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# RESPONDENT'S PLEADINGS

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August 1, 1975

Hon. James R. Meyers  
District Judge  
County Courthouse  
Austin, Texas 78701

Re: Inquiry Concerning a Judge, No. 5 - before the State  
Judicial Qualifications Commission

Dear Judge Meyers:

I understand that you have been selected as the master in re the above-captioned proceeding. I have conferred with my client about a date which would be agreeable for a hearing before the Judicial Qualifications Commission, and September 8, 1975 in Duval County, preferably in the district court at San Diego would be agreeable with my client for commencement of the trial before the Judicial Qualifications Commission.

I of course cannot control the impeachment proceedings and it is quite possible the trial before the Senate might occur at the same time. This you understand of course is beyond my control. In addition, the Federal District Judge in Corpus Christi in granting motion for continuance set U. S. v. Carrillo on the same date but indicated he would not foreclose the possibility of further continuance of this federal case.

I think that a call from you perhaps to Judge Cox would verify this so that there could be a firm setting before the Judicial Qualifications Commission.

Sincerely,

Arthur Mitchell

cc: Mr. Maurice J. Pipkin

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BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

ANSWER TO FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION OF THE  
STATE OF TEXAS:

Comes now the Hon. O. P. Carrillo, District Judge of the  
229th Judicial District of Texas, and makes this his Answer to  
the first Amended Notice of Formal Proceedings for removal  
pursuant to the provisions of Rule 4, Rules for the Removal and  
Retirement of Judges, as adopted and promulgated by the Supreme  
Court of Texas, and would respectfully show the Honorable  
Commission as follows:

I. FACTUAL BACKGROUND: Chronological Summary of Proceedings

A. Background to Proceedings by the Judicial Qualifications  
Commission

1. Commencing several years prior to date, an extensive  
Government investigation was conducted by members of the office  
of the United States Attorney and members of the investigatory  
force of the Internal Revenue Service as part of the so-called  
"South Texas Project," which investigation culminated in the  
return of Federal Grand Jury indictments against several individuals  
including the late George Parr, Archer Parr, and Octavio Saenz,  
all of Duval County, Texas.

2. Questioned by Government agents in the course of this  
investigation were the Hon. O. P. Carrillo, his brother Ramiro D.  
Carrillo, and a distant cousin of the Carrillo brothers, Arturo  
R. Zertuche. Ramiro D. Carrillo and Arturo R. Zertuche were later  
to be called to testify before the Federal Grand Jury which

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subsequently returned indictments against George Parr, Archer Parr, and Octavio Saenz. While both men from the outset claimed their Fifth Amendment rights and privileges and refused to testify, as a result of intensive questioning by the Assistant United States Attorney John Clark, both Ramiro D. Carrillo and Arturo R. Zertuche eventually give testimony before the Federal Grand Jury for the Western District of Texas sitting in San Antonio. Ramiro D. Carrillo testified before the Grand Jury on three occasions: during two Grand Jury sessions on the 10th day of October, 1972 and on the Grand Jury session on the 15th of January, 1973. Arturo R. Zertuche testified before the Grand Jury on the 13th day of October, 1973.

3. As a result of the investigation, and based on information largely resulting from the aforesaid testimony given by Ramiro D. Carrillo and Arturo R. Zertuche before the Grand Jury, a twelve-count indictment was returned against O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche on or about the 28th day of March, 1975, by a Federal Grand Jury for the Southern District of Texas, sitting in Corpus Christi. In said indictment, O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche were charged with tax fraud and conspiring to commit tax fraud and to defraud the United States Government in the assessment and collection of income taxes.

4. Arraignment of O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche was held before the United States District Court for the Southern District of Texas, Corpus Christi Division, on or about the 10th of April, 1975. O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche each entered a plea of "not guilty" thereat.

5. Over the course of the next several weeks following the arraignment, O. P. Carrillo and the other two defendants filed numerous pretrial motions aimed at securing pretrial discovery of

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the exact nature of the charges against them and the information upon which such charges were based. As a result of said pretrial motions and the Government's answers thereto, it became evident that the charges against O. P. Carrillo and the other two defendants were grounded largely on the theory that the Schedule C. income tax forms filed by Arturo R. Zertuche for the years 1967, 1968, 1969, and 1970 contained misrepresentations of material matters in that said Schedules C contained sworn statements to the effect that Zertuche General Store was a sole proprietorship owned by Arturo R. Zertuche and that the income received therefrom was the property of Arturo R. Zertuche. According to the Government's theory, the Zertuche General Store has no independent existence apart from Farm and Ranch Supply (a store owned and operated by O. P. Carrillo and Ramiro D. Carrillo) and was used as a front by the Carrillos to sell goods and services to the various governmental entities of Duval County. Finally, the Government's theory was that, since the Zertuche General Store was a sham, the income from the operation of said store should have been reported on the income tax returns of O. P. Carrillo and Ramiro D. Carrillo, and the failure to report such income on their returns constituted fraudulent misrepresentation by O. P. Carrillo and Ramiro D. Carrillo.

6. On or about the 16th day of May, 1975, a hearing was held in the Federal District Court for the Southern District of Texas, Corpus Christi Division, on the question of whether the joint representation of O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche by a single attorney, Arthur Mitchell, resulted in a conflict of interest on the part of the attorney. The determination of the Court was two-fold: first, the Court determined that there was at present no conflict of interest in the joint representation of the three defendants; and second, the Court determined that the defendants' right to representation by counsel of their own choosing was such as to override any question of conflict of interest on the

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part of their attorney. The Court did, however, order that the trial of Arturo R. Zertuche be severed from that of O. P. Carrillo and Ramiro D. Carrillo; and that Arturo R. Zertuche be tried at a date subsequent to the trial of O. P. Carrillo and Ramiro D. Carrillo. The Court further ordered that a continuance of the trial of O. P. Carrillo and Ramiro D. Carrillo tentatively be granted.

7. Widespread media coverage attended all of the above court proceedings.

B. Commencement of Removal and Impeachment Proceedings and Continuation of Criminal Proceedings in Federal Court

1. In the first week of May, 1975, and during the course of preparation for the May 16th hearing in Federal Court, O. P. Carrillo received a letter from the Judicial Qualifications Commission of the State of Texas dated May 2, 1975, wherein O. P. Carrillo was notified of the commencement of a preliminary investigation against him in his capacity as District Judge of the 229th Judicial District of Texas based on four charges of alleged misconduct on the part of O. P. Carrillo (Exhibit J-1). The Hon. O. P. Carrillo was given further notice in said letter of his right to make reply to such charges within fifteen days from the receipt of the letter. Reply to the charges was made personally by O. P. Carrillo within the allotted time by a letter to the Executive Director of the Judicial Qualifications Commission (Exhibit J-2).

2. On or about the 15th day of May, 1975, House Simple Resolution 161, calling for the institution of impeachment proceedings against O. P. Carrillo on the basis of his recent indictment in Federal Court, was presented to the House of Representatives of the State of Texas. H.S.R. 161 was sponsored by Rep. Terry A. Canales of Premont, Texas, a long-time supporter of the Parr political faction in South Texas and the former attorney of both George B. Parr and Archer Parr in removal suits brought in the

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229th District Court of Texas against the two men in their official capacities, as indicated by the Motions for Legislative Continuance filed therein. The involvement of Rep. Canales with the Parr faction is further indicated by Canales' authorship and sponsorship of a bill in the House of Representatives seeking the abolition of the office of District Attorney for the 229th Judicial District of Texas following the institution of removal suits against the Parrs by the present District Attorney of said district.

3. Also in May of 1975, the House of Representatives passed H.S.R. 167, sponsored by Rep. Robert Maloney, creating the House Select Committee on Impeachment, whose stated function was to inquire into the matters contained in H.S.R. 161.

4. On or about the 19th day of May, 1975, O. P. Carrillo received a telegram from L. DeWitt Hale, Chairman of the House Select Committee on Impeachment, which telegram gave O. P. Carrillo "notice" of the commencement of impeachment hearings by the House Select Committee on Impeachment on the 20th day of May, 1975, and of O. P. Carrillo's right to be present at such hearings and to present evidence and testimony while informing him that he would be denied the right to cross examine any of the witnesses testifying before the Committee.

5. On or about the 20th day of May, 1975, at eight o'clock p.m., the House Select Committee on Impeachment convened to hold the first of its public hearings inquiring into the activities of Hon. O. P. Carrillo and others. Over the course of the next several weeks, the Committee continued to hold daily hearings and to take evidence and testimony introduced by Rep. Terry A. Canales, while denying O. P. Carrillo or his attorney the right to examine the documentary material before the Committee or to question the witnesses testifying before the Committee.

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a. Much of the evidence and testimony presented to the Committee was identical in nature to that which was later to be presented in the Federal prosecution of O. P. Carrillo in Corpus Christi, in that it went to the two questions of whether the Zertuche General Store was a sham enabling O. P. Carrillo to sell goods and services directly to the governmental entities of Duval County and whether O. P. Carrillo received income which was not reported on his income tax returns. As indicated by the Federal indictment and the statement of facts from the trial on the indictment, which is incorporated herein for all purposes, these were to be the same questions in issue in the Federal trial. Whereas H.S.R. 161 indicated that the impeachment proceedings were to be brought on the basis of the fact of O. P. Carrillo's indictment alone, the Committee, upon the instigation of Rep. Canales, took it upon itself to conduct hearings on the very issues involved in the Federal charges. The Committee, however, did not limit itself to the scope of the indictment and the questions of fact presented thereby, but it went outside the scope of the indictment and of H.S.R. 161 and received documentary evidence and testimony on matters wholly unrelated to the above and not included in the limited notice given either by the telegram from L. DeWitt Hale or by H.S.R. 161.

b. Included among the witnesses testifying upon subpoena by the Committee were Cleofas Gonzalez and Rodolfo M. Couling, who were to be key witnesses for the prosecution in the Federal criminal trial.

c. Included among the records subpoenaed by the Committee were bank records showing checks written to various individuals and entities by the governmental entities of Duval County, which records were also to play a key role in the Federal prosecution.



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d. From the outset of the Committee hearings, O. P. Carrillo was denied the right to examine the documentary evidence before the Committee, to know the evidence to be presented against him, to have reasonable notice of the charges against him and the scope of the investigation, and to present witnesses or to have said witnesses subpoenaed by the Committee. Further, O. P. Carrillo was denied the right to question witnesses subpoenaed by the Committee itself.

