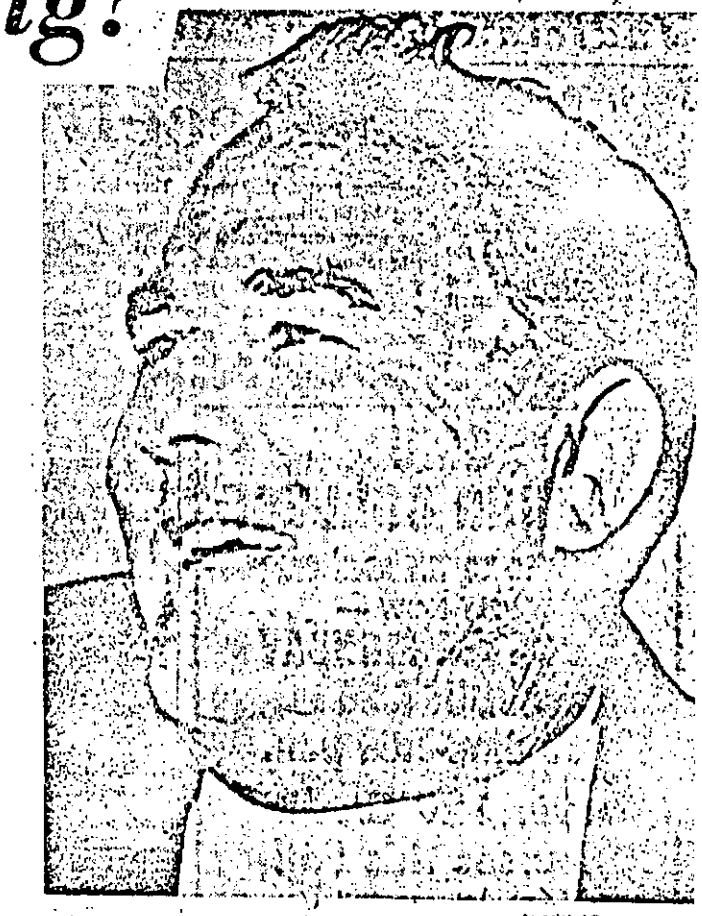
There are others who believe that somehow the Parrs put Manges up to buying the Duval County Ranch Co.

A Talent For Hiring

One characteristic that Clinton Manges has shown in his South Texas ranching, banking and oil dealings is the hiring of attorneys who either have or had political connections.

Among them are:

- Jim Bates, who started his work for Manges while a state senator from Edinburg. He was defeated for re-election in 1972.
- Jack Skaggs of Harlingen, Democratic County Chairman for Cameron County.
- Randall Nye Jr., former district attorney for the 229th Judicial District, that includes Duval, Starr and Jim Hogg
- Tom Stolhandske, a county commissioner in Bexar County.
- Bob Bullock, a former state representative and Texas secretary of state; now the Democratic nominee for state comptroller.
- Former State Sen Murray Watson of Waco, on an appeal proceeding that was heard in the Waco appeals court.



—Associated Press Wirephoto

Clinton Manges

Oscar Carrillo, an ex-state representative, onetime henchman of the Parrs, and former friend of Manges', but now a bitter enemy of all of them, says he initially introduced Manges to the Parrs several years ago.

He also says he was the man who initially helped Manges gain control of the DCRC, as the Duval County Ranch Co. is called in this area.

WHATEVER THE REASON for the purchase of the DCRC, and the manner in which it was purchased, there are definitely plenty of South Texans who wonder how Manges got the financial

lout to buy all that ranchland and two banks in such a short space of time.

And there are those—including several agencies of the federal government, and the members of a federal grand jury in Brownsville—who wonder whether Manges has the legal financial capability to hang onto it.

Manges' story is truly one of rags to riches. For years his luck seemed to be bad. But about 1968 it took an incredible turn for the better, and he was the beneficiary of several developments such as the energy crisis, the new environmental awareness, and the spiraling value of land.

In 1959 Manges had borrowed money from the Small Business Administration (SBA) to aid him in purchasing a cotton gin operation. He went broke in that endeavor in 1961 when, according to a knowledgeable source, Manges paid more for cotton in the fields than it was worth. (Manges once told a reporter that rain ruined him.)

IN THE WAKE of that financial failure, Manges pleaded guilty in 1965 to filing false figures with the SBA in connection with his loan. He was ordered to pay a $2,500 fine and to pay off the loan.

Manges complied with both conditions, and later boasted that he had not only paid off the SBA loan four years ahead of the court-imposed schedule, but did not claim bankruptcy and instead paid off all his creditors.

During much of the decade of the 1960s and probably before, a major backer in some deals and partner in others with Manges was Vannie Cook Jr., a banker and financial magnate from McAllen.

AND IT WAS Cook who provided the bankrolling that got Manges started on his rise to financial power.

The key to the whole package was an apparent feud among the heirs of the Guerra land and banking fortune in Rio Grande City (Starr County). The estate had been left in the form of a partnership, with the six heirs as members. But apparently less than a majority of the partners could commit the whole partnership.

Sometime around 1968, two of the partners offered Cook the Guerra Ranch—some 72,000 acres—at $54 an acre. Cook and Manges bought into the operation, but eventually Cook, after looking over the tangled nature of the Guerra situation, backed out.

—Dallas News Staff Photo by Dave McNeely.

Robert Richmond leaves court after testimony.

Manges, in dealing with J. C. and Virgil Guerra, apparently managed to gain clear title to the land while having to put up very little up-front capital.

Although the matter was embroiled in legal battles for years as other Guerra heirs brought suit, Manges was apparently able to use that land as collateral for other loans from the Bank of the Southwest in Houston, to gain control of his other properties.

THE UPSHOT was that Manges not only gained control of the Guerra ranchland—at least for a while— but also got the family's bank, the First State Bank and Trust Co. of Rio Grande City.

And with the borrowing power he developed as a result, Manges moved on to other ventures.

In December of 1970 and January of 1971, Manges, with a loan from the Bank of the Southwest, bought controlling interest in the Groos National Bank in San Antonio. (The Bank of the Southwest was correspondent bank to the Rio Grande City bank.)

By the end of the whirlwind campaign, Manges was paying as much as two and three times the book value of the stock.

But he managed to catch the Groos bank's owners asleep at the switch, and gained effective control before they could stop him.

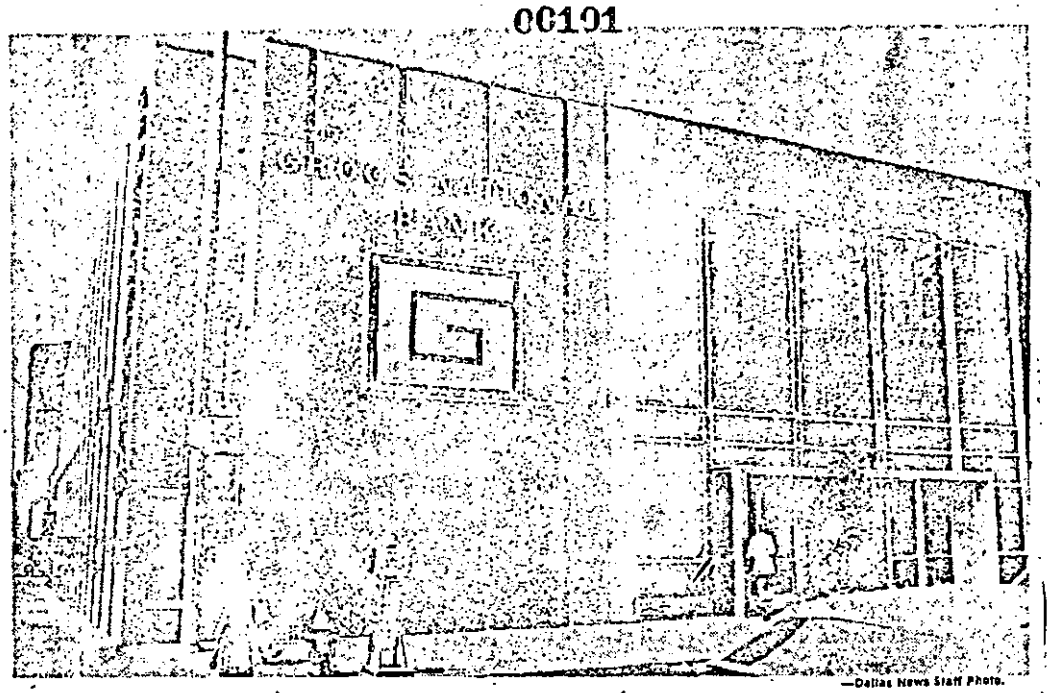
The bank takeover infuriated the banking community in San Antonio. One onlooker speculated that Manges drew their ire because other bankers had grown accustomed to the basically sleepy Groos bank, and didn't want to put up with some hard-driving upstart.

But the Groos people succeeded in gaining a decision from Comptroller of the Currency William B. Camp that Manges could not exercise his control of the bank.

That decision, on March 4, 1971, was based on the SBA conviction; Camp said federal law prohibited a person guilty of a felony breach of trust from operating a bank.

MANGES WAGED a 2-year battle, that included lobbying in Congress, efforts to win a presidential pardon, and appeals to higher courts.

Part of that process was a letter of recommendation from Lloyd Bentsen Sr. of McAllen, father of U. S. Sen. Lloyd Bentsen Jr. (D-Texas).



—Dallas News Staff Photo.

Manges gained control of Groos bank before owners realized.

Bentsen Sr. wrote on March 24, 1971, that he had dealt with Manges for more than a quarter of a century, and that Manges had always kept his word.

"I consider Mr. Manges not only absolutely honest, but a man of high integrity and extreme ability," Bentsen wrote.

Bentsen said he was familiar with the SBA matter that caused Manges' problems "and I personally feel this indictment should never have been brought and was only sustained on a technicality," Bentsen wrote.

PEOPLE CLOSE to Bentsen indicate that he probably would not write the same letter today.

Manges had no luck in trying to get Camp to change his decision, but he finally won a reversal of the decision from the 5th Circuit Court of Appeals on March 1, 1973.

Within a month, Manges had installed his own people in the executive positions at the bank—including the bank's president, H. P. Guerra III, who was a member of the Finance Commission of Texas. The Commission oversees the operation of Texas banks; Manges allegedly was able to get then-Gov. Preston Smith to appoint Guerra to the Commission, with the help of then- State Sen. Jim Bates of Edinburg.

The final successful notch in Manges' financial gun was the takeover of the DCRC.

The company, which traditionally had been headquartered in Houston, included pieces of property in Houston and Louisiana, as well as the 100,000 acres of cattle and oil property in Duval and Starr Counties.

HOW MANGES gained control still isn't known entirely, but it is said that he traveled all over the United States buying up stock in the company from minor stockholders. Some say that Manges blindsided the DCRC people as he apparently achieved a controlling interest sometime in mid-1971, and bought the remainder of the stock in the ranch company in November of that year.

He then set about another maneuver that shook up the oil companies that had mineral leases on the DCRC.

On May 2, 1972, Manges filed suit before 229th Dist. Court Judge O. P. Carrillo to halt various oil companies from continuing production on the ranch until they cleaned up the ecological mess Manges said they had made.

An injunction was granted against one of the oil companies, and has stayed in force—despite later protests that Carrillo was in Manges' pocket.

Carrillo was forced to disqualify himself from that case on Oct. 11, 1973, after it had become well known that Manges had once bought Carrillo a Cadillac, had put Carrillo on the board of the Rio Grande City bank and bestowed other financial favors on him—while Carrillo was the sitting judge in the receivership action under which the Guerra properties were divided up.

(Jim Bates, the former state senator defeated for re-election in 1972, had been appointed as a receiver in that case by the judge who sat in prior to Carrillo assuming a newly created bench in January of 1971. Bates was appointed receiver by Dist. Judge C. Woodrow Laughlin—a man with long-time Parr ties. Bates subsequently showed up as a financial participant in several Manges ventures.)

AT ANY RATE, Manges' efforts to throw the oil producers off his property is said by his friends to be an effort to clean up his land and to make the oil companies honor their production contracts.

Others believe that Manges filed the suits to force the producers off the land.

In order to keep their contracts, the producers have to continue to produce; thus far only the shallower deposits production areas; if the shallow pr tion becomes too expensive, by t the ecological argument, the prod might not be able to afford to around to mine the deeper deposit

Manges, incidentally, has bene measurably from the energy c Some of the wells on his land had marginal producers during time cheaper oil and gas, and had shut down. Now, however, it is eco ical to put them back in production

THERE IS some speculation Manges may be trying to force the er producers off the land so that he sell the oil and gas to Oscar Wy Coastal States Gas Corp. But while between Manges and Wyatt are mored none are known for sure to e —except that Morris Ashby, accoun for the DCRC, previously worked Coastal States.

Manges' final known effort to over a financial property was his a tive try to gain control of the Alice tional Bank in Alice, Texas.

Manges, acting through three f men—DCRC accountant Ashby, Ba and Jack C. Butler of Alice, who previously been associated with bank—gained control of slightly than 20 per cent of the bank's stock.

But after his takeover effort halted, Manges' front men sold their ice bank stock on June 19 of this yea

The timing on that sale was v close to the convening of a fede grand jury in Brownsville on June 1 this year—apparently to look into pects of Manges' financial empire.

AMONG THOSE called to testify fore the grand jury were Manges' w Ruth; his brother-in-law, Robert Ri mond, who is chairman of the board the Groos bank; Ashby, the DCRC countant; Frank Moffett of Dilley, v erinarian for the DCRC; some livest auction personnel; and several bank

Also called were two functionaries of the Bank of the Southwest in Houston.