6. On or about the 23rd day of May, 1975, Hon. O. P. Carrillo presented his First Response to the impeachment proceedings to the Select Committee on Impeachment, wherein O. P. Carrillo set out numerous objections to the hearings and the overall impeachment proceedings, citing, inter alia the denial of substantive and procedural due process and minimal constitutional safeguards inherent in the proceedings, as well as the Committee's lack of authority to proceed, as grounds for the discontinuation of the Committee hearings (Exhibit J-3). The House Select Committee took no action upon said Response of O. P. Carrillo.

7. In the final days of the legislative session, the House of Representatives passed House Simple Resolution 221, sponsored by Rep. L. DeWitt Hale, by which the House of Representatives purported to give itself the authority to vote out Articles of Impeachment against the Hon. O. P. Carrillo should the Select Committee recommend such action either by a majority or by a minority vote of said Committee, clearly evidencing a predetermination by the House of Representatives of the question of impeachment.

8. At twelve midnight on the 2nd day of June, 1975, the Legislature adjourned sine die. Despite the constitutionally mandated termination of the legislative session and the adjournment of the Legislature, the House Select Committee on Impeachment proceeded to hold hearings and inquiries over the stringent

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objections of O. P. Carrillo and his attorney.

9. On or about the 3rd day of June, 1975, O. P. Carrillo submitted a request to the House Select Committee for the production of a list of the witnesses subpoenaed by the Committee in executive session and otherwise, a transcript of all testimony taken to that date, copies of all documentary material introduced and considered part of the official record, and a calendar of the hearings. As a result of such request, the Committee furnished O. P. Carrillo a transcript of the testimony and copies of the documentary materials introduced.

10. At 10:05 p.m. on Friday, June 6, 1975, the House Select Committee on Impeachment adjourned public hearings, purportedly to reconvene at such later date as to be set by the Committee.

11. On the 8th and 9th days of June, 1975, subsequent to said adjournment and unbeknownst to O. P. Carrillo at the time, a subcommittee of the Select Committee held a closed meeting and private investigation which was instituted in Alice, Texas. Present during the course of said closed meeting and private investigation were Rep. Terry A. Canales, Archer Parr, Ruben Chapa, Cleofas Gonzalez, Texas Ranger George Powell, and various and other persons called as witnesses unknown to O. P. Carrillo. Said meeting and investigation was conducted pursuant to no statutory or legislative authority and was in direct violation of the Texas Open Meetings Act, Art. 6252-17, V.A.C.S.

12. Thereafter, on various dates and at various times unknown to O. P. Carrillo, though including the 23rd and 24th days of June, 1975, the Committee or a subcommittee thereof continued to hold closed meetings or "executive sessions" without any form of notice to O. P. Carrillo, whereat testimony of persons unknown to O. P. Carrillo and documentary materials likewise unknown were received by the Committee or a subcommittee thereof.

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13. During the course of the Committee hearings, both public and private, numerous discussions on the subject matter of the hearings and the proposed charges against O. P. Carrillo took place between sundry Committee members and various members of the state executive, administrative, and law enforcement agencies, including members of the Judicial Qualifications Commission and members of the staff of the Attorney General's office.

14. On or about the 25th day of June, 1975, O. P. Carrillo filed in the Federal District Court for the Southern District of Texas, Corpus Christi Division, a Supplementary Motion for Indefinite Continuance of O. P. Carrillo's trial on charges of Federal tax fraud on the grounds that the widespread publicity attendant to the impeachment proceedings made a fair trial impossible anywhere in the State of Texas at that time (Exhibit J-4). O. P. Carrillo was granted a continuance of that trial on other grounds in a hearing on the 30th day of June, 1975, the date originally set for trial of the Federal case (Exhibit J-5).

15. On or about the 3rd day of July, 1975, a Conference of the Judges of the Fifth Administrative Judicial District of Texas was held in Dallas, Texas, five of the fifteen judges attending; and a resolution requesting the resignation of O. P. Carrillo from his office as District Judge was passed by four of the five judges. Said resolution made in the name of the Judges of the Fifth Administrative District of Texas was released to the news media the following week, subsequent to a conversation between O. P. Carrillo and Judge Jose R. Alamia, wherein O. P. Carrillo reiterated his previous statement to the effect that he would not be pressured into resigning from the district judgeship.

16. On or about the 12th day of July, 1975, the Judicial Qualifications Commission met in executive session to consider the various charges against O. P. Carrillo in his capacity as

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District Judge purportedly warranting action by the Commission.

17. On or about the 15th day of July, 1975, in the absence of effective notice to O. P. Carrillo, the House Select Committee reconvened in public session after an adjournment of public hearings for a period of several weeks. At said session, without notice to O. P. Carrillo, the Committee instituted a new format for the proceedings, in that witnesses were questioned at the outset by a newly-hired attorney for the Committee, Terry Doyle, who acted both as examiner and cross-examiner of the witnesses.

18. On or about the morning of the 16th day of July, 1975, the Committee held its final hearing and adjourned for the purported purpose of drafting Articles of Impeachment against O. P. Carrillo. Several hours after the adjournment of the Committee on July 16, 1975, it was announced that the Committee had voted to recommend eleven Articles of Impeachment against O. P. Carrillo.

19. On or about the 18th day of July, 1975, the Executive Director of the Judicial Qualifications Commission, Maurice S. Pipkin, served O. P. Carrillo with Notice of Formal Proceedings against him by the Judicial Qualifications Commission. The charges on which said formal proceedings were based, as set out in the Notice, were largely comprised of the same matters included in the proposed Articles of Impeachment drafted by the Committee and were grounded on evidence and testimony presented to the House Select Committee on Impeachment during the impeachment hearings. Although said Notice of Formal Proceedings set out O. P. Carrillo's right to make reply to the charges as provided by Rule 4 of the Rules for Removal and Retirement of Judges promulgated by the Supreme Court of Texas, O. P. Carrillo was requested by the Executive Director of the Judicial Qualifications Commission, at the time of service of such Notice, to waive such right to reply. O. P. Carrillo was also informed at that time by the Executive Director that a date,

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a time, and a place for hearing had already been set by the Commission, to take place some four days after the date of service, and that District Judge Jim Meyers had been selected by the Commission to act as Master in such hearing. The Executive Director further informed O. P. Carrillo that Judge Jim Meyers, after a discussion with the Executive Director, had agreed to recess the hearing shortly after its commencement in order to allow O. P. Carrillo time to prepare his defense. O. P. Carrillo was further informed by Mr. Pipkin of telephone conversations the Director had had with Rep. Terry Canales and the Vice Chairman of the Select Committee on Impeachment, although he did not divulge the matters discussed therein. O. P. Carrillo refused to waive any of his rights at that time, including the right to reply within a period of fifteen days from the date of service, and stated that he would have to consult with his attorney before he made any decision.

20. On or about the 29th day of July, 1975, O. P. Carrillo filed suit in the Federal District Court for the Western District of Texas, Austin Division, wherein O. P. Carrillo sought an injunction against the proceedings by the House Select Committee on Impeachment, the House of Representatives of the State of Texas, and the Judicial Qualifications Commission (Exhibit J-6). Hearing was set on O. P. Carrillo's application for a temporary injunction against said proceedings on the 1st day of August, 1975.

21. On or about the 1st of August, 1975, pursuant to an order of Judge Brown of the United States Court of Appeals for the Fifth Circuit and a motion by O. P. Carrillo as plaintiff resulting therefrom, an order was entered by the Judge of the Federal District Court for the Western District of Texas, Austin Division, dismissing the suit of O. P. Carrillo with prejudice.

22. On or about the 4th day of August, 1975, the House of Representatives of the State of Texas reconvened upon call of

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Speaker of the House pursuant to the purported authority of H.S.R. 221 and commenced voting on the proposed Articles of Impeachment as set forth in the Committee substitute for H.S.R. 161. By noon the following day, the House had completed its vote on the Committee substitute and, with minor changes, adopted as Articles of Impeachment all but one of the Committee's proposed Articles.

23. Pursuant to the provisions of Article XV, §6 of the Constitution of the State of Texas, upon passage of the formal Articles of Impeachment by the House of Representatives on August 5, 1975, in the form of H.S.R. 161, O. P. Carrillo was suspended from his office as District Judge pending final determination of the charges against him by the Senate.

24. By proclamation of the Governor of the State of Texas, on or about August 5, 1975, the Senate was ordered to reconvene for the purpose of trial on the Articles of Impeachment on the 3rd day of September, 1975.

25. In mid-August of 1975 O. P. Carrillo was notified of his indictment by a State Grand Jury sitting in Duval County, Texas, upon presentation of charges of theft against O. P. Carrillo by members of the staff of the Attorney General of the State of Texas resulting from an intensive task-force investigation by members of said staff. Arraignment of O. P. Carrillo on the charges contained in the indictment was set for October 3, 1975.

26. On or about the 25th day of August, 1975, a pretrial hearing was held in the United States District Court for the Southern District of Texas, Corpus Christi Division, in connection with O. P. Carrillo's trial on charges of Federal income tax fraud, wherein O. P. Carrillo's Motion for Continuance based upon the pending impeachment proceedings was denied by the Court (Exhibit J-4). In accordance with the setting made at the earlier hearing, the trial was set to begin on the 8th of September, 1975. In

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addition, the Court in the August 25th hearing postponed consideration of several of O. P. Carrillo's pretrial motions, including motions for dismissal, and set a further pretrial hearing in Corpus Christi on September 2, 1975, at which time said motions were to be considered.

C. Commencement of Impeachment Trial and Trial in Federal Court

1. On or about the 2nd day of September, 1975 a pretrial hearing was held in connection with O. P. Carrillo's indictment on charges of income tax fraud, wherein O. P. Carrillo's further motion for continuance and motions to dismiss were denied by the Judge of the Federal District Court for the Southern District of Texas, Corpus Christi Division.

2. On or about the 3rd day of September, 1975 the Senate of the State of Texas convened pursuant to the proclamation of the Governor and commenced proceedings as a Court of Impeachment. O. P. Carrillo's Answer to the Articles of Impeachment was filed with the Court and a Motion to Postpone on the basis of the trial in Federal Court (Exhibit J-7 and Exhibit J-8). Postponement of the Senate trial until the 29th day of September, 1975 was granted by the Court of Impeachment.

3. On or about the 8th day of September, 1975 trial in United States of America v. Ramiro D. Carrillo, O. P. Carrillo, Criminal No. 75-C-45, commenced in Federal District Court for the Southern District of Texas, Corpus Christi Division.

4. On or about the 29th day of September, 1975, the Court of Impeachment having taken notice of the fact that the trial of O. P. Carrillo in Federal Court was still in progress, the Court of Impeachment granted a further postponement of the impeachment trial until the following Monday, October 6, 1975.

5. On or about the 2nd day of October, 1975, a verdict of "guilty" on all counts was returned by the jury in United States

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of America v. Ramiro D. Carrillo, O. P. Carrillo, Criminal No. 75-C-45, in the Federal District Court for the Southern District of Texas, Corpus Christi Division. At that time, the Judge of said Court set the date for sentencing of O. P. Carrillo on the 17th day of November, 1975.

6. In late September or early October, 1975, O. P. Carrillo was notified by the Executive Director of the Judicial Qualifications Commission that the original date for the commencement of the hearing before the Master in the formal proceedings by the Judicial Qualifications Commission, October 2, 1975, had been changed to November 3, 1975, said hearing to be held before Judge Jim Meyers in Corpus Christi, Texas.

7. On or about the 3rd day of October, 1975, the date originally set for the arraignment of O. P. Carrillo in State of Texas v. O. P. Carrillo, Cause No. 2941, Judge Darrell Hester acting as Judge of the 229th District Court of Texas granted an indefinite continuance to O. P. Carrillo in Cause No. 2941 until such time as the other proceedings in which Judge Carrillo was and is involved permitted adequate preparation and personal appearance by Judge Carrillo and his counsel in Cause No. 2941.

8. On or about the 6th day of October, 1975 trial before the Senate as a Court of Impeachment commenced, the Court of Impeachment having denied O. P. Carrillo's motions for dismissal of the proceedings and having denied three motions for continuance.

9. On or about the 7th day of October, 1975, at the close of the day's evidence presented by the attorney for the Board of Managers, the Court of Impeachment adjourned until the 18th day of November, 1975, in conformance with a motion to postpone the trial until such date which had been granted by the Court earlier in the day.

10. On or about the 8th day of October, 1975 O. P. Carrillo was served with the First Amended Notice of Formal Proceedings



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from the Judicial Qualifications Commission, which Notice contained identical charges to those contained in the original Notice of Formal Proceedings and, additionally, six new charges not contained in the original Notice of Formal Proceedings. In the First Amended Notice, O. P. Carrillo was informed of his right to make reply to the First Amended Notice within 15 days from the date of service. O. P. Carrillo was likewise notified on that date of the setting of an informal prehearing conference with the attorneys from the Attorney General's office and Judge Jim Meyers on the 17th of October, 1975.

11. On or about the 13th of October, 1975, at the request of the attorney for O. P. Carrillo, the prehearing conference in the Judicial Qualifications Commission Proceedings was postponed until the 20th of October, 1975.

## II. INCORPORATION BY REFERENCE

Incorporated herein for all purposes by reference are the following pleadings by O. P. Carrillo in these and the other proceedings cited above:

1. First Response of Judge O. P. Carrillo to the House Select Committee on Impeachment (Exhibit J-3 attached hereto).

2. Supplementary Motion for Continuance filed in Cause No. 75-C-45 before the Federal District Court for the Southern District of Texas, Corpus Christi Division (Exhibit J-5 attached hereto).

3. Second Response of Judge O. P. Carrillo to the House Select Committee on Impeachment (Exhibit J-12 attached hereto).

4. Statement of Relevance of Subpoenas requested to be issued before the House Select Committee on Impeachment (Exhibit J-13 attached hereto).

5. Motion to Dismiss and in the Alternative for Indefinite Continuance in Cause No. 75-C-45 before the Federal District Court for the Southern District of Texas, Corpus Christi Division (Exhibit J-4 attached hereto).

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6. Complaint of O. P. Carrillo in Cause No. A-75-CA-121 before the Federal District Court for the Western District of Texas, Austin Division (Exhibit J-5 attached hereto.).

7. Answer to Notice of Formal Proceedings in Inquiry Concerning a Judge, No. 5 before the State Judicial Qualifications Commission (Exhibit J-10 attached hereto).

8. Supplementary Motion to Dismiss and Motion in the Alternative for Indefinite Continuance (Post Pretrial Submission) in Cause No. 75-C-45 before the Federal District Court for the Southern District of Texas, Corpus Christi Division (Exhibit J-11).

9. All other pleadings by Judge O. P. Carrillo in Cause No. 75-C-45 before the Federal District Court for the Southern District of Texas, Corpus Christi Division (Exhibit J-14 attached hereto).

10. Motion to Disqualify the Attorney General before the Court of Impeachment (Exhibit J-9 attached hereto).

11. Motion to Postpone before the Court of Impeachment (Exhibit J-8 attached hereto).

12. Original Answer of O. P. Carrillo before the Court of Impeachment (Exhibit J-7 attached hereto).

III. PLEAS IN ABATEMENT AS TO ALL CHARGES CONTAINED IN FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS

A. Denial of Procedural and Substantive Due Process

1. Failure of Judicial Qualifications Commission to comply with provisions of Rules for the Removal and Retirement of Judges

a. The present proceedings before the Judicial Qualifications Commission and the Master should be abated as to all charges against the Judge contained in the First Amended Notice of Formal Proceedings on the grounds that the Commission, in the institution of these proceedings, has denied to the Judge

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procedural due process by failing to comply with the mandatory procedures for the institution of such proceedings as set out in the Rules for the Removal and Retirement of Judges. In the institution of the present proceedings, the Commission has failed to comply with the above Rules in the following respects:

1) As to all of the charges contained in the First Amended Notice of Formal Proceedings, the Judge was not given a reasonable opportunity to present such matters as he might choose prior to a final determination that formal proceedings should be instituted, as mandated by Rule 3(b) of the Rules for the Removal and Retirement of Judges. While the Judge was given an opportunity to answer in writing the very limited charges set out in the May 2nd Notice of Preliminary Investigation, which charges compose the body of the charges set out in Section II of the First Amended Notice of Formal Proceedings; even as to those charges the Judge was not given a reasonable opportunity, or any opportunity, to present such matters as he might choose to the Commission prior to the final determination by the Commission that formal proceedings should be instituted.

2) A time and a place for hearing on the formal charges as contained originally in the Notice of Formal Proceedings and subsequently in the First Amended Notice of Formal Proceedings were selected by the Judicial Qualifications Commission prior to service of the Notice of Formal Proceedings and the Answer of the Judge to such notice, in violation of Rule 6(a) of the Rules for the Removal and Retirement of Judges, which Rule provides that the time and place for the hearing shall be selected by the Commission upon the filing of the Judge's answer or upon expiration of the time for its filing. Rule 6(a) further provides that the Commission shall give notice to the Judge by mail of the time and the place set for the hearing. In these proceedings, the Judge

was verbally informed of the setting of the hearing in Edinburg, Hidalgo County, Texas, at the time of service of Notice of Formal Proceedings on him, in violation of Rule 6(a). Although the hearing date was subsequently postponed from July 22, 1975 to October 3, 1975, and, later, was further postponed to the 3rd of November, 1975, and the place of the hearing was changed from Edinburg to Corpus Christi, Nueces County, Texas, the original selection of the time and place for the hearing violated procedural due process as provided by Rule 6(a), which violation was not cured by the mere postponement of the hearing date by the Commission. Further, even if the subsequent postponements of the hearing date cured the original violation of the provisions of Rule 6(a), the Commission committed a further violation of the above Rule by even the most recent setting of the hearing date on November 3, 1975 in light of the service of the First Amended Notice of Formal Proceedings on the 8th of October, 1975. Said violation occurred in that said Amended Notice contained wholly new charges of which the Judge was given no prior notice whatsoever and thus amounted to an original notice of formal proceedings, particularly as to the charges contained in Sections VII through XII therein, on which a hearing date and place should not have been set prior to the expiration of the time for the Judge's Answer thereto, under Rule 6(a).

3) The Judicial Qualifications Commission in setting the original hearing date of July 22, 1975 and in the two subsequent postponements of that hearing date, in each case failed to give the Judge the twenty days notice of the hearing date prior to the date set as further mandated by Rule 6(a) of the Rules for the Removal and Retirement of Judges.

4) The denial of procedural due process as outlined in subsection (2) above is compounded by the setting of the prehearing conference before the Master for the 17th of October, 1975 (later postponed by consent to the 20th of October,

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1975), some several days before the expiration of the time for the filing of the Judge's answer to the First Amended Notice of Formal Proceedings on October 23, 1975. The First Amended Notice containing entirely new charges against the Judge of which the Judge had no prior notice, the setting of the date for the pre-hearing conference for a date prior to the expiration of the time for the filing of the Judge's answer to the charges set out in that notice clearly violates the provisions of Rules 5 and 6(a) of the Rules for the Removal and Retirement of Judges.

5) On the date of service of the original Notice of Formal Proceedings, July 18, 1975, the Judge was verbally informed that District Judge Jim Meyers had been selected as Master to hear the charges and the evidence related thereto. This was the only notice of the selection of the Master that the Judge has received to date. The selection of a Master by the Commission itself contravenes the provisions of Rule 6(b) of the Rules for the Removal and Retirement of Judges, which expressly provides that, if the Commission directs that the hearing be before a master, the Commission shall, when it sets a time and a place for the hearing, transmit a written request to the Supreme Court to appoint a master for such purpose. The appointment of the Master of its own choosing by the Commission would clearly violate the above provision. If a written request to the Supreme Court was indeed made by the Commission and if the Supreme Court in fact appointed the Master, the Judge has received no notice of any such request or appointment, which denies to him the right to present any objections he might have to the appointment, if any. And even if such a request and appointment were made, they were still made in contravention of Rule 6, in that they were made prior to or in conjunction with the setting of the time and the place for the hearing, which setting was itself in violation of the provisions of Rule 6(a), as set out above.

6) The Judicial Qualifications Commission likewise violated the detailed notice provisions of Rules 3, 4, 5, and 6 and the spirit behind said provisions when it apparently appointed or requested one or more member of the staff of the Attorney General to act as Examiner for the Commission without any form of notice to the Judge or opportunity for the Judge to object to the appointment or request. To date, the Judge is uninformed as to the exact capacity in which members of the staff of the Attorney General's office are acting for the Commission and the scope of the authority of that staff. In the light of the facts preliminarily set out in Section I of this Answer and the political background to these proceedings and the Attorney General's involvement therein, to be elaborated upon below, the Judge may very well have due process objections to such an appointment or request which he is not at present in a position to make with accuracy owing to the lack of notice as to the appointment or request and the scope of any authority the Commission may have conferred on the members of the staff of the Attorney General by its appointment or request.