No one in a position to speak authoritatively has discussed what the grand jury investigation actually concerns.

The jury met for two days in June and reconvened for three days in July.

But the jury recessed after that stint without meeting by itself, with United States attorneys absent. That indicated, courthouse watchers said, that the jury apparently plans to hear more information before deciding whether to hand down indictments. Or it could mean that the federal prosecutors need more time to sift through information gathered in the latest round of grand jury testimony.

SOME OF Manges' friends describe the investigation as a fishing expedition aimed at sullying his reputation.

Whatever the reason, the investigation apparently hasn't helped Manges any.

Manges, who told a newspaper reporter last year that he was worth between $30 million and $50 million, and had apparently a good line of credit with the Bank of the Southwest, is having problems in his empire.

Some of the signs:

- The sale of the stock in the Alice National Bank.
- The fact that the Groos bank's deposits have dropped almost one-third since Manges took control.
- A possible split of some sort between Manges and some of the Guerras who had originally been his friends. H. P. Guerra III resigned from his positions with both the Groos bank and the Rio Grande City bank in late May of this year. (The resignation also terminated his service on the state finance commission, since his position hinged on his being a banker.)
- Ashby, accountant for Manges' ranch and a director of the Groos bank, was sued by the bank for recovery of a $517,000 loan made to him on Nov. 14, 1973.

There was speculation that the loan was made so Ashby could buy the Alice National Bank stock.

- The state banking department told the Rio Grande City bank in April of this year to quit loaning so much money to bank insiders, such as Manges.
- The Groos bank applied Dec. 19, 1973, to change from a national bank to a state bank. One advantage of being a state bank would be an ability to make larger loans to a single person than a national bank can.
- Manges was ordered on June 11, 1974, by Judge Max W. Boyer—who replaced Carrillo in the Guerra receivership action—to pay $225,000 he still owed in connection with the split-up of the ranch property. By the payment deadline of July 11, 1974, Manges had not paid; he did not do so until the threat of foreclosure sale of his property to meet the debt was raised by the judge.

At last report, the check with which Manges paid the $225,000 bounced, and Judge Boyer had ordered receiver Bates to foreclose on property to satisfy the debt.

Whether Manges can assume political control in Duval County in the wake of the Parrs—assuming he can hang onto his land and banks—is another question.

THERE ARE THOSE who believe that he will be a power behind the throne, a kingmaker, after the Parrs are gone.

But there are others who say that Manges is regarded as "an outside gringo" and cannot overnight assume the patron position that the Parrs have built up over generations.

Manges tried to have Ashby elected to the board of the Benavides Independent School District, which includes Freer, but Ashby was beaten.

(Oscar Carrillo says Manges nonetheless controls the school board, and Carillo says that as a result, Manges pays far less on his taxes than do other landholders—such as Carrillo.)

But the mystery of Clinton Manges continues. Whether he is good or bad depends largely on who is asked about him.

"He's vicious and dangerous," says Oscar Carrillo, once Manges' friend.

One San Antonian, however, says that Manges has simply beaten people —such as the Groos family—at the free private enterprise game they have espoused. Said the San Antonian:

"He ain't in the San Antonio Country Club yet, but if he stays rich long enough, he will be."

SATURDAY: One of the keys to staying out of trouble with the law is either to be the law or to have a hand in selecting those who enforce and adjudicate it. In South Texas, the Parrs' hand in that process has been a large one.

Duval Stir
Little Emoti

The Parr regime may be i
of falling in Duval County due
convictions, but around the st
tal a "ho-hum" attitude still
Last of Series on

—Associated Press Wirephoto.

Oscar Carrillo, pictured here in 1971 while a member of the Texas House of Representatives, would like to take over the political machine of George and Archer Parr. Carrillo was a part of the machine until the Parrs refused to support him in his 1974 try for the state senate.

Austin Apathetic To Duvall Situation

By ROBERT E. BASKIN

AUSTIN—While other sections of the state may feel a sense of shock and amazement over the latest developments in the Parr Duchy of Duval, residents of South Texas—and even politicians here in the state capital—tend to take a ho-hum attitude about them.

"What else can you expect down there?" an Austin lawyer said with a shrug the other day. "We've always had that situation in Duval and other countries in the area, and maybe we always will."

Many observers feel that the Parrs will pull through their present crisis, despite the federal convictions of the reigning duke, George Parr, and his heir apparent nephew, Archer Parr, over irregularities in the handling of funds of the Duval County conservation and reclamation district. They always have.

THE PARRS can be expected to fight their appeals with the best legal talent they can find, as Goerge Parr did so successfully in 1960 before the U.S. Supreme Court on his mail fraud conviction. His attorney then was Abe Fortas.

And the speculation is that they will be able to contain, at least for the time being, the insurgency of former State Rep. Oscar Carrillo, who says he is prepared to take over the reins of power. The Parr name is still magic to Duval's Mexican-Americans.

A complete showdown on the question of control probably will not come unless, and after, both George and Archer Parr go to prison.

The record of the last few months in the troubled dukedom is enough to awe most politicians—the two convictions, the tragic suicide of Archer Parr's wife, Jody, the emergence of a new strong man, the mysterious Clinton Manges, in the South Texas economic and political picture, and the behavior of a few state district judges.

is no indication that state legal action is foreseeable against the Parrs or any of their cohorts. It has always taken federal initiative, usually in Republican administrations, to strike with any degree of effectiveness at this 62-year-old machine.

Foremost of these is the reflection cast upon the state's judicial system. The secret of political power in south Texas has been (1) the control of votes and (2) the control of local courts. The two go hand in glove.

Under the elective system of naming state and county prosecutors and judges the men who control the votes often have the whiphand over the judicial system. Lawyers who must try cases in these courts may chafe under circumstances of unfairness and lack of judicial impartiality arising from this, but few are prepared to chal-

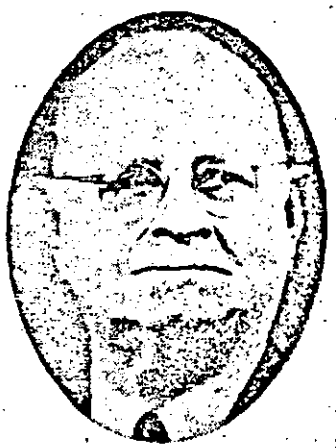
DUVAL:
A Troubled Dukedom

lenge a judge before whom they may have to try another case.

THERE ARE legal remedies—such as impeachment or action by the state judicial qualifications commission—but they are rarely employed.

Periodically there are recommendations that state judges are appointed by the Governor and confirmed by the Senate, and this was a subject of discussion at the recent ill-fated Constitutional Convention. But proponents of elective judges have always had the last say.

While many, or most, state benches are occupied by honorable and dedicated jurists, there are inevitably political considerations involved in their tenure of office under the elective system. In much of south Texas, where the vote is controlled by macines, the considerations are magnified many



Archer Parr, the first Duke of Duval . . . his family's political reign nearing end?

parts of the state can be a rare commodity.

Another major issue in South Texas concerns the vital question of what will happen if the prevailing political organization is ousted from power. The specter of Crystal City, where the Mexican-American La Raza Unida party won municipal control and took readily to the exercise of power, affects the thinking of the entire area.

There are respectable citizens who would prefer to have a rather benevolent despotism by a machine which maintains a stable government than take the risk of having a less predictable group become dominant.

TO SOME EXTENT this has been true in Duval County. But it is more pertinent in neighboring Webb County (Lanedo) where the machine run by the Martin and Kazen families has acquired sophistication and restraint in its power.

No matter what happens to the Parrs in their present predicament, the future political evolution of Duval County and its satellites is difficult to assess. The system of paternalism has become deeply ingrained over the course of this century.

History of the Bar Association of New York, by George Martin

Chapter 6

IT IS HARD to assess exactly the Association's role in the reform movement which was developing. Whenever it acted in its own name, by resolutions or memorial to the legislature, its contribution, of course, is evident. But frequently an individual rather than the Association acted, and often the man's motives, though he was a member of the Association, were mixed. Tilden is an obvious example. No other man did as much to defeat the ring, but clearly he acted primarily as a Democrat eager to cleanse his party rather than as a lawyer eager to raise the standards of his profession. Yet at the same time he was a vice-president of the Association, planned much of his strategy with it in mind, and reported to it on the progress of the movement. To what extent, then, should the Association's role be treated as distinct from Tilden's?

There is no certain answer, and biographers of the Association and of Tilden all have made individual judgments.* This much, however, is clear: Tilden set about reform, hoping to use the Association as one of his tools, and the Association, seeing that this was an honorable and probably effective use of its power, offered itself to his hand.

* For example, Edward W. Sheldon in writing his historical sketch of the Association for its semicentennial, 1870–1920, practically ignores Tilden and says of the Association that "Almost single-handed it organized, conducted and won a fight against firmly seated corruption." Further, he quotes with approval, in one of his two slight references to Tilden, an extraordinary statement by another member of the Association to the effect that "the organization of this Association may almost be said to have inaugurated Mr. Tilden's public career." In fact, by 1868, two years before the Association was founded, Tilden was already one of the leaders of the Democratic party in New York, and some would say, in the country. On the other hand, Tilden's biographers, not unnaturally, tend to favor their subject. (E.g., Alexander C. Flick, *Samuel J. Tilden* [New York, Dodd, Mead, 1939], pp. 236–239. Edward W. Sheldon, *Historical Sketch, 1870–1920*, 23 ABCNY *Reports* 226, pp. 55, 44.)

In other instances the Association's role becomes even more difficult to assess because it was an indeterminable influence about which there is often no record at all. When Choate, for example, stepped forward at the Cooper Union meeting to state, "This is what *we* are going to do about it," he was not referring to the Association or even to the legal profession. Yet he was not on the platform by chance, and he may have been influenced to be there by the Association. He was a member, though relatively inactive; but he also was a partner of Evarts and on good, even intimate, terms with most of the Association's leaders. To what extent did they encourage him to join the Committee and to play an active role on it?

Again there is no certain answer. But the founders of the Association had hoped to exert an influence for good simply by organizing, and during the decade of the 1870's, in which the Association appeared as an an organization crusading for reform, it undoubtedly often did have an effect on men and events simply by existing.

As its first active step in the reform movement, the Association joined the Committee of Seventy in opposing one of Tweed's candidates for the Supreme Court in the election of November 1871. By a resolution published in the newspapers the Association informed the public that it regarded the nomination of Thomas A. Ledwith as "that of a man who was not a lawyer," and added that the nomination "must be regarded as dictated by political or selfish motives, and in our opinion should be condemned by the people."

Ledwith was defeated. But so were most of Tweed's other candidates, probably primarily because of the campaign put on by the Committee of Seventy. The real significance of the Association's action was internal: The potential conflict within the mem-

Attached Exhibit # 11

bership over whether it should or should not attempt to reform the judiciary, as well as the bar, had been resolved, at least temporarily.

But it had not been resolved quickly or easily. Nicoll, presumably, was now in favor of some move toward judicial reform, for the executive committee had recommended action; but others had opposed it. In the secretary's words, "After an animated discussion, and the rejection of a motion to lay the whole subject on the table," a committee had been approved to study what action might be taken. The vote of approval, however, was 45 to 23 — hardly unanimous — and the committee's recommendations, which ultimately led to the resolution against Ledwith, though adopted unanimously, provoked considerably more discussion. Without the pressure of the reform movement, the Committee of Seventy, the election, and an aroused public, the decision might have gone the other way.

The public, however, was not satisfied to stop with the resolution on Ledwith. It expected the Association to do more than prevent bad judges from getting on the bench; it looked to the organized bar to get corrupt judges already on it, off. Many lawyers felt this too, among them George Templeton Strong, who wrote in his diary on December 16, 1871:

> The Association is pusillanimous; its members are afraid to get up a cause against Barnard, Cardozo and Company, though abundant proof of corruption is within their reach. If they should fail, Barnard and the others would be hostile to them, and they would lose clients. . . . I feel inclined to resign from this Bar Association.[1]

He did not resign, and in fact his stricture on the Association was unfair, although it probably reflected general opinion in the month following the election. But within the Association, whose meetings Strong seldom attended, the active members, elated by Ledwith's defeat and perhaps overestimating their part in it,

moved ahead at once to prepare the machinery and evidence for impeaching those judges they could prove to be corrupt.

The committee on the judiciary prepared a memorial and a report for the legislature which were submitted to members of the Association for their approval at a meeting on January 4, 1872. (By then Evarts had left for Europe, where he remained until December. Throughout 1872, though some vice-president generally presided at the Association's meetings, Henry Nicoll as chairman of the executive committee had the guiding hand.) After Wheeler H. Peckham, chairman of the judiciary committee, read the proposed memorial and report, Nicoll moved that they be accepted — which they were, almost without discussion. By this time, evidently, the question of whether to attempt to reform the judiciary was no longer arguable. It had been decided over Ledwith.

The memorial opened with a paragraph in which the Association identified itself and its purposes, and then went on to state:

> Your memorialists further represent that for several years last past the administration of justice in said city, both civil and criminal, has failed to command that measure of public confidence which is essential in order that it may accomplish its beneficent ends; that the integrity of several high judicial officers occupying places upon the bench in said city, has fallen under distrust; that the profession and the public have become and are becoming more and more alarmed at the course and tendency of judicial action, and the general suspicions have ripened into conviction that the courts of justice have been, in many instances, made the instruments of promoting the frauds and injustice they were created to repress and punish.
>
> Your memorialists further represent, that charges directly impeaching the judicial integrity of some of the judges upon the bench in said city, have been repeatedly made in the most explicit manner in many of the principal journals of the day, and thus circulated throughout the United States and foreign countries; and that in these and other ways the administration of justice in said city, and the honor and fair fame not only of that city but

also of the State have become widely involved in doubt and suspicion; and that by reason of the condition of things herein set forth, capitalists have been alarmed, and important commercial and financial enterprises have been diverted from said city, and that its general prosperity is likely to be still further materially retarded.