2. Denial of substantive and procedural due process by failure to comply with the provisions of Art. V, §1-a, subsection 11 of the Constitution of the State of Texas

a. Article V, §1-a of the Constitution of the State of Texas creates the Judicial Qualifications Commission and broadly outlines the manner in which it is to proceed in any matter concerning the qualifications of a justice or judge. Subsection 11 of Article V, §1-a expressly provides that a judge or justice against whom formal proceedings are brought by the Commission is entitled to the same substantive and procedural due process rights as a defendant in a criminal case in the following language:

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"The Supreme Court shall by rule provide for the procedure before the Commission, Masters and the Supreme Court. Such rule shall afford to any person holding an office named in Paragraph A of Subsection (6) of this Section, against whom a proceeding is instituted to cause his retirement or removal, due process of law for the procedure before the Commission, Masters and the Supreme Court in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding is entitled to due process of law, regardless of whether or not the interest of the person holding an Office named in Paragraph A of Subsection (6) of this Section in remaining in active status is considered to be a right or a privilege. Due process shall include the right to notice, counsel, hearing, confrontation of his accusers, and all such other incidents of due process as are ordinarily available in proceedings whether or not misfeasance is charged, upon proof of which a penalty may be imposed." (Emphasis added.)

The proceedings before the Judicial Qualifications Commission should be abated on the grounds that, in the institution of the proceedings and the conduct of these proceedings to date, the Commission has failed to comply with the due process requirements of the above-cited Constitutional provision by which its proceedings are governed. Said Constitutional provisions being jurisdictional in nature, the failure to comply with said provisions results in a failure of the jurisdiction of the Commission to be properly invoked. The Judicial Qualifications Commission in these proceedings has failed to comply with the provisions of Article V, §1-a, Subsection 11 and the statutory provisions and the rules enacted pursuant thereto in the following respects:

- 1) The charges presented by the original Notice of Formal Proceedings and the First Amended Notice of Formal Proceedings clearly arise out of the proceedings before the House Select Committee on Impeachment and the verbal and documentary evidence presented to the Committee, as evidenced by the nature of the testimony and documentary materials elicited by the Committee as recorded in the transcript of the Committee hearings,

incorporated herein for all purposes as if set out in its entirety, and as further evidenced by the statement by the Executive Director of the Judicial Qualifications Commission to Judge Carrillo at the time of service of the original Notice of Formal Proceedings to the effect that he has been in communication with Rep. Terry Canales and Vice Chairman of the Committee, Robert Maloney. The use of such information and/or evidence in the formulation of the charges against Judge Carrillo herein and as a basis for the institution of formal proceedings violates the due process rights of the Judge in that the impeachment proceedings out of which such information and/or evidence arose were themselves unlawful for the reasons set out in Judge Carrillo's First Response to the Committee (Exhibit J-3) and his Answer to the Articles of Impeachment (Exhibit J-7). Even assuming that the proceedings before the House Select Committee on Impeachment were not in themselves unlawful, said proceedings are not and were not even ostensibly governed by the same strict due process requirements that govern proceedings by the Judicial Qualifications Commission under Article V, §1-a, Subsection 11 of the Constitution of the State of Texas. Repeatedly, members of the House Select Committee denied that their proceedings were governed by the same due process requirements which control court proceedings; and, the telegram of notification of the commencement of Committee hearings (Exhibit J-16) expressly stated that the Judge would not be allowed to cross-examine the witnesses testifying before the Committee, thus denying to the Judge a crucial due process right for which Article V, §1-a, Subsection 11 expressly provides in all stages of the proceedings by the Commission. The use of such evidence as a basis for the formal proceedings against the Judge by the Judicial Qualifications Commission is clearly in violation of the provisions of the



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Constitutional article and section and is clearly grounds for abatement of the present proceedings.

2) Closely related to the above grounds, but presenting yet another basis on which the present proceedings by the Commission should be abated is the overall denial of the due process rights of the Judge occasioned by the fact that the Judicial Qualifications Commission and its Executive Director have evidently allowed themselves to be caught up in the public and highly partisan spirit of general condemnation of the Judge indicated in the factual background to these proceedings set out in Section I of this Answer. Rather than fulfilling its judicial function in an atmosphere of calm and impartiality, the Commission has become an active participant in the confederation of agents of the State and Federal executive, administrative, legislative, and judicial departments seeking to purge the sins of many at the expense of sacrificing the fundamental rights of one district judge. That the Judicial Qualifications Commission, through public pressure or through choice, has abdicated its impartial judicial function and become an active participant in the confederation of State action aimed at the Judge and resulting in the destruction of the rights of the individual is evidenced, among other things, by (1) the expediency, if not outright haste, with which the Commission is attempting to move the proceedings along, even to the point of violating almost every notice provision set out in the Rules for the Removal and Retirement of Judges and designed for the protection of the due process rights of the Judge; (2) the appointment of members of the staff of the Attorney General as examiners in these proceedings, in the light of the fact that the staff of the Attorney General has not only been actively before the Senate but also has been requested to assist and has assisted in the prosecution of the charges against the Judge and has been engaged over the course of many months in securing the indictments of the

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Judge and his political allies in the Duval County area and;  
(3) the statements to the news media on October 16, 1975 by Executive Assistant Attorney General and Examiner for the Judicial Qualifications Commission, John W. Odam, to the effect that Judge Blackwell had ordered the deposition of O. P. Carrillo to be taken in these proceedings, said statements being reported; and, finally,  
(4) the highly improper statements concerning proceedings of the Judicial Qualifications Commission made to the press by the Executive Director of the Judicial Qualifications Commission, Maurice Pipkin, as recently as the 17th of October, 1975, Mr. Pipkin being quoted as saying, among other things:

"Don't you consider the Senate's vote an ultimatum to the commission?"

and

"We had had complaints about Judge Carrillo. In each case, the commission looked into them and in its wisdom, felt there was no ground for action."

and

"I don't see how he (Carrillo) expects to survive all this. It seems he would resign, pick up his marbles and go home."

"Senate Vote Pushes Commission to Act,"  
Wichita Falls Times, October 12, 1975 (Exhibit J-15).

Clearly, such actions on the part of the Commission and its representatives demand the abatement of the present proceedings against Judge Carrillo on the grounds that, taken as a whole and in the light of the highly political factual background to the proceedings, the Commission action denies the Judge due process of law as contemplated by Article V, §1-a, Subsection 11 of the Constitution of the State of Texas and the Fifth and Fourteenth Amendments to the Constitution of the United States.

3) Due process of law as provided for in Article V, §1-a, Subsection 11 of the Constitution of the State of Texas and the Fifth and Fourteenth Amendments to the Constitution of the United States is further denied to the Judge in the Judicial

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Qualifications Commission proceedings in the undue and improper expediency with which the Commission has acted and is acting in regard to appointment of a master, the setting of hearing dates, the amendment of its charges, the setting of the date for the taking of the deposition of the Judge and two witnesses at a time prior to the prehearing conference with the Master, and the setting of the prehearing conference with the Master prior to the expiration of the time for the Judge's Answer to the amended charges, in that such expediency results in a denial to the Judge of effective assistance of competent counsel in the light of the nature of these and the other proceedings against Judge Carrillo and the demands on counsel in terms of preparation time and time spent in proceedings. To satisfy the Commission's seeming taste for a hasty removal of the Judge, the Commission forces counsel for the Judge, in view of the equally pressing demands of other proceedings against him, into a position of being physically unable to adequately and properly represent the Judge in these proceedings before the Commission.

4) Finally, while the clear intent of the Constitutional and statutory provisions and the Rules relating to proceedings by the Judicial Qualifications Commission is to maintain a nonadversary atmosphere by and before the Commission for as much of the proceedings as possible and, in fact, up to a final determination for removal, the apparent abuses by the Judicial Qualifications Commission and its representatives in these proceedings of the provisions of the Rules for the Removal and Retirement of Judges and the provisions of the Constitution and Art. 5964, V.A.C.S. relating to its functions and procedures demonstrate the potential Constitutional defect and/or anomaly inherent in the various provisions of the Constitution, the Rules, and Article 5964, V.A.C.S. While Article V, §1-a, Subsection 11 of the Constitution expressly grants criminal due process rights

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to a judge against whom Commission proceedings have been instituted, the provisions relating to the proceedings result in the Judicial Qualifications Commission taking on the dual roles of judge and prosecutor or party-opponent in the proceedings, which would clearly violate any concept of due process in any court proceedings, whether criminal or civil. The provisions relating to the Judicial Qualifications Commission evidently are based on the assumption that the Commission in such proceedings will maintain a neutral position in regard to the charges against the Judge up to and including the time for a final determination on the question of removal. Whether this assumption could ever be a reality is a question which merits careful consideration; however, it is not the question presented in these proceedings by the Commission. For representatives of the Commission, by their various actions and their failure to comply with the Rules by which it is governed in these proceedings, including the selection of the Master for the hearing, the expedition of the time set out in the Rules for the various stages of the proceedings, the failure to follow the proper order of proceedings as provided by the Rules, the deletion of certain vital steps designed for the protection of the Judge in the proceedings, and the failure to maintain secrecy in the proceedings, have demonstrated that the Commission as a body is not capable of performing the dual roles assigned to it with a neutral attitude and has made the potential Constitutional defect of the provisions relating to the Commission proceedings a reality. As the proceedings by the Commission do not conform to the requirements of due process as provided by the Fifth and Fourteenth Amendments to the Constitution of the United States or Article V, §1-a, Subsection 11 of the Constitution of the State of Texas, and as the Constitutional and statutory provisions and the Rules providing for the jurisdiction of the Judicial Qualifications Commission over such proceedings are

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in themselves Constitutionally defective in the light of these proceedings and therefore, result in a failure of jurisdiction on the part of the Commission in these proceedings, the present proceedings against Judge Carrillo by the Judicial Qualifications Commission properly should be abated.

IV. PLEAS TO CHARGES OF SECTION I

A. Pleas in Abatement

1. In addition to the grounds for abatement set out above in Section III of this Answer and incorporated herein for all purposes, proceedings on the charges contained in Section I of the First Amended Notice of Formal Proceedings should be abated on the grounds that said charges were not included in the May 2nd Notice of Preliminary Investigation of the Judicial Qualifications Commission, and the Judge was given no notice whatsoever of the nature of the charges prior to a determination that formal proceedings should be instituted, as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges.

2. Further, proceedings on the charges contained in Section I should be abated on the grounds that, the Judge having received no notice of the nature of these charges prior to a determination that formal proceedings should be instituted, the Judge was not given a reasonable opportunity or any opportunity to reply and present such matters as he might choose prior to the determination that formal proceedings should be instituted, as required by Rule 3(b).