Your memorialists further represent, that the public alarm and apprehension thus aroused for the security of the rights of person and property, and the general indignation at the reproach thus drawn upon the city of New York and the State, were among the exciting causes which led to the popular uprising at the recent election in that city, and that the fruits of that election would be in great measure lost unless the distrust herein mentioned should be shown to be without foundation, or be removed by the application of the most efficient remedies; and that it is due to the administration of justice and to the many learned and upright members of the bench, and to those whose character and usefulness have been and are affected and impaired, that a rigid inquiry should be instituted by the Legislature, and such remedies applied as the results of the inquiry may demand.[7]

Throughout December the judiciary committee had collected a mass of evidence, much of it verbal and not taken under oath, but enough nevertheless to convince the committee that corruption could be proved against certain judges. The committee report, prepared as an integral part of the memorial, summarized the kind of malfeasance with which the judges (still unnamed) should be charged:

> In the gross abuse of the powers of such judges, and of the courts held by them respectively; in granting injunctions; in the creation of receiverships, and the appointment of receivers and transferring to them vast amounts of property, both of corporations and individuals; in abusing the power to appoint referees, and in making excessive allowances to receivers, referees and others for purposes not justified by law; in abusing their authority in the manner of holding courts; in making improper *ex parte* orders out of court, and in deciding causes and motions without a hearing in court; in abusing the writ of *habeas corpus*, by using

> or permitting its use for unlawful purposes, and in improperly withholding relief under that writ; in attempting the intimidation of counsel in the discharge of duty toward their clients, and in showing undue favoritism to other counsel and attorneys for their personal or professional advancement; in gross and indecorous conduct while sitting in court, tending to bring the office of judge into popular contempt; in various acts indicating the influence of corruption upon their official conduct and decisions; and finally, in so perverting judicial authority, by the use of devices under the forms of law, as to enable individuals and corporate officers to usurp and exercise unlawful powers, seize and convert property, accomplish nefarious designs, and evade justice.[8]

The committee gave the combined memorial and report to Tilden, intending that he should present it to the legislature on behalf of the Association. This was natural, for Tilden in his role of assemblyman had a place on the Assembly's judiciary committee. But as he explained, "Instead of presenting it and making it the occasion of a speech, I retained it and gave it back to the committee, advising them to take it to Mr. [Thomas G.] Alvord for presentation. I deemed his cooperation important, thought his parliamentary skill and influence entitled him to a consideration which a section of his own party were not disposed to accord to him, and, for the interest of the cause, felt willing to invite his leadership, and to be myself a follower."[9] It was a wise move, for ultimately it put a competent, honest Republican in charge of the proceedings in a legislature which, after the election, was dominated by the Republican party.

After Alvord presented the memorial and report, the Assembly referred the matter to its judiciary committee, which soon announced that it would hold hearings in New York to investigate the charges. At this time it seemed likely that charges would be presented against four judges: Barnard, Cardozo and D. P. Ingraham of the Supreme Court, and John H. McCunn of the Superior Court. Of these, Ingraham was thought by many to be an honest

judge, guilty only of being associated in men's minds with Barnard and Cardozo because he frequently sat with them as the third member of the Supreme Court's General Term. Whatever may have been the truth, Ingraham was also an old man whose term of office had nearly expired and who by constitutional prohibition could not stand for reelection. After a short preliminary investigation, therefore, the proceeding against him was discontinued.*

There remained the other three, all of whom prepared to defend themselves. In those days the judges in New York, as part of the democratic trend emphasized by the Anti-Rent wars and the constitution of 1846, did not wear wigs or black gowns or even, necessarily, dark suits. Barnard, a handsome man with a flowing moustache, had a taste for well-cut jackets and trim trousers, and he ran his court informally. Because he liked to do something with his hands, every day he would whittle a stick of wood down to a pile of shavings, and, fancying himself as a wit, he bantered a great deal with the lawyers. Once when a lawyer asked him for a rather large allowance, $30,000, Barnard hesitated and then said, "Oh, well, take your allowance, and let them put it in the charges." And another time, interrupting a lawyer who was not a member of the Association, he announced, "If there is any member of the Bar Association here, he can have an additional specification in the charges against me, for I am going to scratch my head." Perhaps because he was the judge, and the lawyers merely lawyers, they professed to be vastly amused.[6]

* A minute of the Association's meeting on February 13, 1872, shows that within the Association the fate of Ingraham was discussed with some heat. From the floor a member offered a resolution that Ingraham's conduct "be inquired into before the Judiciary Committee of the Assembly." But "after an animated discussion, the resolution, on motion, was laid on the table." (*Minutes of the Association*, Vol. 1, p. 95.) Ingraham was born in 1800 and died on December 12, 1881. His judicial life had begun in 1838 when Governor Marcy appointed him an associate judge of the Court of Common Pleas. On his retirement from the Supreme Court on December 31, 1873, he had been a judge for thirty-five years, which was thought to be a longer period than any other judge in the state's history up to that time. (For some eulogies of him following his death, see 25 ABCNY *Tributes to Lawyers* 12.)

The hearings of the Assembly's judiciary committee began on February 19 at the Fifth Avenue Hotel, which was then on 23rd Street, and continued through April 11. Often the sessions lasted from ten in the morning until eleven at night. On the committee of nine were Tilden and his two colleagues, D. B. Hill and W. W. Niles, and all three took an active part in the interrogations. Besides the committee's counsel, the Association, on the Assembly's invitation, was represented by three members: Joshua Van Cott, John E. Parsons and Albert Stickney. From the start these men were the active counsel in the hearings and soon symbolized for the public the Association's role in the reform movement. For about six months they spent all their time on the hearings and on the subsequent trial and impeachment proceeding. At the end the Association voted them an honorarium of $1,000 each "for their services in the trial of Judge McCunn."[6] In all, the Association itself spent about $40,000, collected principally from its members, on the prosecution of its charges.[7]

At the hearings Van Cott, Parsons and Stickney examined 239 witnesses, 116 with regard specifically to Barnard, 64 with regard to Cardozo, and 42 with regard to McCunn. All three judges were represented by counsel,* and cross-examination was allowed. The records at the end were voluminous — and damaging to the judges. Nevertheless, each continued to prepare his defense. Barnard conferred with Cardozo, and both agreed that a resignation by either would serve as an admission of guilt for both; each therefore promised the other not to resign. The committee, after studying the records for three weeks, recommended impeachment for all three judges.

Just as the Assembly was about to act on the recommendation, however, Cardozo, without notice to Barnard, sent in his resignation to the secretary of state, and it was accepted. As a result the case against him was dropped, and he retired to private life, dis-

* Barnard retained George Ticknor Curtis who, having written the article on David Dudley Field's actions in the Erie litigations, already had studied much of the ground the hearings would cover.

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Cardozo

graced but without official censure. Barnard and McCunn continued to prepare their defenses. Even in sin there are degrees of guilt; and all men, honest or corrupt, judged Cardozo, for his secret betrayal of his colleagues, to be the most contemptible of all the men involved in Tweed's ring.*

The resignation of Cardozo and the impending trials of Barnard and McCunn, as might be expected, released the venom of those who believe that virtue or vice resides in the racial or religious background of a man. Cardozo was a member of one of the city's oldest and most distinguished Jewish families, and McCunn was an Irish immigrant—a sailor from County Derry who, with a helping hand at the start from O'Conor, had worked his way up in the world. Among New York's citizens there were many, such as George Templeton Strong, who were eager to believe that the city's troubles were largely the work of the Irish and the Jews. Yet the Deity in his wisdom had made it difficult for anyone seriously to reach this conclusion, for there was also Barnard, of good native stock, born in Poughkeepsie, one of seven brothers, all of whom had gone to Yale. And even Yale was not clearly the cause of the trouble, for Barnard's brother Joseph was on the Supreme Court at Poughkeepsie and was honest.

For reasons that are unclear the Assembly decided to follow different procedures in the trials of Barnard and McCunn. For Barnard it proposed an impeachment, in which it would present its charges (the articles of impeachment) to the Senate sitting as a Court of Impeachment. In addition to the Senators the judges would include five members of the Court of Appeals and the lieutenant governor of the state, who was by law president of the Senate and of the Court of Impeachment. The trial would be scheduled and directed, however, by nine members of the Assembly,

* Cardozo's son, Benjamin Nathan Cardozo (1870–1938), was only two years old at the time of his father's resignation, but he grew up feeling his father's disgrace keenly and determined to redeem the family name. He achieved this by becoming one of the most distinguished judges of his generation, serving on the Supreme Court and Court of Appeals of New York from 1914–1932, and on the United States Supreme Court from 1932 until his death in 1938.

who had the title "Managers on behalf of the Assembly." Chairman of these was Tilden's colleague, Thomas C. Alvord.

For McCunn the assembly proposed a less formal procedure. It submitted charges to the governor with the recommendation that he call a special session of the Senate to investigate them and, if it found them true, to remove McCunn from office. Under this procedure the Senate technically did not sit as a court and did not have the judges of the Court of Appeals sitting with it. In fact no one was exactly sure how the procedure should work, and much of the early part of the trial was given over to arguments about jurisdiction and powers and whether the governor's letter to the Senate had met the requirements of the state's constitution. Nevertheless, the Senate determined to proceed, to conduct its investigation as if it were a trial, and to deliver a judgment. If, as McCunn's counsel insisted, he had the right of appeal to some court from what was merely a quasi-judicial hearing, that question could be met when it arose.

Because this procedure was simpler than an impeachment, requiring the Senate merely to assemble in its regular chamber at Albany without the additional judges or the managers from the Assembly, McCunn's trial was scheduled before Barnard's and began on June 18. Representing the Association and pressing its charges against McCunn were Van Cott, Parsons and Stickney; representing McCunn, besides himself, was a group of five lawyers.

The Association presented eight charges, all carefully selected. McCunn was most notorious for his fraudulent naturalization proceedings, which generally took place just before elections. Immigrants, often forty at a time, would be herded before him by Tweed's lieutenants and with the knock of his gavel would acquire the right to vote. "It is rumored," the *Tribune* remarked one time, "that Judge McCunn has issued an order naturalizing all the lower counties of Ireland, beginning at Tipperary and running down to Cork. Judge Barnard will arrange for the northern counties at the next sitting of Chambers." *

But there was none of this in the charges. Obviously to question the citizenship of thousands of voters and, perhaps, to prove that all the elections in the state for the past five years had been fraudulent would create enormous problems which the removal of McCunn would not solve. Instead the Association's lawyers had selected seven cases, each with several allegedly corrupt acts or rulings by McCunn, and had fashioned out of each case a separate charge of corruption. A final eighth charge presented the conclusion of corruption based on the other seven.

The charges are stated in a formal, contorted style which conceals rather than discloses their meaning, but Parsons, in his summation for the senators put the seventh charge, typical of the others except that the amount of money involved is small, as follows:

> The next case to which I call your attention is that of *Van Ness* v. *Taliaferro*. The facts are in a small compass, and the case is a very aggravated one. There was pending a reference before a very respectable attorney in the City of New York, Mr. Edsall: the contest being about a fund of $3,000, in the possession of a firm of auctioneers, of New York, Messrs. Leeds & Minor, a perfectly respectable and responsible firm.
>
> MR. D. P. WOOD: Under which charge does this case come?
>
> MR. PARSONS: It comes under the seventh charge, and the testimony relating to it will be found commencing at page 403. I have stated that this fund of $3,000 was in the hands of Leeds & Minor, a responsible firm of auctioneers in the city of New York; they were willing to pay interest for it, pending this litigation, and the reference before Mr. Edsall had proceeded so far that the plaintiff had rested his case, and the defendants were called upon to introduce their testimony, when one of the parties to the suit made a motion before Judge McCunn to vacate the order of reference, upon the grounds that the case was not referable, and that the consent given was not that of the party; really, the result of this case is laughable; senators, you must not think that these are isolated cases which we have succeeded in bringing before you; we cannot bring here the mass of cases which are exemplified and illustrated by those with which we have felt justified in occupying the attention of the Senate; in this case, as I have said, a motion was made before Judge McCunn to vacate the order of reference, on the ground that the case was not a referable one; Judge McCunn vacated the reference — all that he was asked to do by the parties appearing or by the motion papers; but, by the same decision, he who thus held that the order of reference before Edsall should be vacated upon the ground I have stated, ordered another reference and appointed Wm. M. Tweed, Jr., referee; we all know why that was done: but that is not all; by the same order Judge McCunn appointed Mr. Thomas J. Barr receiver of the amount in controversy; no such motion was pending; no party applied for a receiver; and the consequence was that the parties were subjected to a further litigation, extending over many months, and were obliged to pay receiver's fees and referee's fees, in addition to the referee's fees previously incurred, and to enable Judge McCunn to purchase political support and assistance. This was immediately preceding his nomination to his present term of office, and indicates the extent to which he holds his seat by the will of the people.[9]

McCunn attended the trial through the arguments about the Senate's jurisdiction and through the first day of testimony, and then his courage apparently failed him. Though he remained in Albany close to the Senate and followed its actions, he would not attend its sessions.