3. Further, proceedings on the charges contained in Section I should be abated to the extent that said charges allege misconduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge, on the grounds that the allegations of misconduct prior to that date provide no basis for removal under Article 5986,

V.A.C.S., which provides:

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"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."

4. In the alternative, proceedings on the charges contained in Section I should be abated on the grounds that the charges on their face do not constitute grounds for removal from office in that the conduct alleged in said charges was not clearly inconsistent with the proper performance of the duties of O. P. Carrillo as District Judge and was not clearly of a nature to cast discredit upon the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Section I of the First Amended Notice of Formal Proceedings and demands strict proof thereof.

C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Section I of the First Amended Notice of Formal Proceedings on the grounds that said Section fails to plead facts which make actionable in these proceedings a conspiracy between the Judge and his brother, Ramiro D. Carrillo, in that it is impossible as a matter of law for a conspiracy to have existed with the object charged, to-wit, to appropriate funds of Duval County, Texas, the facts indicating that the county is operated under the statutes by a Commissioners Court composed of elected Commissioners from the four precincts of Duval County and headed by the County Judge, also an elected official. Further, the facts show that the Commissioners Court meets as the board of directors of the county in effect, operates the county by duly authorized monthly meetings with notice of these meeting and opportunities to be heard by members of the public, and votes on matters before it. Therefore, any agreement between the Judge and any person or

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persons could not as a matter of law amount to a conspiracy to deny or deprive Duval County of anything. Even assuming arguendo a conspiracy among Ramiro Carrillo as Commissioner of Precinct 3 of Duval County and Judge Carrillo and non-Commissioners and/or other individuals to defraud the county, the conspiracy would be impossible to accomplish and therefore would not be actionable for any purpose and certainly would not be actionable for the purpose of any disqualification of the Judge by the Judicial Qualifications Commission. The Texas law that each and every county, subdivision, water district, et cetera, as to its internal affairs, is controlled by a Commissioners Court or duly elected board of directors composed of commissioners from each and every precinct and headed by the County Judge, which law has been in effect at all times relevant herein, precludes the possibility of any such conspiracy as is alleged. At all times relevant herein, at least four commissioners, a judge, and all other statutory cross-checks were in effect and precluded as a matter of law a conspiracy between Judge Carrillo, Ramiro Carrillo, and third persons. In addition, all other statutory cross-checks and restraints were in effect in the form of controls by action of the County Clerk, who examined and cross-checked the county vouchers, the County Auditor, who prepared the claims and placed them on the docket of the Commissioners Court and executed the vouchers, the Assistant County Auditor, who, in turn, cross-checked and determined the validity of the checks and who, in fact, examined the vouchers as well. All those restraints preclude as a matter of law the operation upon either the county, the water district, or any other governmental entity of a conspiracy by a District Judge, who has absolutely no power under the law as regards the regulation of the internal affairs of these various entities and certainly not as regards the disbursement of their funds, even with the combination of a single precinct commissioner.

Wherefore, Judge O. P. Carrillo specially excepts to the charges set out in Section I of the First Amended Notice of Formal Proceedings.

2. Further Hon. O. P. Carrillo specially excepts to the charges contained in Section I on the grounds that said charges are too vague, general and indefinite in their allegations, omitting to allege with any particularity the acts which the Judge is alleged to have committed and thereby fail to afford the Judge reasonable notice of either the facts the Commission expects to prove thereunder or the misconduct with which he is charged.

3. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section I on the grounds that said charges fail to allege the object of the alleged conspiracy between the Judge and Ramiro Carrillo.

4. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section I on the grounds that said charges fail to allege any overt acts committed in furtherance of the object of the alleged conspiracy.

5. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section I on the grounds that said charges fail to state misconduct for which the Judge may properly be removed, in that they fail to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

V. PLEAS TO CHARGES OF SECTION II

A. Pleas in Abatement

1. Incorporated herein for all purposes are the pleas in abatement set out above in Section III of this Answer.

2. Further, proceedings on the charges contained in Section II of the First Amended Notice of Formal Proceedings should be abated on the grounds that said Section does not allege



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misconduct on the part of the Judge which is actionable in these proceedings, said Section alleging misconduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge. Allegations of misconduct occurring prior to the date of the Judge's election to office may not form the basis for a removal proceeding under Article 5986, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."

3. Further, proceedings on the charges contained in Section II should be abated on the grounds that the charges on their face do not constitute grounds for removal from office, in that the conduct alleged in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O. P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Section II of the First Amended Notice of Formal Proceedings and demands strict proof thereof.

C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Section II of the First Amended Notice of Formal Proceedings in that said Section fails to plead facts which make actionable in these proceedings the conduct of the Judge. As a matter of fact, the facts pleaded clearly indicate that the Judge handled the matter of his disqualification correctly and in a fashion designed to protect the integrity of the judiciary. The facts alleged show that the Judge, rather than unilaterally disqualifying himself, which, if allowed to establish a precedent, would destroy the integrity of the judiciary by requiring a district judge to disqualify himself ipso facto upon the filing of a motion,

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caused the same to be set for hearing, Judge Magus Smith, Judge of the 93rd Judicial District, conducting the hearing on the question of Judge Carrillo's disqualification. The facts alleged further show that, once Judge Magus Smith determined that there was a disqualification, Judge Carrillo recused himself. It is submitted that this is the correct procedure to be followed. Otherwise, chaos would prevail in the judiciary, in that, if each and every time a litigant filed a motion for disqualification in the district court the judge was required to disqualify himself, then, by the simple expediency of the filing of the motion there would be a destruction, in effect, of the judiciary. Wherefore, Judge O. P. Carrillo specially excepts to the charges contained in Section II on the grounds that the facts alleged do not present conduct which as a matter of law constitutes official misconduct or maladministration and do not present grounds for removal of the Judge, the allegations in fact showing that the actions of Judge Carrillo in this matter were correct and proper.

2. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section II on the grounds that said charges fail to allege that the alleged misconduct occurred during the Judge's present term of office as District Judge.

#### VI. PLEAS TO CHARGES OF SECTION III

##### A. Pleas in Abatement

1. In addition to the pleas in abatement set out above in Section III of this Answer and incorporated herein for all purposes, proceedings on the charges contained in Section III of the First Amended Notice of Formal Proceedings should be abated on the grounds that said charges were not contained in the May 2nd Notice of Preliminary Investigation of the Judicial Qualifications Commission, and the Judge was given no notice whatsoever of the nature of the charges prior to a determination

that formal proceedings should be instituted, as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges.

2. Further, proceedings on the charges contained in Section III should be abated on the grounds that, the Judge having received no notice of the nature of these charges prior to a determination that formal proceedings should be instituted, the Judge was not given a reasonable opportunity, nor any opportunity to reply and present such matters as he might choose prior to the determination that formal proceedings should be instituted, as required by Rule 3(b).

3. Further, proceedings on the charges contained in Section III should be abated on the grounds that said Section does not allege misconduct on the part of the Judge which is actionable in these proceedings, said Section alleging misconduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge. Allegations of misconduct occurring prior to the date of the Judge's election to office may not form the basis for a removal proceeding under Article 5986, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office.

4. Further, proceedings on the charges contained in Section III should be abated on the grounds that the charges on their face do not constitute grounds for removal from office, in that the conduct alleged in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of O. P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Section III of the First Amended Notice of Formal Proceedings and demands strict proof thereof.

## C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Section III of the First Amended Notice of Formal Proceedings on the grounds that said Section fails to plead facts which made actionable a conspiracy between the Judge, his brother Ramiro Carrillo, and Roberto Elizondo, in that it is impossible as a matter of law for a conspiracy to have existed under the facts alleged with the object charged, to-wit, to steal funds of Duval County, Texas, for the reasons set out above in Section IV.C. of this Answer. The allegations of said Section assuming a conspiracy between the Judge, his brother, and Roberto Elizondo while alleging no facts which would make such a conspiracy possible for the three men to accomplish; no one of the three individuals, nor a combination of the three, having control over the funds of Duval County, Judge O. P. Carrillo therefore specially excepts to said allegations contained in Section III as presenting no actionable factual allegations for the purposes of these proceedings or any other proceedings.

2. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section III on the grounds that said charges are too vague, general and indefinite in their allegations, omitting to allege with any particularity the acts which the Judge is alleged to have committed and thereby fail to afford the Judge reasonable notice of either the facts the Commission expects to prove thereunder or the misconduct with which he is charged.

3. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section III on the grounds that said charges fail to allege any overt acts committed in furtherance of the object of the alleged conspiracy.

4. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section III on the grounds that said charges fail to allege that the alleged conspiracy was entered

into by the Judge or continued during the Judge's present term of office as District Judge.

5. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section III on the grounds that said charges fail to state misconduct for which the Judge may properly be removed, in that it fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

VIII. PLEAS TO CHARGES OF SECTION IV

A. Pleas in Abatement

1. In addition to the pleas in abatement set out above in Section III of this Answer and incorporated herein for all purposes, proceedings on the charges contained in Section IV of the First Amended Notice of Formal Proceedings should be abated on the grounds that said charges were not contained in the May 2nd Notice of Preliminary Investigation by the Judicial Qualifications Commission, and the Judge was given no notice whatsoever of the nature of the charges prior to a determination that formal proceedings should be instituted, as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges.

2. Further, proceedings on the charges contained in Section IV should be abated on the grounds that, the Judge having received no notice of the nature of these charges prior to a determination that formal proceedings should be instituted, the Judge was not given a reasonable opportunity nor any opportunity to reply and present such matters as he might choose prior to a determination that formal proceedings should be instituted, as required by Rule 3(b).

3. Further, proceedings on the charges contained in Section IV should be abated on the grounds that said Section does not allege misconduct on the part of the Judge which is

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actionable in these proceedings, said Section alleging misconduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge. Allegations of misconduct occurring prior to the date of the Judge's election to office may not form the basis of a removal proceeding under Article 5986, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."

4. Further, proceedings on the charges contained in Section IV should be abated on the grounds that the charges on their face do not constitute grounds for removal from office, in that the conduct alleged in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of Judge O. P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Section IV of the First Amended Notice of Formal Proceedings and demands strict proof thereof.

C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Section IV of the First Amended Notice of Formal Proceedings on the grounds that said Section fails to plead facts which make actionable the alleged conduct of the Judge, in that there is no allegation and can be no allegation that Judge O. P. Carrillo had any power or control over the Mr. Francisco Ruiz which would make possible the commandeering of Mr. Ruiz's time and labor to the Judge's personal benefit and to the expense of Duval County, as the allegations of said Section presume. There is, in fact, no power or rule of law giving a district judge control of Mr. Francisco Ruiz, and the allegations of said Section certainly

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present nothing on which to base a proceeding upon the qualifications of a district judge. Further, there are no facts alleged in said Section to show the operation of any conspiracy, to show any statutory authority over Mr. Francisco Ruiz, to show that the work allegedly done was done other than on the free time of Mr. Francisco Ruiz, or was done other than voluntarily and freely by Francisco Ruiz. There is clearly no authority to reprimand a judge on the basis of another person's voluntary acts. Wherefore, Judge O. P. Carrillo specially excepts to proceedings on the charges contained in Section IV as presenting no actionable factual allegations for the purposes of these proceedings or any other proceedings.

2. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section IV on the grounds that said charges are too vague, general and indefinite in their allegations, omitting to allege with any particularity the acts which the Judge is alleged to have committed and the dates on which such acts were allegedly committed, and thereby fail to afford the Judge reasonable notice of either the facts the Commission expects to prove thereunder or the misconduct with which he is charged.

3. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section IV on the grounds that said charges fail to allege that the alleged misconduct of the Judge occurred during the Judge's present term of office as District Judge.

4. Further, the Hon. O. P. Carrillo specially excepts to the charges contained in Section IV on the grounds that said charges fail to state misconduct for which the Judge may properly be removed, in that they fail to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

VIII. PLEAS TO CHARGES OF SECTION V

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A. Pleas in Abatement

1. In addition to the pleas in abatement set out above in Section III of this Answer and incorporated herein for all purposes, proceedings on the charges contained in Section V of the First Amended Notice of Formal Proceedings should be abated on the grounds that said charges were not contained in the May 2nd Notice of Preliminary Investigation by the Judicial Qualifications Commission, and the Judge was given no notice whatsoever of the nature of the charges prior to a determination that formal proceedings should be instituted, as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges.

2. Further, proceedings on the charges contained in Section V should be abated on the grounds that, the Judge having received no notice of the nature of these charges prior to a determination that formal proceedings should be instituted, the Judge was not given a reasonable opportunity, nor any opportunity, to reply and present such matters as he might choose prior to a determination that formal proceedings should be instituted, as required by Rule 3(b).

3. Further, proceedings on the charges contained in Section V should be abated on the grounds that said Section does not allege misconduct on the part of the Judge which is actionable in these proceedings, said Section alleging misconduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge. Allegations of misconduct occurring prior to the date of the Judge's election to office may not form the basis of a removal proceeding under Article 5986, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."



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4. Further, proceedings on the charges contained in Section V should be abated on the grounds that the charges on their face do not constitute grounds for removal from office, in that the conduct alleged in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of Judge O. P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Section V of the First Amended Notice of Formal Proceedings and demands strict proof thereof.

C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Section V of the First Amended Notice of Formal Proceedings on the grounds that said Section fails to plead facts which make actionable the alleged conduct of the Judge, in that there is no allegation and can be no allegation that Judge O. P. Carrillo, even in combination with his brother Ramiro Carrillo, had any power or control over Mr. Oscar Sanchez which would make possible the commandeering of Mr. Sanchez's time and labor to the Judge's personal benefit and to the expense of Duval County, as the allegations of said Section presume. There is, in fact, no power or rule of law giving a district judge control of Mr. Oscar Sanchez; nor is there any allegation as to any power or rule of law giving Ramiro Carrillo control of Mr. Oscar Sanchez; and the allegations of said Section certainly present nothing on which to base a proceeding upon the qualifications of a district judge. Further, there are no facts alleged in said Section to show any statutory authority over Mr. Oscar Sanchez, to show that the work allegedly done was done other than on the free time of Mr. Oscar Sanchez, or was done other than voluntarily

and freely by Mr. Oscar Sanchez. There is clearly no authority to reprimand a judge on the basis of another person's voluntary acts. Wherefore, Judge O. P. Carrillo specially excepts to the charges contained in Section V as presenting no actionable factual allegations for the purposes of these proceedings or any other proceedings.

2. Further Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said charges are too vague, general and indefinite in their allegations, omitting to allege with any particularity the acts which the Judge is alleged to have committed and thereby fail to afford the Judge reasonable notice of either the facts the Commission expects to prove thereunder or the misconduct with which he is charged.

3. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said charges fail to allege the object of the alleged conspiracy between the Judge and Ramiro Carrillo.

4. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said charges fail to allege with particularity a date or time at which the alleged conspiracy was entered into by the Judge and Ramiro Carrillo.

5. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said charges fail to allege the duration of the alleged conspiracy entered into by the Judge and Ramiro Carrillo.

6. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said charges fail to allege any overt acts committed in furtherance of the object of the alleged conspiracy.

7. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said

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charges fail to allege that the alleged conspiracy was entered into or continued during the Judge's present term of office as District Judge.

8. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section V on the grounds that said charges fail to state misconduct for which the Judge may properly be removed, in that they fail to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

IX. PLEAS TO CHARGES OF SECTION VI

A. Pleas in Abatement

1. In addition to the pleas in abatement set out above in Section III of this Answer and incorporated herein for all purposes, proceedings on the charges contained in Section VI of the First Amended Notice of Formal Proceedings should be abated on the grounds that said charges were not contained in the May 2nd Notice of Preliminary Investigation by the Judicial Qualifications Commission, and the Judge was given no notice whatsoever of the nature of the charges prior to a determination that formal proceedings should be instituted, as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges.

2. Further, proceedings on the charges contained in Section VI should be abated on the grounds that, the Judge having received no notice of the nature of these charges prior to a determination that formal proceedings should be instituted, the Judge was not given a reasonable opportunity, nor any opportunity, to reply and present such matters as he might choose prior to a determination that formal proceedings should be instituted, as required by Rule 3(b).

3. Further, proceedings on the charges contained in Section VI should be abated on the grounds that said Section does

not allege misconduct on the part of the Judge which is actionable in these proceedings, said Section alleging misconduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge. Allegations of misconduct occurring prior to the date of the Judge's election to office may not form the basis of a removal proceeding under Article 5986, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."

4. Further, proceedings on the charges contained in Section VI should be abated on the grounds that the charges on their face do not constitute grounds for removal from office, in that the conduct alleged in said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of Judge O. P. Carrillo as District Judge, and was not clearly of a nature to cast discredit on the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Section VI of the First Amended Notice of Formal Proceedings and demands strict proof thereof.

C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Section VI of the First Amended Notice of Formal Proceedings on the grounds that said charges are frivolous and form no basis for any action on the part of the Judicial Qualifications Commission in regard to the Judge. Said charges are further evidence of the fact that the Judicial Qualifications Commission is caught up in the spirit of general condemnation of the Judge now prevailing, as set out in the factual background and the general pleas in abatement above. If there was a use of

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the backhoe by the Judge, the uncontroverted evidence in other proceedings indicates that such a use of the backhoe would be in line with a customary use of the backhoe by individuals in Duval County which grew out of a habit of longstanding in the county, said individuals in the county assuming the fact that county equipment and county property belongs to the people of the county and may be so used. Wherefore, Judge O. P. Carrillo specially excepts to the charges contained in Section VI as frivolous and presenting no actionable factual allegations for the purposes of these proceedings or any other proceedings.

2. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section VI on the grounds that said charges fail to allege that the alleged misconduct occurred during the Judge's present term of office as District Judge.

3. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Section VI on the grounds that said charges fail to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

X. PLEAS TO CHARGES OF SECTIONS VII, VIII, IX, X, XI, AND XII

A. Pleas in abatement

1. In addition to the pleas in abatement set out above in Section III of this Answer and incorporated herein for all purposes, proceedings on the charges contained in Sections VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings should be abated on the grounds that said charges were not contained in the May 2nd Notice of Preliminary Investigation by the Judicial Qualifications Commission, and the Judge was given no notice whatsoever of the nature of the charges prior to a determination that formal proceedings should be instituted, as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges.

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2. Further, proceedings on the charges contained in Sections VII, VIII, IX, X, XI, and XII should be abated on the grounds that, the Judge having received no notice of the nature of these charges prior to a determination that formal proceedings should be instituted, the Judge was not given a reasonable opportunity, nor any opportunity, to reply and present such matters as he might choose prior to a determination that formal proceedings should be instituted, as required by Rule 3(b).

3. Further, proceedings on the charges contained in Sections VII, VIII, IX, X, XI, and XII should be abated on the grounds that none of the charges contained in each of said Sections were contained in the original Notice of Formal Proceedings, and thus said charges constitute wholly new charges of which the Judge had no prior notice and no notice whatsoever prior to the 8th of October, 1975. Because said Sections contain wholly new charges unrelated to any of the charges contained in the original Notice of Formal Proceedings, said Section and said charges contained therein are not proper amendments to the original Notice of Formal Proceedings and do not constitute a proper basis for any part of the present proceedings under Rule 11 of the Rules for the Removal and Retirement of Judge, which provides only that notice of formal proceedings may be amended "to conform to proof or set forth additional facts." Rather than supplementing or enlarging upon the facts contained in the original Notice of Formal Proceedings, as contemplated by the provisions of Rule 11, the attempted amendments contained in Sections VII, VIII, IX, X, XI, and XII present wholly new charges against the Judge, are outside the scope of amendments which may properly be made to the notice, and may not form the basis for any part of the present proceedings.

4. Further, proceedings on the charges contained in Sections VII, VIII, IX, X, XI, and XII should be abated on the

rounds that none of the charges contained in said Sections specifies "in ordinary and concise language the charges against the Judge" nor "the alleged facts upon which such charges are based," as required by Rule 4(b) of the Rules for the Removal or Retirement of Judges. In fact, said Sections specify none of the factual allegations upon which the charges are based and thus fail to provide the Judge with notice of the charges as contemplated by Rule 4(b).

5. Further, proceedings on the charges contained in Sections VII, VIII, IX, X, XI, and XII should be abated on the grounds that none of said Sections allege misconduct on the part of the Judge which is actionable in these proceedings, said Sections alleging conduct on the part of the Judge occurring prior to the 5th of November, 1974, the date of his election to the office of District Judge. Allegations of misconduct occurring prior to the date of the Judge's election to office may not form the basis of a removal proceeding under Article 5986, V.A.C.S., which provides:

"No officer in this State shall be removed from office for any act he may have committed prior to his election to office."