On the second day of taking testimony, a week after the trial began, while a witness was being questioned by Parsons on redirect examination, a messenger delivered a letter from McCunn to the president of the Senate. It announced that McCunn's counsel had withdrawn from the case and had urged him, as their letter to him stated, "to leave it to the Senators, unimpeded by you, or by us in your behalf, to make such disposition of the charges against you as, in their judgement of their power and duty, shall seem just and right." This advice, McCunn now informed the Senate, he intended to follow.

Attached Exhibit # 11

In their letter to him which he enclosed for the senators his lawyers explained their action by stating that, in addition to thinking the proceeding was unconstitutional, "our views in regard to the admissibility of much of the evidence produced against you differ so widely from the rulings on the subject, that we are disposed to question the propriety of our continuing longer in the position we have occupied, and to doubt whether our doing so would be of any essential service either in your defense, or in excluding from the record of the proceedings against you, of what we deem irrelevant and improper evidence." [10]

The two letters, when read out to the Senate by its president, caused amazement. No one was sure of their significance. One senator proposed that the Senate sit without adjournment; another, that it adjourn at once; and still another, that it follow the schedule previously laid down for the proceeding — in short, disregard the letters. And in the end this is what it did.

The trial came to a close on July 2. In the morning Parsons began his summation by attempting to answer the senators' unstated questions about the two letters. Perhaps some of them feared that they had been a legislative tyranny? Parsons assured them they had not: "This case has assimilated very nearly to an impeachment trial; every right which the accused judge could claim, if he were here with articles of impeachment pending against him, has been conceded to him, and we think that the Senate had gone even beyond what the accused judge could claim if he were here to answer articles of impeachment, and that privileges have been accorded to him which in that case he could scarcely insist upon as a matter of strict right." [11]

This was true, and the senators must have felt convinced of it. Further, as Parsons observed: "The case was a nasty case. It had not even those circumstances to give it an appearance of dignity which are found, and which impose upon the public mind when a man of great talent has been guilty of correspondingly great wrong. This man, who had procured himself to be placed in the position of judge, as represented by this testimony, is a low, mean, sneaking man . . . ." [12] And this also seemed true.

"I stand here," Parsons said, "for the bar of the city of New York, to call upon you, senators, by your interference, to elevate, beyond the reach of influence or temptations like these, the standards of professional honor, applicable as well to the practice of my profession as to the performance by the judges of the city of New York of their duties."

Later, after a period of private consultation, the Senate returned to public session, and the clerk was directed to read the charges. Of six of the seven charges McCunn was found guilty; of the sixth charge he was found innocent. On the eighth and summary charge the Senate found him guilty of "illegal and corrupt acts", for "his own personal gain and advantage, pecuniary and other" which had "thereby brought the administration of justice into contempt, and caused deep-seated and general distrust and fear to proceedings in the courts of this State." Then it voted, 28 to 0, to remove him from office.

McCunn left Albany and returned to his home in the city. He was reputed to be a crude man, and perhaps he was. But he was not insensitive. He arrived at home in a half-dazed manner and, without even stopping to grieve with his family, shut himself up in his bedroom. Three days later he died, and Charles O'Conor, who once had helped him get his start and now was preparing the case against Tweed, put aside his work to attend the funeral and to go with the family to the grave.

Barnard's trial began on July 22, only a fortnight after McCunn's death, and was held at Saratoga Springs in the large town hall. Saratoga then was a fashionable spa, an attractive place in midsummer for the judges, senators, witnesses, clerks and counsel to gather. It was filled besides with sentimental legal memories for the older lawyers. Until the reformation of the state's judicial system, which had followed the constitution of 1846 and which, under David Dudley Field's Code of Procedure, had merged the

McCunn

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practice of law and equity, Saratoga had been the seat of the state Court of Chancery. It was at Saratoga that Chancellor Kent had presided, and for many lawyers it seemed appropriate for a court of impeachment of a judge to sit there.

The trial proceeded in much the fashion of McCunn's, except that Barnard's counsel did not withdraw and there was less argument about the tribunal's jurisdiction. There was also more examination of witnesses, for instead of only eight charges of corruption Barnard was facing thirty-eight articles of impeachment. Half of these were related to the litigations involving the Erie, the Union Pacific and the Albany & Susquehanna railroads, and the examination of witnesses concerning them consumed perhaps three-quarters of the trial. As with the charges against McCunn, each article dealt with a specific situation, most often the granting of an *ex parte* order of injunction or the appointment of a receiver, and closed, typically, with "The said justice made the said order contrary to law, with a willful and corrupt partiality toward James Fisk, Jr., Jay Gould, and others, who were then directors of the said Erie Railway Company. . . ."

Only one article, the twentieth, charged Barnard with taking money for his corrupt acts, and even this was limited to small personal gifts and "a number of costly chairs of the value of five hundred dollars and upward." In this respect the charges against McCunn and Barnard were quite different. Those against McCunn always specified pecuniary profit for himself or his friends, generally in fees or allowances, whereas those against Barnard, with this one exception, specified only partiality for his friends. In either case, of course, someone suffered an injustice, one which in the railroad suits could run into millions of dollars. Nevertheless, the atmosphere of Barnard's trial was less sordid than that of McCunn, although more glittering because of its greater formality, the size of the sums involved and the flamboyance of its personalities.

Representing the managers of the Assembly and therefore pre-

senting the articles of impeachment to the court, were Daniel Pratt of Syracuse and the same three men from the Association — Van Cott, Parsons and Stickney. Technically they now were employed by the Assembly and had no connection with the Association, except of course that they were members. But so was Barnard's chief counsel, William A. Beach. The public, however, tended to ignore Beach's membership and to think of the others as representing the Association against Barnard.

Beach himself contributed to this idea, for in his summation he stated bluntly that the managers "have sat through this trial as mute dummies and delegated its control to the Bar Association." [13] Hoping to convince the senators that the Association had ulterior political motives for attacking Barnard, he talked of "the subtle and stealthy emissary of the Bar Association of the City of New York shadowing this court and its members" and remarked on the Association's "spirit of malignity and hate." Its tactics had included "Professional spies placed upon the private movements of a judge. Professional reporters employed to follow his courts and gather up any humorous or unconsidered expressions he may have used in the freedom of chambers intercourse." [14] As Breen wrote later, the Association as painted by Beach was a monster crawling "in the path of its victim from place to place, listening to his lightest word and noting his minutest movement in its anxiety for materials out of which to construct the instrument intended for his ruin." [15]

In other parts of his speech, of course, Beach pounded on alleged defects in the articles of impeachment, and generally his summation was considered to be very effective. Its rhetoric was in the style of the day — and so was its length, seven hours. Van Cott's reply, however, was even longer, and he also had something to say of the Association's role in the proceeding. Protesting at Beach's description of it, he asked:

What is the Bar Association of the City of New York? It is the

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utable standing is obliged to stay out of it, and I believe I may say that every reputable lawyer desires to be in it and to co-operate in its high and useful public purposes. The Bar Association of the City of New York, whose chiefs are Charles O'Conor, Samuel J. Tilden, William M. Evarts — these are the persons described in the expressive language of the gentleman as the "subtle and stealthy emissaries of the Bar Association" who have conspired and set upon this virtuous respondent, who flies, one would think, as a volunteer, not brought here as a criminal, not dragged to the bar of justice, but who flies here as to a place of refuge from the persecution of those "stealthy and subtle emissaries of the Bar Association." [16]

The court took three days to vote on the articles, and during that period word leaked out that Barnard had been acquitted of the charge of pecuniary corruption. This was the twentieth article, and although there were still thirty-seven others, this was in a sense the most serious. With it safely passed, the hopes of Barnard and his friends soared. If he were found guilty of one or two of the articles — and a two-thirds vote of the court was necessary for each one — there might be only a reprimand or vote of censure, and even if he were removed from office, he soon could be reelected. Barnard himself seems never to have doubted that he would be acquitted.

On the final afternoon he waited for the verdict with his friends in a room of the Grand Union Hotel, drinking, joking and gaily anticipating the result. When news of the verdict came, it fell on the group like a thunderclap. He had been found guilty of twenty-five of the articles, including every article involving the Erie Railroad litigations, three out of four of those involving the Union Pacific, and seven out of eleven of those involving the Albany & Susquehanna. The court thereupon had voted 35 to 0 to remove him from his office and 33 to 2 to disqualify him forever from holding any "office of honor, trust or profit under this State."

Barnard, Cardozo and McCunn: these are the most famous of the judges brought to trial, but they were not the only ones.

There were two more, George M. Curtis and Horace C. Prindle, both of whom were acquitted, but only after testimony which revealed that, though they perhaps were not corrupt, they were indeed bad judges.[17]

The charges against Curtis, a judge of the Marine Court in New York City, were prepared and prosecuted by the Association. As with McCunn's, the trial was before the Senate. It started in December 1872 and ran into the following year. Prindle was the county judge and surrogate of Chenango County, and the charges against him, fifty-four in all, were preferred by eleven citizens of Chenango County. His trial too was before the Senate and, proceeding in a desultory fashion, ran from July 1872 into the following January. So that in 1872 the citizens of New York faced the spectacle of four of their judges on trial for corruption and a fifth resigning after public hearings to avoid trial. There never had been such a sight before in the state's history and, not unexpectedly, men asked, Why? What had happened?

Many lawyers in the state, including those leading the Association, agreed on the root of the trouble. It lay in the constitution of 1846, which had abolished the method by which judges were appointed and had substituted a system of election. Terms, for the higher courts at least, had been set at eight years and election districts made relatively small. For a time this system had worked reasonably well but gradually, in the opinion of many lawyers, the caliber of some of the judges had declined. Political leaders who wanted to control the patronage of the court system had nominated and elected some judges who could be controlled.

In an effort to remedy this problem by giving the judges more independence, the constitutional convention of 1867 had proposed to extend the terms on the Court of Appeals and the Supreme Court from eight to fourteen years. The people had approved this, though by a very small majority, in the election of 1869. For lawyers who thought the selection of judges by popular election was a bad method, this was a step in the right direction,

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but a very small step. In 1873 there would be a chance to tak larger one.

A proposal which had originated in the constitutional conv tion of 1867 was scheduled to come before the people as a ref endum in the election of November 1873. The proposed pl would reinvest the governor of the state with the power appoint judges, contingent upon the advice and consent of t senate. This, in the opinion of many lawyers, was the answer the spread of corruption on the bench. It was a system of selec ing judges that had worked well in the past and certainly nev had produced a situation in which five judges faced trials for co ruption within a single year. Passage of the referendum was th positive reform for which the bar as a whole should work, and t which the conviction of Barnard and McCunn should be merely prelude.

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00114

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

IN THE MATTER OF	IN PROCEEDINGS FOR A REAL
M. GUERRA & SON, A LIMITED PARTNERSHIP,	
DEBTOR	PROPERTY ARRANGEMENT NO. 69-B-9

PROPONENTS' BRIEF ON JURISDICTION; AND ADEQUACY OF REMEDIES IN BANKRUPTCY COURT; INADEQUACY OF REMEDIES IN STATE COURT IN STARR COUNTY

TO THE HONORABLE JUDGE OF SAID COURT:

M. Guerra and Son, Petitioner, files this Memorandum Brief at this time for the purpose of: (1) demonstrating that jurisdiction of the Bankruptcy Court became fixed when the Petition for Arrangement was filed; (2) that once jurisdiction attached, the Court's jurisdiction is not ousted by subsequent events, or affirmative acts of opponents of the arrangement; (3) that the Court's jurisdiction and duty to continue extends to all issues and controversies here involved; (4) that the remedies available through this proceeding are adequate to settle all controversies with justice and fairness; (5) that just remedies are not available in State Court in Starr County, and remedies there available are not just or adequate.

To the extent reference is herein made to any matter of fact, not already before the Court from the prior incomplete hearing, evidence will be presented when the hearing is completed.

This Brief is divided into two general parts, "The Jurisdictional Question," beginning on Page 2, and "Competency of the Bankruptcy Court to Grant Desired Relief; Inability of State Court to Effect a Just Result," in which remaining issues are discussed.

-1- Attached Exhibit #2-

THE JURISDICTION QUESTION

The United States Supreme Court has placed the jurisdiction question beyond the contentions of the opponents of the arrangement in its consistent holding that jurisdiction is determined on the state of things at the time suit is brought, and that subsequent events do not oust the Court of jurisdiction.

1. Jurisdiction Attaches at Time Petition is Filed: It is an elemental principle concerning jurisdiction that jurisdiction is determined on the state of things at the time the suit is brought. (Lee v. Madigan, 248 F2d 783, 79 S. Ct. 276, 358 U.S.228, 3 L.Ed.2d 260; Yung Jim Teung v. Dulles, 229 F2d 244)

2. Court is Not Ousted by Subsequent Events: If jurisdiction existed on the date of filing of the petition, it is retained until all issues of both law and fact have been finally determined. (In Re 431 Oakdale Ave. Bldg. Corp. 28 F.Supp. 63) Consequently, all of the melodrama concerning the note held by Southwestern Life Insurance Company, and the efforts of the opponents of the arrangement to oust the court of jurisdiction by tendering payment of the note would have been of no avail for their purpose, even if they had been successful. Nor does the Southwestern note constitute the only lien on real estate which existed at the time of the petition, and still exists. The National Bank of Commerce holds a note supported by a written agreement that the partners would supply real estate as collateral if the note were not paid when due. This note was overdue at the time of filing the petition. (USF&G Co. v. Millers Mutual Fire Ins. Co. of Texas, 396 F2d 569 (1968), Eighth Circuit) Three partners J. C. Guerra and V. H. Guerra (general partners) and Virginia G. Jeffries (a limited partner) had by their acts with...

from the partnership prior to the filing of the petition, but no accounting had been made to them by the partnership. While this may be a disputed fact, nevertheless, the real estate, as well as all other assets of the partnership, stand good for their interest therein until final settlement is made. The Supreme Court in USF&G Co. v. Millers Mutual Fire Ins. Co. of Texas, in a case where the two insurance companies held joint liability to the Plaintiff, but Millers refused to defend the insured and USF&G assumed the defense successfully, thereby eliminating everything but the claim by USF&G against Millers for contribution to the defense in a sum less than the jurisdictional amount, Millers contended that the Federal Court had lost jurisdiction. The Court said:

> "Defendant overlooks in its present jurisdictional attack the well settled principle that once jurisdiction is successfully invoked, subsequent events are of no importance and cannot divest the court of its jurisdiction." (Citing cases.)

The Millers case cited St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 58 S.Ct. 586, 82 L.Ed. 845, in a case in which the Federal Court took jurisdiction when Plaintiff's Petition alleged in good faith more than the jurisdictional minimum, but as a result of pre-trial procedures, etc., a subsequent amendment of the Plaintiff's Petition reduced the claim to less than the jurisdictional minimum, and contention was made that the Court had lost jurisdiction. The Court retained jurisdiction saying:

> "Events occurring subsequent to the institution of suit, which reduce the amount recoverable below the statutory limit do not oust jurisdiction." (L.Ed. p. 849, U.S. p. 289-90)

This principle was earlier stated by the Supreme Court in Carter vs. McClaughry, 183 U.S. 365, 46 L.Ed. 236 (Sup. Ct. 1902), wherein an army officer convicted of embezzlement of the government by court martial, dishonorably discharged, and imprisoned in Ft. Leavenworth, applied for habeas corpus on grounds that the Army lost jurisdiction of him after his discharge, and thereafter had no jurisdiction to punish him.

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The Court held that jurisdiction attached to him while he was in the Army, and that such jurisdiction included not only the power to hear and determine the case, but the power to execute and enforce the sentence of the law, indicating the settled consistency of this principle by the statement:

> "It may be added that the principle that where jurisdiction has attached it cannot be divested by mere subsequent change of status has been applied as justifying the trial and sentence of an enlisted man after expiration of the term of enlistment." (L.Ed. p. 849, U.S. p. 383.)

An interesting case where jurisdiction depended upon the United States Government being a party in a suit to establish tax liability of a contractor for funds held by the State of Massachusetts under road construction contracts, and where, during the process of litigation, the United States disappeared as a party, leaving only actions and cross-actions between the contractor's assignees (under which the Federal Court would have had no jurisdiction of either the person or subject matter in the first instance) is that of Atlantic Corporation vs. United States, First Circuit, 1962, 311 F.2d 907. The Court held that jurisdiction had attached because of the origina presence of the U. S. Government, and that the Court was not ousted from jurisdiction when the United States dismissed its claim. The Court stated at page 910:

> "The presence or absence of the government had nothing to do with the Court's jurisdiction over the balance of the case. If Atlantic had a proper cross-claim against its co-defendants, this gave the Court ancillary jurisdiction even though all the parties to the cross-claim were citizens of the same state. (Citing cases.) The termination of the original action would not affect this. This is but one illustration of the elementary principle that jurisdiction which has once attached is not lost by subsequent events. (Citing Home Insurance Company of New York vs. Trotter, 130 F.2d 800.) The District Court's seeming view that it lost jurisdiction of an otherwise justiciable matter was erroneous. Rather, the question was whether it ever had such jurisdiction."

The settled nature of this principle is indicated by the text statement in 54 Am.Jur. 673, United States Courts, Sec. 12, as follows:

> "12. Inception and Ouster or Loss of Jurisdiction - Jurisdiction of a Federal court attaches when a case or controversy of a character cognizable in such court and which possesses the required elements or conditions of Federal jurisdiction is by appropriate pleading first brought before it for adjudication. And when a Federal court once obtains jurisdiction, such jurisdiction will generally not be ousted or lost by subsequent changes in the conditions, whether such changes relate to the citizenship of the parties or the amount in controversy."

The general rule to like effect is stated in 36 C.J.S. 137, Federal Courts, Sec. 26, as follows:

> "As a general rule, the jurisdiction of a federal court depends on the state of the record at the time the action is brought, and if the court has once obtained jurisdiction it cannot be ousted. In other words, where the jurisdiction of a federal court has once attached, it is not subject to be divested by subsequent events or extraneous matters. Thus, where the jurisdiction of a federal court has attached, the right of plaintiff to prosecute his suit to a final determination cannot be arrested, defeated, or impaired by any proceeding in a court of another or concurrent jurisdiction, or by the fact that after the action is begun defendant does not continue to resist plaintiff's demands, or admits or acknowledges liability; and jurisdiction once obtained is not terminated by any fraud practiced on the court by the successful litigant."

The cases on this point are so numerous that further citations or quotations from them would be cumulative, but unnecessarily repetitious. It is obvious, therefore, that the Court had jurisdiction when the petition was filed; that none of the subsequent events or efforts by the opponents, however motivated, have been effective to oust the Court of its plain jurisdiction, and that the Court has a duty to assume jurisdiction and dispose of all of the matters involved herein.

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COMPETENCE OF BANKRUPTCY COURT TO GRANT DESIRED RELIEF; INABILITY OF STATE COURT TO EFFECT A JUST RESULT

1. Dismissal was based on incomplete evidence:

Because of the incomplete nature of the hearing, the Court, on such incomplete facts, reached unjustified conclusions, expressed on p. 3, "Although all partners appear to desire a dissolution of the partnership," and again on p. 7, "This Court cannot assure continued existence of the debtor, because it is obvious that all partners wish its dissolution." Because of this incorrect conclusion, the Court ordered the incorrect dismissal, giving as his reason:

> "The state court alone has jurisdiction to dissolve the partnership. The relief which this Court has power to give is incomplete; when its jurisdiction and power will have been exhausted, the partners still would have to go to the state court for final dissolution of the partnership."

Further hearing will clearly show that at no time up to the time of this hearing had the petitioning partners, H. P. Guerra, Jr., M. A. Guerra or R. R. Guerra, or any of them, expressed a "wish" or "desire" for dissolution of the partnership. The state court proceeding initiated by M. A. Guerra and R. R. Guerra had as its purpose preservation of the partnership against the efforts of V. H. Guerra and J. C. Guerra, general partners, and Mrs. Jeffries, a limited partner, to substitute Clinton Manges as the owner of their pro rata part of ranch lands, without complying with the provision of the Articles of Partnership requiring that dissatisfied partners first offer such interests to the remaining partners; and in the suit initiated by Manges, M. A. and R. R. Guerra resisted the effort of Manges to have a receiver appointed, and partition 2/6 of the land to him. H. P. Guerra, Jr. did not join in either of these suits at the outset. He did not desire dissolution, but because he desired peace, he was willing to

accept as a fait accompli the withdrawal of the three dissatisfied partners, rather than go to court to obstruct it. This is quite different from a desire to dissolve! When on March 31, 1969, two of the dissatisfied partners, V. H. Guerra and J. C. Guerra, attempted to convey the entire ranch lands to Manges, this act would have destroyed ranching business of the partnership, which was its expressed purpose. At this point, H. P. Guerra, Jr. intervened in the litigation previously initiated by R. R. Guerra and M. A. Guerra to set aside the Deeds given as to the pro rata interests of J. C. and V. H. Guerra, and Mrs. Jeffries, to Manges, and enlarged the suit by a pleading to set aside the Deed of March 31, 1969, attempting to convey the entire ranch property. Thus, by the acts of the majority in number and interest of the partners, they are committed against the very concept on which the Court based its decision: that all partners desire dissolution of the partnership.

2. Complete relief is available under Petitioners' plan:

H. P. Guerra, Jr. and M. A. Guerra, now the only two general partners who have not by their hostile acts withdrawn from the partnership, have offered the pending plan, which does not involve a sale of all partnership ranch lands, but only of enough to pay the debts of the partnership. To clear title to the land to be sold, the executory contracts and deeds between the dissatisfied partners and Manges must be, as they should be, set aside as illegal and fraudulent Deeds, which now cast a cloud on title. This the bankruptcy court has jurisdiction and power to do. Thereafter, under the supervision of the Court, the plan provides for complete relief as follows:

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a. Some 20,000.00 acres of lands, more or less, can be conveyed to M. G. Johnson at $60.00 per acre, to produce the approximate sum of $1,200,000.00 in cash. (This is $114,000 more than the same 20,000 acres would bring under the executory contracts with Manges at $54.30 per acre.)

b. All debts, both principal and interest, will be paid in full, promptly.

c. The dissatisfied and withdrawn partners may be placed in the role of creditors, and settled with, under the supervision of the Court under one of the following plans:

(1) If those who have attempted to sell their pro rata part of ranch lands to Clinton Manges at $54.30 per acre request that these executory contracts be consummated, H. P. Guerra, Jr. and M. A. Guerra, as surviving general partners, under the supervision of the Court, can execute Deeds in satisfaction thereof to specific partnership lands, fairly partitioned, and thus settle this matter for good.

(2) If the dissatisfied and withdrawn partners who have attempted to sell their pro rata part of ranch lands to Manges desire to receive such land in kind, H. P. Guerra, Jr. and M. A. Guerra, as surviving general partners, under the direction of the Court, may execute a Deed to them for specific ranch lands, fairly partitioned.

(3) If the withdrawn and dissatisfied partners in fact desire to sell their pro rata interests in ranch lands, the partnership acting through H. P. Guerra, Jr. and M. A. Guerra is willing to buy the pro rata share of said partners in ranch lands at the price at which they were offering it to Clinton Manges, $54.30 per acre; or, if under the facts and law they are entitled to the higher price of $60.00 per acre, which has been offered by M. G. Johnson for the entire ranch property, the partnership can purchase their interests at such price. In either event, it will be necessary that

the partnership borrow some funds with which to finance the purchase in cash, and it is believed ninety (90) days would be adequate time.

d. R. R. Guerra, who has at all times opposed the dissolution of the partnership and the sale to Clinton Manges, until he panicked after the Court's memorandum dismissing the case on February 20, 1970, and later made the contract with Manges under which he would retain his pro rata part of the ranch lands, and either go along silently or actively, with the liquidation of the pro rata part of the ranch lands which would otherwise belong to H. P. Guerra, Jr. and M. A. Guerra, may be permitted to receive his pro rata part of ranch lands in kind, and in specific property rather than an undivided interest, which can be carried out by a Deed from the partnership acting through H. P. Guerra, Jr. and M. A. Guerra, under the supervision of the Court, and after the Court has examined the situation for fairness and equity.

e. The town lots, any minerals held in undivided interest, and all other assets of the partnership, may be divided in kind according to interest, and the interest of the dissatisfied and withdrawn partners transferred to them by Deed or Bill of Sale by the partnership, acting through H. P. Guerra, Jr. and M. A. Guerra.

f. The ranch lands then remaining, together with the pro rata interest of M. A. Guerra and H. P. Guerra, Jr. in other properties will remain in the name of the partnership, M. Guerra & Son, which thereafter will be owned entirely by H. P. Guerra, Jr. and M. A. Guerra, who desire to continue the partnership.

The above procedure, which is within the jurisdiction and power of the Court to carry out, provides full and complete relief to all parties, as well as the attribute of fairness

and justice to all parties. It denies to no party any right which he or she is entitled to under either law or equity.

3. Complete and just remedies are not available in the State Court in Starr County: The Court in the memorandum of February 20, 1970, seemed to recognize the technical fact of its own jurisdiction, even on the incomplete state of the evidence, but was persuaded that the Federal Court's jurisdicti was being imposed upon, when adequate remedy is readily available in State Court:

> "There is now pending in the state court a suit seeking dissolution of the partnership. In the course of that dissolution, all claims against the partnership, secured and unsecured, will be paid. Hence it is clear that the relief available in that Court is complete." page 7.

This is true as an abstract principle of procedural law applied in a vacuum, but is inapplicable in Starr County, because it is the obvious opinion of proponents and opponents alike that the concept of a "government of laws" has been replaced by a "government of men" which has penetrated the state judiciary by operation of a local political majority which over a long period of years has consistently denied to its opposition, and especially to members of the "Old Party" (of which Petitioners are members) a fair trial on the merits in matters there in court. This is strong language reluctantly said, but it is common knowledge in the area. It is not a secret known only to the bar, but kept quiet to present to the public an "image" of impartial justice, while the substance of justice is siphoned off in a locally imposed "government of men." The symbolic blind is worn by the Statue of Justice not by the public. The public sees and knows what is going on in Starr County.

The opponents of this arrangement seek to force trial in Starr County for the very reason that they are confident that the game of justice will be there played with a stacked deck, and that their man will be house dealer. The petitioners seek to avoid this for the same reason. The people in Starr County watch the drama with both knowledge and curiosity. The Court is an eye-and-ear-witness to the maneuverings of opponents of this arrangement to take advantage of this unhealthy political situation, and of the petitioners to avoid being sucked into the trap.

Full development of the evidence will reveal that the Court was premature in concluding that petitioners sought to impose on Federal jurisdiction; that instead, they were impelled to do so as humble citizens who saw it as a last hope to obtain even-handed justice at the trial court level.

Petitioners take no pleasure in raising this issue; nor do they feel either shame or hesitation in doing so. It is their plain duty! This situation focuses a searchlight on one of democracy's unsolved problems: that a local majority may at times supplant a "government of laws" with a "government of men." We are fortunate that this is a "local" and not a "national" majority so conducting public affairs. That a "majority" can be a tyrant as well as a monarch is not a Starr County development. It has been with us since the founding of the nation. Madison, writing in Federalist Paper #10, said:

> "Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished, as they continue to be the favorite and fruitful

Attached Exhibit #12

topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true." (Emphasis ours.)