6. Further, proceedings on the charges contained in Sections VII, VIII, IX, X, XI, and XII should be abated on the grounds that none of the charges contained therein on their face constitute grounds for removal from office, in that the conduct alleged in each of said charges was not willful and persistent, was not clearly inconsistent with the proper performance of the duties of Judge O. P. Carrillo as District Judge, and was not clearly of a nature to cast discredit upon the judiciary.

B. General Denial

Hon. O. P. Carrillo denies generally each and every, all and singular allegations of Sections VII, VIII, IX, XI, XI, and XII of the First Amended Notice of Formal Proceedings and

demands strict proof thereof.

C. Special Exceptions

1. Hon. O. P. Carrillo specially excepts to the charges contained in Sections VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings on the grounds that said charges are too vague, general and indefinite in their allegations, omitting to allege with any particularity the acts which the Judge is alleged to have committed and thereby fail to afford the Judge reasonable notice of either the facts the Commission expects to prove thereby or the conduct with which he is charged.

2. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Sections VII, VIII, IX, X, XI, and XII on the grounds that said charges fail to allege that the alleged conduct on the part of the Judge occurred during the Judge's present term of office as District Judge.

3. Further, Hon. O. P. Carrillo specially excepts to the charges contained in Sections VII, VIII, IX, X, XI, and XII on the grounds that said charges fail to state misconduct for which the Judge may properly be removed, in that they fail to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Hon. O. P. Carrillo, Judge of the 229th Judicial District of Texas, respectfully prays that the present proceedings against him on the basis of the charges contained in the First Amended Notice of Formal Proceedings be abated on the grounds and for the reasons set out above. In the alternative, Judge O. P. Carrillo respectfully prays that the proceedings on the basis of the charges contained in Sections VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal



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Proceedings be abated on the grounds and for the reasons set out above. In the alternative, Judge O. P. Carrillo respectfully prays that said charges on which proceedings are not abated be amended in conformance with the special exceptions to each of such charges set out above and, subsequent to such amendment, Judge O. P. Carrillo be allowed a reasonable time to prepare his defense thereto prior to the commencement of the formal hearing thereon. Further, Judge O. P. Carrillo respectfully prays that a date, a time, and a place be set for hearing on the matters raised herein, such hearing to be held at such a time prior to the commencement of the formal hearing before the Master as to permit necessary amendments to be made to the Notice and for the Judge to prepare his Answer thereto, to permit reasonable prehearing discovery and the raising of other necessary, reasonable, and usual prehearing matters as in any court proceedings, and to permit the Judge to prepare his defense to the charges contained in the Notice on which proceedings have not been abated.

Respectfully submitted,

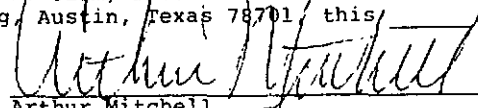
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By   
Arthur Mitchell

ATTORNEYS FOR O. P. CARRILLO

I hereby certify that a true and correct copy of the above and foregoing Answer to First Amended Notice of Formal Proceedings has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General, Supreme Court Building, Austin, Texas 78701, this day of October, 1975.

  
Arthur Mitchell

**00049**  
BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

---

INQUIRY CONCERNING A JUDGE,  
NO. 5

---

BRIEF IN SUPPORT OF THE  
APPLICATION OF ARTICLE  
5986, VERNON'S ANNOTATED  
TEXAS STATUTES

---

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R/P-3

**00050**  
BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

---

INQUIRY CONCERNING A JUDGE,  
NO. 5

---

BRIEF IN SUPPORT OF THE  
APPLICATION OF ARTICLE  
5986, VERNON'S ANNOTATED  
TEXAS STATUTES

---

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION OF  
THE STATE OF TEXAS:

INTRODUCTORY STATEMENT

On March 15, 1975, the Judicial Qualifications Commission entered into a preliminary investigation of Judge O.P. Carrillo on the charges of alleged misconduct. As a result of the preliminary investigation, the Commission according to Rule 4 of the Rules for the Removal or Retirement of Judges instituted formal proceedings. Within the fifteen day limit set by Rule 5, O.P. Carrillo filed his Original Answer to Notice of Formal Proceedings. On October 8, 1975, the Judicial Qualifications Commission amended the Notice of Formal Proceedings.

To assist the Commission in understanding the Plea in Abatement concerning Article 5986, V.A.T.S., otherwise known as the "Prior-Term

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Doctrine," the attorney for O.P. Carrillo submits this brief in support of the application of Article 5986, V.A.T.S., or the application of the spirit of this doctrine in the proceedings before the Judicial Qualifications Commission.

POINTS BEFORE THIS COURT

POINT ONE

Acts occurring prior to the present term of office should not be considered as evidence in the removal proceedings of a public official.

AUTHORITIES, FACTS AND ARGUMENT  
UNDER POINT ONE

A. The Prior-Term Doctrine

It is an accepted judicial doctrine in states other than Texas that public officials should not be removed for actions occurring prior to the present term of office. There is overall agreement that in order to remove an official for acts occurring during a prior term of office, the statute must explicitly state that malfeasance during a prior term shall be a ground for removal of a public official. "In Ohio, under statutes authorizing removal of a public officer for misconduct, . . . the misconduct . . . must have occurred within the term of office during which it is sought to remove the officer." Re Removal

of Coppola, 155 Ohio St. 329, 44 Ohio Ops. 313, 98 NE 2d 807, 810 (1951). The Arkansas statute allowing removal of a public official is to punish an officer only for wrongdoings committed during his existing term of office and not any prior term of office. Jacobs v. Parham, 175 Ark. 86, 298 SW 483 (1927). "[As] a general rule, offenses committed or acts done by a public officer during a previous term are not cause for removal from office." Smith v. Godby, 174 SE 2d 165, 42 ALR 3d 675 (W. Va. Sup. Ct. of App. 1970).

B. History of the Prior-Term Doctrine in Texas

The Texas Legislature adopted the judicial "Prior-Term Doctrine" and inacted it into statutory law.

No officer in this State shall be removed from office for any act he may have committed prior to his election to office. Art. 5986, V.A.T.S. (1939).

The article straight forwardly applies to all public officials. There are no reservations nor limitations to its applicability to public officials. Article XV, Sec. F of the Texas Constitution cannot be interpreted as a viable limitation on the applicability of Article 5986, V.A.T.S. Article XV, Sec. F permits the Legislature to provide for the method of trial and removal of officials which have not been provided for in the State Constitution. That in no way impedes the applicability of Article 5986 which represents the doctrine of judicial self-restraint. This doctrine has historically been applied in removal proceedings

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against county clerks, sheriffs, and district judges. Huntress v. State, 88 SW 2d 636 (Ct. App. - San Antonio 1935); Reeves v. State, 114 Tex. 296, 267 SW 666 (1924); In re Laughlin, 265 SW 2d 805 (1954).

POINT TWO

The "Prior-Term Doctrine" formulated in Article 5986, V.A.T.S., is applied to all non-criminal removal proceedings, and admission into evidence of any acts of misconduct during the prior term is error.

AUTHORITIES, FACTS AND ARGUMENT  
UNDER POINT TWO

- A. Article 5986, V.A.T.S., is applied to all non-criminal removal proceedings.

Article 5986, V.A.T.S., and the identical public policy is applicable only to civil removal proceedings involving public officials and is not applicable to criminal proceedings against public officials. TEX. ATTY. GEN. OPIN. 1939, No. 749. In Williams v. State, 150 SW 2d 803 (Crim. App. 1941), a public official could not be criminally prosecuted for actions occurring during his prior term in office.

The Constitutional and statutory provisions for the removal of district judges are not criminal in nature. Although the Rules for Removal or Retirement of Judges, Rule 10, provide the accused with the rights of one at a criminal trial, the trial itself is not a criminal

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proceeding. "It is specifically provided and held that the trial and proceedings connected therewith shall be conducted as far as possible in accordance with the rules and practice in other civil cases." In re Laughlin, 265 SW 2d 805, 807 (1954).

- B. Admission of acts of misconduct during the prior term is admissible error.

The Court of Appeals in Reeves v. State, 267 SW 666 (1924) found the sheriff guilty of official misconduct during both his first and second terms, therefore admission of acts committed during the first term were harmless. However, the Supreme Court in overturning the Court of Appeals stated:

We think however, that the admission in evidence of other separate acts charged and found by the jury to have been committed during the first term of office could not help but be prejudicial to the plaintiff in error, and to have influenced the jury in their findings upon the issues submitted to them of acts committed during the second term, and should not have been admitted for any purpose. Reeves v. State, supra.

### POINT THREE

The "Prior Term Doctrine" incorporated into statute by Article 5986, V.A.T.S., is not an affirmative defense; instead, it is a plea in abatement raising a question of law.

### AUTHORITIES, FACTS AND ARGUMENT UNDER POINT THREE

In the Rules for Removal or Retirement of Judges promulgated by

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the Supreme Court in 1965, Rule 7 states that the hearing before the Judicial Qualifications Commission shall be conducted in accordance with the rules applying in the trial of civil causes. The "Prior Term Doctrine" or Article 5986, V.A.T.S., became the basis of a Motion to Dismiss in a case involving the removal of a District Judge. In re Laughlin, 265 SW 2d 805, 808 (1954). Before the Judicial Qualifications Commission Article 5986 took the form of a Plea in Abatement in In re Brown, 512 SW 2d 317, 321 (1974). In the present action, the Judge has presented the "Prior-Term Doctrine" or Article 5986, V.A.T.S. as a Plea in Abatement incorporated into the Original Answer. This is in accordance with Rule 85, TEX. RULES OF CIV. PRO.. Article 5986 or the judicial doctrine upon which it is based is not an affirmative defense. Rule 94, TEX. RULES CIV. PRO. sets out the precise actions which must be affirmatively pled. Article 5986, V.A.T.S., cannot be classified as an affirmative defense. The exclusion of acts prior to the issuance of the election certificate does not create an issue of fact or an issue that requires the production of evidence. Instead, Article 5986 raises a question of law which must be ruled upon by the Commission after hearing written or oral arguments, but prior to the production of evidence.

POINT FOUR

Even if Article 5986, V.A.T.S., is not applicable, the spirit



of the statute should be applied in the proceedings before the Judicial Qualifications Commission.