Continuing his discussion of the dangers of tyranny by a local majority, Madison pointed out the protection which the diversity of interests and factions involved in the Federal system gave to the citizen against the very evil of an overbearing local majority, saying:

"Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic - is enjoyed by the Union over the States composing it. Does this advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here again the extent of the Union gives it the most palpable advantage." (Emphasis ours.)

Writing again in Federalist Paper #43, Madison discussed the very function of the Federal Government in a situation where a local majority has subverted justice:

"At first view, it might seem not to square with the republican theory to suppose either that a majority have not the right, or that a minority will have the force, to subvert a government; and consequently

> that the federal interposition can never be required but when it would be improper. But theoretic reasoning, in this as in most other cases, must be qualified by the lessons of practice. Why may not illicit combinations, for purposes of violence, be formed as well by a majority of a State, especially a small State, as by a majority of a county, or a district of the same State; and if the authority of the State ought, in the latter case, to protect the local magistracy, ought not the federal authority, in the former, to support the State authority? Besides, there are certain parts of the State constitutions which are so interwoven with the federal Constitution that a violent blow cannot be given to the one without communicating the wound to the other. Insurrections in a State will rarely induce a federal interposition, unless the number concerned in them bear some proportion to the friends of government. It will be much better that the violence in such cases should be repressed by the superintending power, than that the majority should be left to maintain their cause by a bloody and obstinate contest. The existence of a right to interpose will generally prevent the necessity of exerting it."

Fear of tyranny from local majorities seemed to bother the people preparing to vote on adoption of the constitution, and Madison again addressed himself to the subject in Federalist Paper #51:

> "It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself."

Madison was not the only advocate of the Constitution to feel called upon to argue the protection the Federal Constitution gave the local citizen against the tyranny of a local majority. In Federalist Paper #60, Hamilton stated:

"It is not difficult to conceive that this characteristic right of freedom may, in certain turbulent and factious seasons, be violated, in respect to a particular class of citizens, by a victorious majority; but that so fundamental a privilege, in a country so situated and enlightened, should be invaded to the prejudice of the great mass of the people by the deliberate policy of the government without occasioning a popular revolution, is altogether inconceivable and incredible."

Jefferson observed this same phenomenon in his writings:

"I suspect that the doctrine that small States alone are fitted to be republics, will be exploded by experience, with some other brilliant fallacies accredited by Montesquieu and other political writers. Perhaps it will be found, that to obtain a just republic (and it is to secure our just rights that we resort to government at all) it must be so extensive that local egoisms may never reach its greater part; that on every particular question, a majority may be found in its councils free from particular interests, and giving, therefore, an uniform prevalence to the principles of justice. The smaller the societies, the more violent and more convulsive their schisms." (Emphasis ours.) (John Dewey, The Living Thoughts of Thomas Jefferson, page 59.)

But it is an important principle in a democracy that the majority shall rule, and Jefferson recognized this fact:

"The first principle of republicanism is, that the lexmajoris partis is the fundamental law of every society of individuals of equal rights; to consider the will of the society enounced by the majority of a single vote, as sacred as if unanimous, is the first of all lessons in importance, yet the last which is thoroughly learnt. This law once disregarded, no other remains but that of force, which ends necessarily in military depotism. (John Dewey, The Living Thoughts of Thomas Jefferson, page 71.)

Alexis de Tocqueville, writing of the American Democracy in 1834, included several chapters on the "Tyranny of the Majority," and among other things, observed:

"A majority taken collectively is only an individual, whose opinions, and frequently whose interests, are opposed to those of another individual, who is styled a minority. If it be admitted that a man possessing absolute power may misuse that power by wronging his adversaries, why should not a majority be liable to the same reproach? Men do not change their characters by uniting with one another; nor does their patience in the presence of obstacles increase with their strength. For my own part, I cannot believe it; the power to do everything, which I should refuse to one of my equals, I will never grant to any number of them."

The above quotations, from ancient authorities, are here quoted and restated for the threefold purpose of reminding all of us that the conditions existing in Starr County were foreseen by the framers of our government, and that the remedy they foresaw was Federal help at the time a local tyranny deprived a minority of its rights; that it was common knowledge that the majority could be a tyrant in the days of the founding of our government; and no impertinence is intended in observing 200 years later that it has happened in Starr County, Texas, and needs the remedy pointed out in these early writings.

If the oppressive majority divided itself from the minority along racial lines, there would be ready relief in the numerous civil rights statutes to transfer the litigation out of the courts so dominated; but, when the division between the majority and minority has no racial overtones, but is divided along business, commercial, and political interests, specific provision for transfer is not made. Fortunately in this case, specific provision is not necessary.

Petitioners do not request the Court to "stretch" its jurisdiction to cover an area of legislative neglect. Rather, Petitioners request the Court in a situation where jurisdiction has fixed not to exercise its discretion (if it may be discretionary in such case) to send a case back to a State court for trial under a theory that remedy there will be complete, when the fact is that the remedy available to Petitioners is to have their pro rata interests in ranch lands, which they desire to keep, sold at a price far less than its true value, and because of its long ownership by the family, a large portion of the proceeds of the sale not consumed by debts will be consumed by income taxes resulting from the sale.

Attached Exhibit #12

While evidence will be adduced on this point at the hearing, we believe the Court has been eye-witness to enough evidence to justify the above conclusion, without more. Let's marshal some of the evidence now before the court:

1. Articles of Partnership: The Articles of Partnership are before the Court (MX-1 and PX-6) and Paragraph 1 of the Articles provides that the purpose is "general ranching, cattle and related business, and such other businesses, except banking and insurance, as may be agreed upon by those partners hereto constituting a majority in interest." (Paragraph 1.) Paragraph 2 provides the partnership may be terminated by "agreement of the parties or by operation of law." Paragraph 4 provides that upon final dissolution, the capital contributions of each partner are to be returned "in cash or such other properties as those partners constituting a majority in interest shall determine." Paragraph 5 provides that, "No partner shall sell or assign his interest in the firm without first having offered it to the other partners for a period of 90 days prior to such proposed sale date at a price not in excess of the bona fide price offered by a prospective purchaser." Paragraph 6 provides against dissolution in case of death, withdrawal, or total physical or mental disability of a partner, except under procedures there outlined. While Manges, J. C. and V. H. Guerra contend that Paragraph 9 gives any general partner power to sell all lands of the partnership, the proponents of this arrangement contend that such paragraph is limited to acts in the normal conduct of the ranching business. It is clear that Manges, J. C. and V. H. Guerra placed the same construction on the Articles of Partnership as these proponents by their following acts:

a. They first proposed to accomplish the sale of the ranch lands to Manges by a contract prepared for the signature of all partners, which contract was dated May 29, 1968. (PX-9.)

b. When the majority in interest and number of general partners would not agree to sell, Manges then entered the conspiracy with J. C. and V. H. Guerra, and Mrs. Jeffries, to economically paralyze the partnership by the contracts and deeds given by such partners to Manges purporting to convey specific lands of M. Guerra & Son over their own signatures, when title to such lands stood in the name of the partnership. (PX-10, 11, 12, 13 and 14.) Neither J. C. nor V. H. Guerra, nor Mrs. Jeffries, offered their interest in the partnership or in such ranch lands to the remaining partners at the price offered by Manges, $54.30 per acre, for 90 days, as provided in Article 5; nor did they propose dissolution and division of assets (after paying debts) in "cash or other properties" as the "majority in interest shall determine." Consequently, they did not legally seek withdrawal (under Paragraph 5) or dissolution under Paragraph 4. Then, what was their intent?

c. Conclusion is inescapable that the intent was to defraud the partnership, and the remaining partners, who constituted the majority in number and interest. They seek to

sell 72,000 acres of ranch land considered by proponents worth $75.00 per acre ($5,400,000.00), as to which proponents have an offer of $60.00 per acre ($4,320,000) for the lower sum of $54.30 per acre ($3,909,600.00), a loss respectively of $1,490,400.00, or $381,600.00. With the motives of withdrawal and dissolution eliminated, fraud on the partnership is the only remaining motive with any of the earmarks of credibility.

d. While J. C. Guerra, V. H. Guerra and Mrs. Jeffries have not withdrawn nor dissolved the partnership by agreement, their hostile and fraudulent acts have resulted in their withdrawal "by operation of the law," which would have been true in the absence of Paragraph 2, but is doubly true because contemplated by Paragraph 2.

e. J. C. Guerra, V. H. Guerra and Mrs. Jeffries oppose this proceeding, not because they would lose a cent they are entitled to, legally or equitably. Then what do they lose? They lose only chance at the undisclosed fruits of the conspiracy with Manges, that is, whatever they are to receive back for their cooperation in forcing sale of the H. P. Guerra, Jr. and M. A. Guerra interests in the partnership ranch lands for $54.30 per acre, presuming the matter can be so arranged by the District Court in Starr County that reversal on appeal will be impossible.

f. If the Deeds given by J. C. Guerra and V. H. Guerra, and the contract by Mrs. Jeffries, given in August, 1968, were effective to convey their interests, how could any of them thereafter on March 31, 1969, have any power to deal with title to remaining lands standing in the name of M. Guerra & Son, but equitably belonging to the remaining three partners?

2. Manges' Suit in State Court: In Cause No. 3953, Manges vs. Guerra, 79th District Court, Starr County, Texas, Manges sought the appointment of a Receiver to take charge of the affairs of M. Guerra & Son, and on final hearing to have a partitioning to him of his "undivided 2/6 interest in the surface of the lands" and a judgment vesting in him his "undivided 2/6 interest of the minerals," which lands and minerals he had acquired under the deeds from J. C. Guerra and V. H. Guerra conveying to him their purported interests in the partnership lands. This action was opposed by M. A. Guerra and R. R. Guerra, and H. P. Guerra, Jr. and J. C. Guerra entered general denial, and V. H. Guerra filed a cross-action against the remaining partners joining in the effort to have the Receiver appointed. This suit was not for a dissolution of the partnership, but rather was to conserve its assets and partition to Manges the 2/6 interest he claimed to have purchased from V. H. and J. C. Guerra.

3. R. R. (Ruben) Guerra has spent a lifetime in Starr County. He knows Starr County and its politics well. He is now, and wants to continue in the ranching business. He recognized the threat to his right to continue M. Guerra & Son under terms of the contract, or to have a fair partition of his interest in the ranch lands of the partnership posed by the activities of Manges in concert with J. C. and V. H. Guerra, proceeding in Starr County. He sought to preserve the partnership by opposing the action in state court, and joining in the original petition for relief in this court. He joined M. A.

Attached Exhibit "12"

Guerra in employing one of the oldest, most competent and experienced law firms in the Valley, with personal knowledge and experience with Starr County politics spanning half a century. When this Court improvidently dismissed this arrangement on February 20, 1970, and he was faced with the prospect of an adjudication in state court in Starr County, R. R. Guerra panicked. Rather than pursue his honest desire to preserve the partnership and have fair dealing between the partners, he made a deal with Manges, in effect salvaging for himself his pro rata part of ranch lands, but sacrificing his brothers and partners, M. A. and H. P. Guerra, Jr., by leaving them to fight the conspiracy alone, to save their pro rata interest in such lands.

4. The Considered Judgment of Ruben's Attorneys: The evidence to which the Court is an eye-witness does not stop with Ruben's panic. Ruben's attorneys, according to Manges' answer to interrogatories, were represented at the negotiation and drafting of the contract between Ruben and Manges, and they also panicked when they saw the white of the eyes of Starr County justice; and they advised M. A. Guerra that they could no longer represent him in this proceeding because Ruben had settled, and had so directed them; that their hands were thereby tied. Petitioners here intend no criticism of the acts of Ruben or his attorneys, who have deserted the Petitioner but only to draw to Petitioners' aid the evidence of such conduct, and the conclusions to be drawn therefrom: that it confirms (1) by the conduct of Ruben, a longtime and informed resident of Starr County, and (2) by the conduct of his attorney one of the oldest, most knowledgable of border and Starr County politics, and sophisticated law firms on the Rio Grande border, every observation made herein concerning the prospects of Petitioners to get justice in Starr County; and (3) that even lawyers finally fatigue in seeking justice in courts where a "government of laws" has been ousted in favor of a "government of men," and the judiciary is dominated by partisan interests.

5. Manges' Acts: Manges is the main actor, and would be the principal beneficiary of the consummation of the conspiracy. But he is not so persuasive, nor are Joe Guerra and Virgil Guerra so gullible, that Manges has convinced Virgil and Joe to go along with sale of property in which claim 1/6 interest each for $1,490,400.00 less than its value without a side agreement with Manges. All three - Manges, Joe and Virgil - have now identified with the "New Party" in Starr County. The stage is set!!

CONCLUSION

J. C. Guefra, V. H. Guerra and R. R. Guerra, by the acts indicated above, which are eitheralready before the court or inescapably implied from evidence before the Court, have withdrawn as general partners from M. Guerra & Son, and are no longer in a position to speak or act for it; and Mrs. Jeffries, by her acts, has lost any rights that she had as a limited partner to participate in the affairs of the partnership; this leaves M. A. and H. P. Guerra only as the general partners who

have not, by operation of the law, withdrawn from the partnership, or estopped themselves from acting for it.

Jurisdiction attached when the Petition was filed herein, and has not been divested by any subsequent acts, nor can it be divested by the melodrama of the opponents' efforts to pay off the real estate note now held by M. G. Johnson. Full and complete relief is available under the jurisdiction and through the processes of this court, and the arrangement here proposed should be entertained and approved by the Court. It will pay all bills, be just to all parties, and unjust to no party.

Respectfully submitted,

SMITH, McILHERAN & JENKINES

BY: Garland F. Smith
Attorneys for M. Guerra & Son, Acting Through H. P. Guerra, Jr. and M. A. Guerra

CERTIFICATE OF SERVICE

I hereby certify that copies hereof have been mailed this 25th day of July, 1970, to counsel for adverse parties, as indicated below.

Garland F. Smith
Garland F. Smith

copies to:

Mr. Jack Skaggs
Carter, Stiernberg, Skaggs & Koppel
P. O. Box 2367
Harlingen, Texas 78550

Mr. R. Dean Moorhead
307 First Federal Building
Austin, Texas 78701

Mr. Arnulfo Guerra
P. O. Drawer 905
Roma, Texas 78586

Kampmann, Kampmann, Church & Burns
Milam Building
San Antonio, Texas 78205

Mr. Thomas G. Sharpe, Jr.
Hardy & Sharpe
1010 East Washington St.
Brownsville, Texas 78520

Mr. James S. Bates
310 South Closner
Edinburg, Texas 78539

Attached Exhibit #12

00133

SMITH, McILHERAN, YARBROUGH & GRIFFIN
ATTORNEYS AT LAW
PROFESSIONAL BUILDING
FIFTH & MISSOURI AVENUE
WESLACO, TEXAS 78596

GARLAND F. SMITH
E. H. McILHERAN
DAVID L. YARBROUGH
W. GAINES GRIFFIN

P.O. BOX 418
AREA CODE 512
WOODLAWN 8-2788

August 21, 1975

Mr. Leon Jaworski
Messrs. Fulbright and Jaworski
Bank of the Southwest Building
Houston, Texas 77002

Re: Carrillo Impeachment Trial

Dear Mr. Jaworski:

In spite of the logic of it, I have some misgivings about the propriety of your serving as one of the prosecutors in the Senate trial of Judge Carrillo. I feel it is my professional duty to report this to you; I know of no other way you would know about it. Your statement in yesterday's Caller that one of your associates had handled some business matters for Mr. Manges, refreshed my memory. Until your disclosure, I had thought your firm was representing only the Bank of the Southwest. If your firm was also representing Manges it may be closely connected to one of the articles of impeachment voted against Carrillo: that he refused to recuse himself in matters involving Manges, in which he had an interest. Some background is necessary.

After all of the former partners in M. Guerra & Son had by December 1970 settled their differences with Manges, the case went into Carrillo's 229th District Court in January 1971, for necessary orders in the receivership to carry out the settlements made. Manges was to get approximately 40,000 of the 72,000 acres of ranch lands in controversy, plus ½ of the minerals, plus executory rights to make oil, gas and mineral leases as to all of said lands, except as to 13,265 acres withdrawn by R. R. Guerra, who got Manges' ½ of minerals plus executory rights as to the 13,265 acres.

Our information is and was that your client, Bank of the Southwest was at the time financing your firm's client Manges' efforts to acquire this land and the Groos National Bank, and it was in these matters (especially the Groos Bank deal) in which your associate Hubert Gentry, Jr. represented Manges and the bank. My representation at the time settlements were made was of H. P. Guerra, Jr., (who is an attorney and personally

Attached Exhibit #13

00134

negotiated his settlement with Manges, reserving 7,500 acres and selling the rest of his interest, (about 5,000 acres) and M. A. Guerra, (who settled for cash). Both reserved their undivided interest in the reserved ½ interest in minerals, subject to executory rights held by Manges (and by R. R. Guerra as to 13,265 acres). (Emphasis added because the later litigation in which we proved Carrillo's disqualification was to protect this interest against Manges' effort to acquire it under the receivership.)

I did not participate in the agreed judgment entered by Judge Carrillo on August 20, 1971, since I had closed the cash settlement for M. A. Guerra in January, under the terms of which Manges assumed all of M. A. Guerra's obligations to the partnership; and H. P. Guerra, Jr. took over his own representation in the routine matter of approving the final judgment. All Guerra parties understood on August 20, 1971, that except for the routine of the receiver paying remaining debts and costs (as to which the Guerras understood adequate assets were on hand) the receivership would be closed and the partnership dissolved.

My next contact with the case was 15 months later when the Receiver in November 1972 filed an accounting and motion to sell the one-half of the minerals reserved to the former partners in M. Guerra and Son. The motion recited an offer by Manges of $300,000 for such minerals. At this point, our former clients, H. P. Guerra, Jr. and M. A. Guerra again consulted us and upon investigation we became convinced of the following:

1. That the Receiver's report was not accurate and that Manges still owed the estate about $312,000, which if paid in, would relieve any necessity to sell any of the retained minerals.

2. That when Judge Carrillo in February approved the order for the Receiver to convey to Manges the approximate 40,000 acres of ranch lands on February 11, 1971, Manges was not required to pay the full consideration to the Receiver, and the deed did not reserve a lien for the unpaid balance.

3. If my information is correct, it was during this period from the late 1970s through August 20, 1971 that the Bank of the Southwest and Manges required the assistance of your firm

Attached Exhibit #13

through your associate Hubert Gentry, Jr. in the acquisition of controlling stock in Groos National Bank.

4. We understood that the Bank of the Southwest had prior to February 11, 1971 made advances to Manges in anticipation of his being in a position to clear title to the Guerra lands he was to acquire, which would be used as collateral to the banks loans. This was accomplished when the Receiver's deed was given to Manges, free of lien for the unpaid balance with Court approval, on February 11, 1971, and we understand the bank did then lend money on this security.

5. After the August 20, 1971 settlement, the shortage in funds caused by Manges' failure to pay when he got title left the Receiver unable to close. As indicated by No. 1 above, we estimated the shortage at $312,000.00. To remove from your mind any lingering doubt that there was a shortage, we attach a xerox copy of the judgment entered on June 11, 1974 wherein Manges paid to the Receiver $225,000.00 additional. At the time of our agreement to this figure, we were not convinced that it fully satisfied the shortage, but it did provide funds with which all remaining debts and costs could be paid, and relieved the threat of sale of the reserved one-half of the minerals. So our clients agreed to it.

Having made the determination that (1) M. A. Guerra's interest in minerals should not be sold because Manges had assumed all his obligations to the partnership; and (2) that if Manges paid the balance of his purchase price to the Receiver, (around $312,000 - he ultimately paid in $225,000) there would be no necessity to sell the H. P. Guerra, Jr. interest in minerals, we then confronted the renewed litigation, the Receiver's motion to sell minerals being set for hearing before Judge Carrillo on January 15, 1973.

Having exhausted efforts to negotiate a settlement of these matters, we now faced the harsh option of litigation in the 229th District Court. Our casual investigation of the remote prospects of a fair trial revealed the following:

1. The Judge was driving around in a Cadillac, which rumor had it, was a gift from Manges, the opposing litigant, your firm's client, Manges. For your information, I attach a xerox copy of Manges' check to Riato Cadillac for $6,915.00,

Attached Exhibit #13

dated January 27, 1971, stubbed "O.P. Carrillo '71 Cad". Is not this during the period when Mr. Gentry was assisting Manges to get clear title to the Guerra land so he could give a first mortgage to the bank? I do not suggest that either you or Mr. Gentry knew that Manges had not paid the full purchase price for the Guerra land, or of the Cadillac purchase. (Note: Carrillo's and Manges' explanation of the Cadillac is in the record supplied by the House Committee).

2. The Judge had accepted stock and a position as director in the First State Bank and Trust Company, in which your firm's client, Manges had wrested control from M. Guerra & Son in the pending litigation. Manges had also made the Receiver's attorney a director in the bank. (See House Committee Record)

3. The judge was grazing his cattle on lands of your firm's client, Manges under two oral leases: (1) One for over 1000 acres for 90 days, "as a courtesy to the Judge," Manges said; but Judge Carrillo said he intended to pay; and (2) a second lease for 5000 to 6000 acres, for 3 years subject to cancellation at Manges' option and consideration of $1.00 per acre to be paid at the end of the term, in cash or cattle, at Manges' option. (See House Committee Record)

4. The First State Bank & Trust Company, which your firm's client, Manges then controlled, had loaned the Judge over $300,000.00 on land, and $38,000.00 on an open note. (This is in the record provided by the House Committee)

5. During this interim, R. R. Guerra, who had been represented by other attorneys in his settlement, reported to us that his attorneys considered it hopeless to salvage the reserved minerals, because of their knowledge of the relations between your firm's client, Manges and the Judge, and he sought to join M. A. Guerra and H. P. Guerra, Jr. in opposing the sale. We called his former attorney who confirmed this conclusion that it was hopeless for the reasons stated and consented that we represent his former client, which we did. He wished us luck. It was not easy! (See House Committee Record)

To forestall sale of the minerals, we filed on January 9, 1973 the motion to disqualify Judge Carrillo, which was before the judge six days later on January 15, 1973, when the minerals were scheduled to be sold on the Receiver's motion. With this motion pending, Judge Carrillo declined to recuse himself

Attached Exhibit #13

or rule on it that day, and reset the motion to disqualify and the Receiver's motion. Your firm's client, Manges, then employed able San Antonio counsel and opposed the motion to disqualify vigorously for 4 months, until May 20, 1973, when Judge Magus F. Smith (who had been designated to hear the motion) ruled that Judge Carrillo was disqualified.

Judge Vernon Harville of Corpus Christi was designated to hear the Receiver's motion on the merits. We represented only R. R. and M. A. Guerra, and H. P. Guerra, Jr., who is an attorney, chose to represent himself. Judge Harville granted our Motion for Summary Judgment in favor of M. A. Guerra for the patently clear reasons stated above; but in December 1973 concluded his Corpus Christi docket was too heavy for him to continue, and he withdrew. A retired Judge, Max Boyer, was then designated to complete the matter, with results shown by the agreed judgment of June 11, 1974 attached, under the terms of which your firm's client, Manges, agreed to pay to the Receiver an additional $225,000.00, which should have been paid three years earlier on February 11, 1971, when he got his lien free deed, which permitted your firms other client, Bank of the Southwest to have a first mortgage on the Guerra lands, to secure their advances to Manges.

There are other aspects of this matter that give us concern. Many of our clients still live in the 229th Judicial District. Rumors circulate in Austin that when Judge Carrillo is removed, the Governor will appoint another judge "agreeable to Manges!" Couple this with the personal meeting between the Governor, Manges and his attorney (incidentally the Receiver in the Guerra matter) in Brownsville for the purpose of returning to Manges the $15,000 campaign contribution, and we must be concerned with this rumor. Unless we can have a fair and impartial (and hopefully also honest and able) lawyer as judge of the 229th Judicial District, our clients are sitting ducks for judicial harrassment by your firm's client, Manges. Let me illustrate:

After the June 11, 1974 judgment (copy attached) R. R. Guerra made an oil and gas lease to C. Neil Johnson on the 8,667 mineral acres unleased under the 13,265 acres he retained, as to which the judgment had ratified the mineral deeds from Manges to Guerra conveying the minerals and executory rights, Manges filed suit against Guerra and Johnson seeking cancellation of the lease on grounds that there was an oral agreement that he, Manges, was to have the executory rights. When we attached to our motion for summary judgment five (5) written documents

Attached Exhibit #13

in which Manges had recognized Guerra's executory rights, and had pending a motion for sanctions under Rule 215 for his failure to honor a subpoena to take his oral deposition, Manges took a non-suit two days before the motions were to be heard by Judge Schraub of Seguin. (Judge Carrillo did recuse himself in this matter at my telephone request).

If you will read the record of the proceedings in the disqualification of Judge Carrillo, you cannot escape the conclusion that his disqualification stems from favors conferred on him by your firm's client, Manges; nor that these favors were things of value; and were by a litigant in pending litigation to a judge hearing the matter in controversy.

You did not ask me for this information. If you had, you might compare this letter to that of the man who asked for a drink and was offered one from a fire hyrant. Realizing that you did not know what was happening at our end of the line while your firm was helping Manges and your bank, I felt you should know, and that you would not know if I did not tell you. I have entirely too many classmates and friends in your firm to do anything to injure you or your firm, and this letter is written in friendship, and I trust you will so receive it. Your firm's client, Manges, has been such a heavy contributor to Judge Carrillo's troubles, that I fear your participation in the Senate trial of Judge Carrillo would tarnish one of the really outstanding records of members of our American Bar. After all I believe you will agree that the corruption of the court at this end assisted Manges to acquire the Groos bank, the matter in which your firm was assisting him.

To examine our situation as to"axes to grind," our clients now have a certain sense of security in that Judge Carrillo is disqualified in litigation involving Manges. This would change to their disadvantage if the Governor should (after Carrillo's removal) appoint a judge "agreeable to Manges," for the obvious reasons inherent in the above background. Too long responsible officials at the State level have been keeping hands off while a local dictatorship terrorizes the people of these unfortunate police counties. "They get what they deserve; they elected them!" The Germans elected Hitler, and after he was in office two years, the German people were helpless. The Duval machine has been in charge over 50 years: many citizens of the 229th Judicial District your age, have never seen anything enforced but the will of the boss. Duval county has lost (or they fled) over 10,000 in population since 1940. I dare say 9,000 of them could have run the county better than it has been run for the past 30 years.

Attached Exhibit #13

It is easy for lawyers in Houston and Dallas to sit in their offices on the air-conditioned top-floor of the tallest building in town, and say "ain't it funny how the political factions are fighting in Duval and Starr Counties; ho-hum; boys will be boys." But it ain't funny down here! The Court houses in Starr and Duval Counties are not air-conditioned, and it is hot. One trial lawyer's burden is to put on evidence that will reverse the controlled decision of the District Court on appeal, while the opposing lawyer takes advantage of the corruption. This puts pressures on the ethics (and tempers) of both attorneys: the attorney seeking advantage of the judicial corruption has guilt complexes which make him arrogant and fractious; the attorney seeking to avoid having his client done in on a rigged case is morally outraged, and primitive instincts are aroused about "government of laws." Tempers are on edge!

In fact, during the disqualification hearing, the Receiver (by then on Manges' Rio Grande City bank board and now one of his attorneys) in a rather loud voice, accompanied with some uncomplimentary names, threatened to "beat the Hell out of me!" Your firm's client, Manges, came charging toward me from across the court room, shaking his fist and shouting insults and threats. It was comforting that at this point the Bailiff stepped between us. I have never been involved in a fight in court, and do not want to start now. My comfort was short lived. At noon, a young man told me he was sitting next to the Bailiff when Manges charged across the court room, and the Bailiff said, "those fellows are going to fist city; we better get the Hell out of here!" The young man told the Deputy "It's your duty to stop that fight!", whereupon the Bailiff did his duty.

While I have not had any apprehension of physical danger, I have had enough fellow lawyers express concern for my safety, that I am convinced that this is one of the reasons many lawyers are reluctant to try cases in the 229th District Court. A better example involves attorney Rogers Butler of Robstown. The story I get was that he was trying a case alone in San Diego, when Mr. Manges attacked him in court during the proceeding, and actually had him down choking him. Aid was very slow coming. Since my information is hearsay, you may want to confirm this from Mr. Butler. This sort of thing is not conducive to proper administration of justice.

Attached Exhibit #13

I simply feel that if you know how the matters handled by your firm were interconnected with matters at this end affecting Carrillo's impeachment, you would want to reconsider your participation. Of course, I was not one of the attorneys in the Groos bank matter, and am not privy to the transactions between Manges and the Bank of the Southwest, nor the exact participation of your firm. If I am in error in any of this information, the correct information will obviously be available to you through your office and the Bank of the Southwest.

When this is over, no lawyer or litigant in Texas should ever have to go through with what my clients and I had to go through with in this matter, just to get our Texas Constitutional right to try the case before a fair and impartial judge. I will say this for Judge Carrillo: that if he is impeached for corruption smacking of bribery, and the litigant giving the bribe is not prosecuted, it will be one-sided justice.

If any of my information is wrong, I shall appreciate your correcting me.

Sincerely yours,

Garland F. Smith

Garland F. Smith

GFS/ncl

[redacted]

Attached Exhibit #13

FULBRIGHT & JAWORSKI
BANK OF THE SOUTHWEST BUILDING
HOUSTON, TEXAS 77002
TELEPHONE (713) 224-7070
CABLE FULBRIGHT HOUSTON-TELEX 76-2828

00141

WASHINGTON, D.C. [illegible]
TELEPHONE (202) [illegible]
TELEX 89-2602

52 LINCOLN'S INN FIELDS
LONDON, WC2A 3LZ
TELEPHONE (01) 405-3200
TELEX 22-736

PASEO DE LA REFORMA 388
MEXICO 5, D. F.
TELEPHONES 5-20-54-05
5-28-72-80
TELEX 017-74828

August 26, 1975

Mr. Garland F. Smith
Smith, McIlheran, Yarbrough & Griffin
P. O. Box 416
Weslaco, Texas 78596

Dear Mr. Smith:

I thank you for your letter of August 21st which appeared to have been hand delivered to my office on yesterday.

I know that your letter was written in good faith but it is based on some erroneous assumptions. It should be noted at the very beginning that I am not one of the prosecutors in the "Senate trial of Judge Carrillo." At the request of the members of the Senate and Lieutenant Governor Hobby I agreed to advise them on any questions of procedure or law on which my views were desired. My function is purely in an advisory capacity and my views may be followed or completely disregarded. I serve as an advisor, neither prosecuting nor defending, and I have no interest in the outcome other than the hope that the impeachment process will be conducted in a manner comporting with due process of law.

I do not know Mr. Manges and do not recall ever having seen him. I am certain that I have never had any dealings of any kind with him.

As I disclosed of my own volition to the Senate committee, some four years ago a junior member of the firm assisted as local counsel in a proceeding involving a land controversy in which Mr. Manges was involved. It appears that this attorney in our firm was called in as local counsel by lawyers who regularly represent Mr. Manges.

00142

Mr. Hubert Gentry has never represented Mr. Manges. Mr. Gentry at one time was with this firm, but went with the Bank of the Southwest several years ago. The matter to which you allude in which Mr. Gentry participated, he was representing the Bank of the Southwest. The Bank paid his fees for these services involving what you referred to as the "Groos Bank deal."

As you no doubt know, Mr. Jack Skaggs and other attorneys in the Valley, as well as attorneys in Austin, have represented Mr. Manges. This firm has had no contact with him since 1971 and none of the matters involved in the Judge Carrillo impeachment proceedings related to the representation of a member of this firm - not Mr. Gentry - in 1971.

I think that you will agree that in light of the facts as set out above, there exists no disqualification on my part to serve in the capacity mentioned.

Although of no great significance, I should add that I am serving without compensation. It is purely a public service I was requested to render and to the best of my ability I intend to do so.

I appreciate the spirit in which you approach this matter. You were basing your comments on facts you believed existed, but you also realized that these purported facts could be in error. I have pointed out the errors and if there is any further information you wish to have, I shall be pleased to furnish it.

Sincerely yours,

Leon Jaworski

LJ:vm

CC143

SMITH, MCILHERAN, YARBROUGH & GRIFFIN
ATTORNEYS AT LAW
PROFESSIONAL BUILDING
FIFTH & MISSOURI AVENUE
WESLACO, TEXAS 78596

GARLAND F. SMITH
E.H. MCILHERAN
DAVID L. YARBROUGH
R. GAINES GRIFFIN

P.O. BOX 416
AREA CODE 512
WOODLAWN 8-2128

August 28, 1975

Mr. Leon Jaworski
Messrs. Fulbright & Jaworski
Bank of the Southwest Building
Houston, Texas 77002

Dear Mr. Jaworski:

I am relieved to know that your firm's representation of Mr. Manges was not in his acquisition of control of the Groos bank. My understanding originally was that your firm represented the Bank of the Southwest only, which now seems correct.

The Bank of the Southwest did benefit from the partiality of the Judge to Manges in permitting the Receiver's deed to Manges, free of lien when the full consideration had not been paid. This opened the door for the bank to have a valid first mortgage on adequate real estate to secure a profitable loan. The interests of the bank and Manges were so consistent that they did work together, much to the disadvantage of the Guerra partnership. Manges' interest now seems to be consistent with that of Judge Carrillo.

I respect the integrity of your decision to participate in the limited way you have indicated, and have no apprehension concerning the integrity or quality of your counsel to the Sena Yet there are attorneys, and I am one of them, who would regard the factual background as cause to recuse or disqualify. My views may be unduly focused as a result of seeing my own client and other litigants go through years of judicial harrassment. You cannot come out of this experience without feeling that the State has substantial responsibility to relieve judicial corrup when "police county" situations develop.

Sincerely yours,

Garland F. Smith

Garland F. Smith

GFS/ncl

United States of America vs.

CC144 **United States District Court** for SOUTHERN DISTRICT OF TEXAS

DEFENDANT: O. P. CARRILLO

CORPUS CHRISTI DIVISION

DOCKET NO.: 75-C-45

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
11	24	75

COUNSEL

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Mr. Arthur Mitchell, Richard Haynes, and William Bonilla (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy to file false tax returns in violation of Title 18, United States Code, Section 371, as charged in Count 1 of the Indictment; and filing false tax returns in violation of Title 26, United States Code, Section 7206(1), as charged in Counts 7, 8, and 9 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that. The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

FIVE (5) YEARS as to Count 1 and THREE (3) YEARS as to Count 7 of the Indictment. The sentence imposed on Count 7 shall run concurrent with the sentence imposed on Count 1. On Counts 8 and 9 of the Indictment, the defendant is committed to the custody of the Attorney General for THREE (3) YEARS on each count; execution of sentence imposed is suspended and the defendant is placed on supervised probation for a period of FIVE (5) YEARS on each count. The sentence imposed on Count 8 shall follow the term of imprisonment on Count 1 of the Indictment. Counts 8 and 9 of the Indictment shall run concurrently.

SPECIAL CONDITIONS OF PROBATION

A fine in the amount of $10,000.00 is imposed on Count 1. A fine in the amount of $4,000.00 is imposed on each of Counts 7, 8 and 9.

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED

NOV 26 1975

V. BAILEY THOMAS, CLERK
BY DEPUTY: M. A. Salazar

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

APPROVED AS TO FORM:
Robert A. Berg
ROBERT A. BERG, AUSA

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

Owen D. Cox
OWEN D. COX

Date 11-27-75

TRUE COPY I CERTIFY.
ATTEST:
V. BAILEY THOMAS, Clerk
By M. A. Salazar
Deputy

E-169

00145

November 3, 1972

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. O. P. Carrillo
Drawer S
Benavides, Texas 78341

Dear Mr. Carrillo:

The Benavides Implement Hardware Co. check in the amount of $2975.25 drawn on the First State Bank & Trust Co. and dated October 18, 1972 has been returned to us unpaid, marked "unable to locate account."

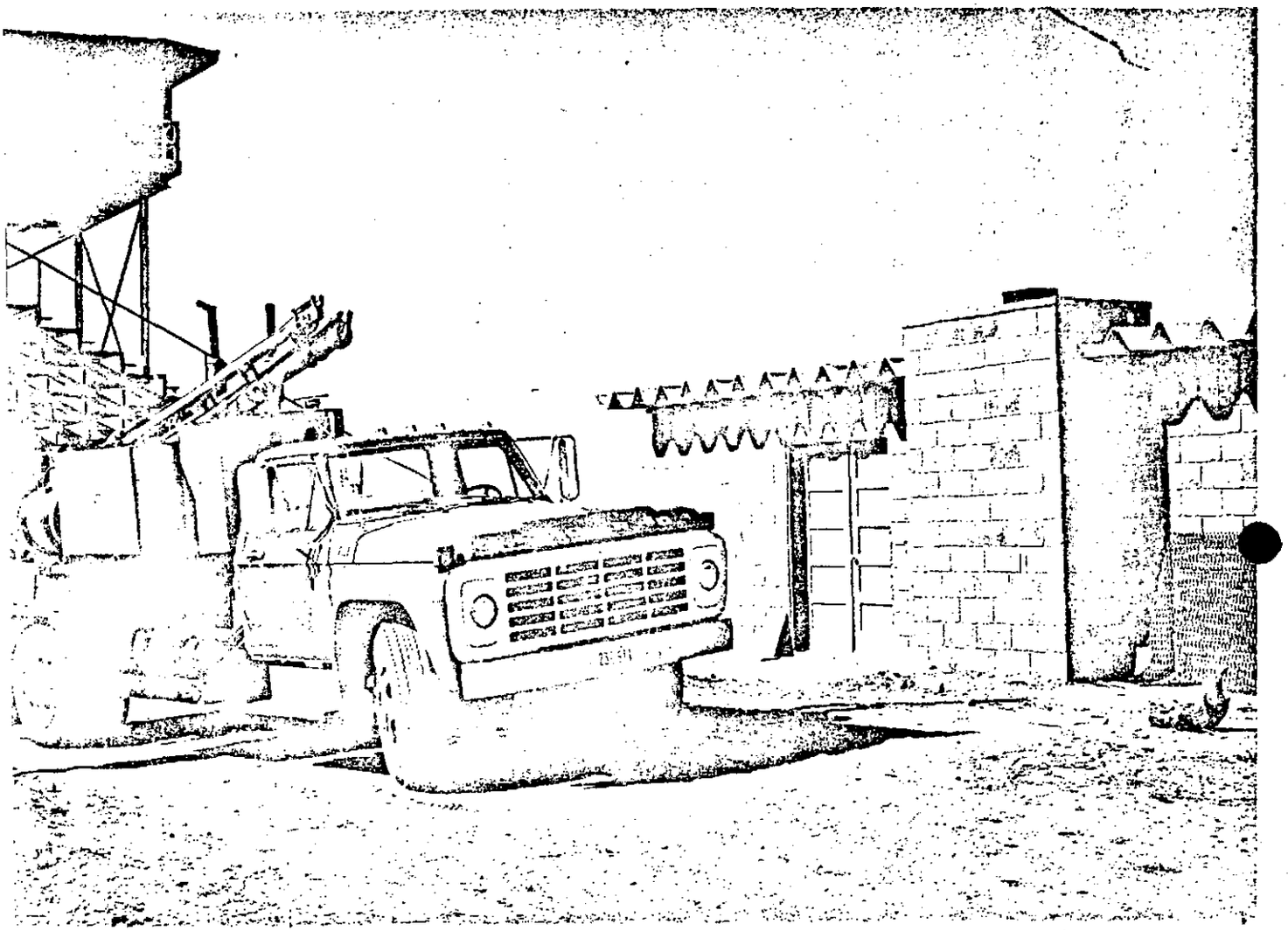
Under the check writing laws, we have notified you by certified mail and must request that you contact Benavides Implement Hardware Co. and secure a cashiers check to cover the bad check we hold in your file.

Yours truly,

C. G. James
Regional Finance Supervisor

lw
cc: Nueces Farm Center, Robstown
A. H. Vitter

2 1771



E-180