AUTHORITIES, FACTS AND ARGUMENT  
UNDER POINT FOUR

Assuming arguendo Article XV, Section 7 of the Texas Constitution allowing the Legislature to provide methods for the removal of officials where the Constitution has not provided for their removal prevents the application of Article 5986, V.A.T.S., to the removal of a District Judge, the spirit of the statute has been applied in all such removal proceedings. This doctrine of judicial self-restraint was applied in the 1954 removal proceedings against a district judge from South Texas. The Supreme Court in that case stated that removal may not be predicated upon acts antedating election "when such acts were a matter of public record or otherwise known to electors and were sanctioned and approved or forgiven them by election." In re Laughlin, 265 SW 2d 805, 808 (1954). The actions taken by the Supreme Court are in harmony with the public policy enacted into statutory law by the Legislature in Article 5986, V.A.T.S. .

The public is the ultimate arbiter of what constitutes improper conduct by state officials. Reeves v. State, 114 Tex. 296, 267 SW 666 (1924). The electorate can knowingly return a man to office in spite of charges of misconduct. Upon his re-election to office all prior acts which are a matter of public record may no longer become

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the basis or be used in evidence in any removal proceedings.

In re Brown, 517 SW 2d 317 (1974), questions whether Judge Brown's alleged misconduct was known by the general public prior to the official's election or re-election. The Supreme Court leaves unanswered the question of whether Judge Brown's acts were known prior to the institution of the proceedings. In re Brown, supra, at 321. Investigation, examination, and deposition of a proportionate cross-section of the voters in the 229th District will show that the actions complained of were known prior to the November 1, 1974, election. In re Brown, supra at 320, reaffirmed the holding of In re Laughlin, supra at 808, stating that as a matter of public policy a district judge should not be removed by the Judicial Qualifications Commission or the Supreme Court for misconduct known to the electors at the time of election or re-election and forgiven by them as evidenced by their election or re-election of the official.

#### CONCLUSION

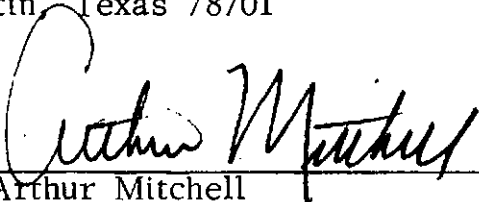
Upon the presentation of the applicable statutory and case law supporting the Plea in Abatement, sufficient evidence has been put forward to shift the burden of coming forward to the State. It is now upon the Commission to grant the Plea in Abatement since the State has failed in its burden of proof.

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Respectfully submitted,

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By   
Arthur Mitchell

ATTORNEYS FOR O.P. CARRILLO

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Brief in Support of the Application of Article 5986, Vernon's Annotated Texas Statutes has been sent to Mr. John Odam, Executive Assistant Attorney General and Mr. Max Flusche, Assistant Attorney General at the Supreme Court Building, Austin, Texas, 78701, on this the \_\_\_\_\_ day of October, 1975.

  
Arthur Mitchell

0059

BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

O. P. CARRILLO'S FIRST MOTION IN LIMINE

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION,  
STATE OF TEXAS:

Comes now Honorable O. P. Carrillo, District Judge of the 229th Judicial District of Texas, and makes this his First Motion in Limine, moving this Honorable Commission to exclude from evidence and consideration of the Master or the Commission in the above proceedings any testimony, documentary materials, or other matters relating to any of the charges contained in Sections I, III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings, and for grounds would show the Commission as follows:

I.

The charges contained in Sections I, III, IV, V, VI, VII, VIII, IX, X, XI, and XII are outside of the scope of the matters contained in the Notice of Preliminary Investigation served on Judge O. P. Carrillo on or about May 2, 1975, said Notice of Preliminary Investigation giving Judge Carrillo notice of only the charges contained Section II of the First Amended Notice of Formal Proceedings. As to such additional charges not contained in the Notice of Preliminary Investigation Judge Carrillo has not been given a reasonable opportunity to present such matters as he may choose prior to a final determination that formal proceedings should be instituted. The inclusion of said charges outside of the scope of the May 2nd Notice of Preliminary Investigation contravenes the provisions of Rule 3(b) of the Rules for the Removal and Retirement of Judges, as adopted and

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promulgated by the Supreme Court of Texas; and any verbal and/or documentary materials relating to said charges should therefore be excluded from consideration by the Master and/or the Commission in these proceedings.

WHEREFORE, PREMISES CONSIDERED, Judge O. P. Carrillo respectfully prays that the Commission exclude from evidence and consideration of the Master and/or the Commission any testimony, documentary materials, or other matters relating to any of the charges contained in Sections I, III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings. Judge O. P. Carrillo further prays that a date, time, and place for hearing of the matters contained herein be set by the Commission.

Respectfully submitted,

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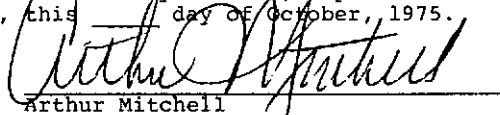
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BY \_\_\_\_\_

ARTHUR MITCHELL

ATTORNEYS FOR O. P. CARRILLO

I hereby certify that a true and correct copy of the above and foregoing First Motion in Limine has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General, Supreme Court Building, Austin, Texas 78701, this \_\_\_\_\_ day of October, 1975.

  
Arthur Mitchell

6061

BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

O. P. CARRILLO'S SECOND MOTION IN LIMINE

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION,  
STATE OF TEXAS:

Comes now the Honorable O. P. Carrillo, District Judge of the 229th Judicial District of Texas, and makes this Second Motion in Limine, moving this Honorable Commission to exclude from evidence and consideration of the Master or the Commission in the above proceedings any testimony, documentary materials, or other matters relating to the charges contained in Sections VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings, and for grounds would show the Commission as follows:

I.

The charges contained in Sections VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings are not matters to be properly included in an amendment to the original Notice of Formal Proceedings under Rule 11 of the Rules for the Removal and Retirement of Judges, as adopted and promulgated by the Supreme Court of Texas, in that the matters contained in said sections neither present factual allegations which conform to proof offered by the Examiner nor set forth additional facts in support of the original charges contained in the Notice of Formal Proceedings. Rather, the matters contained in said sections of the First Amended Notice of Formal Proceedings present wholly new charges against Judge O. P. Carrillo of which Judge Carrillo had no preliminary notice and as to which Judge Carrillo had no reasonable opportunity to present such matters as he might choose prior to a final determination that formal proceedings should be

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instituted as required by Rule 3(b) of the Rules for the Removal and Retirement of Judges. Said matters are thus outside the scope of amendments to the Notice of Formal Proceedings permitted by Rule 11 and, further, are outside the scope of those matters which may properly be contained in either an original or an amended Notice of Formal Proceedings under Rules 3 and 4, Rules for the Removal and Retirement of Judges, as adopted and promulgated by the Supreme Court of Texas.

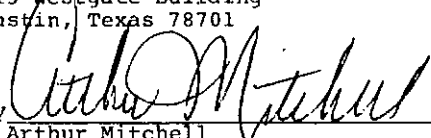
WHEREFORE, PREMISES CONSIDERED, Judge O. P. Carrillo respectfully prays this Honorable Commission to order the exclusion from evidence and consideration of the Master or the Commission in the above proceedings any verbal or documentary evidence relating to any of the charges contained in Sections VII, VIII, IX, X, XI, and XII of the First Amended Notice of Formal Proceedings. Judge O. P. Carrillo further prays that a date, time, and place for hearing of the matters contained herein be set by the Commission.

Respectfully submitted,

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By

  
Arthur Mitchell

ATTORNEYS FOR O. P. CARRILLO

I hereby certify that a true and correct copy of the above and foregoing Second Motion in Limine has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General, Supreme Court Building, Austin, Texas 78701, this ~~7th~~ 4th day of October, 1975.

  
Arthur Mitchell

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BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

O. P. CARRILLO'S FIRST MOTION FOR INDEFINITE  
CONTINUANCE

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION,  
STATE OF TEXAS:

Comes now Honorable O. P. Carrillo, Judge of the 229th  
Judicial District of Texas, and makes this his First Motion for  
Indefinite Continuance of the hearing before the Master in the  
formal proceedings against him and for grounds would show the  
Commission and/or the Master in these proceedings the following:

I.

Incorporated herein for all purposes as if set out in  
their entirety are Sections I and III of his Answer to First  
Amended Notice of Formal Proceedings, being the factual background  
to the present proceedings by and before the Judicial Qualifications  
Commission and the general pleas in abatement to the charges  
contained in the First Amended Notice of Formal Proceedings.

II.

Hon. O. P. Carrillo would show the Commission and/or the  
Master in these proceedings that an indefinite continuance of the  
hearing on the formal charges, which is set at present for the  
3rd day of November, 1975, is necessary in light of the factual  
background to the present proceedings in order that the Judge may  
be represented by competent counsel, have effective assistance of  
counsel, and adequately prepare his defense to the formal charges  
against him in these proceedings.

III.

Hon. O. P. Carrillo would show the Commission that, owing  
to the extensive pretrial preparation necessary for trial in

RP-6



0064

Cause No. 75-C-45 in the Federal District Court for the Southern District of Texas, Corpus Christi Division, the extensive and extended hearings before the House Select Committee on Impeachment, the commencement of the impeachment trial before the Senate, the month-long trial in Cause No. 75-C-45 in the Federal District Court, the recommencement of the impeachment trial in the Senate and the preparation therefor, and the preparation necessary for the hearing on the sentencing of the Judge in Cause No. 75-C-45, Judge O. P. Carrillo and his attorneys have not had adequate time and will not have adequate time to prepare the defense of Judge Carrillo in these proceedings prior to the date presently set for commencement of the hearing before on the formal charges.

IV.

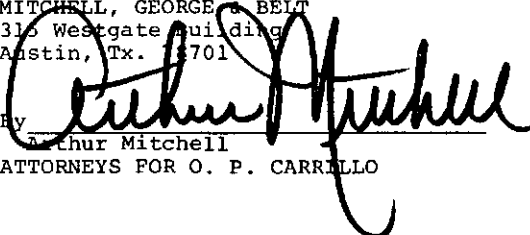
Causing the matters contained in the First Amended Notice of Formal Proceedings to be heard on the November 3rd date presently set for such hearing would deny to Judge Carrillo effective assistance of counsel in these proceedings in contravention of Article V, §1-a, Subsection 11 of the Constitution of the State of Texas and Amendments Five, Six, and Fourteen to the Constitution of the United States of America.

WHEREFORE, PREMISES CONSIDERED, Hon. O. P. Carrillo respectfully prays that the Commission and/or the Master grant an indefinite continuance of the hearing on the formal charges against Judge Carrillo in order to allow him the right of effective assistance of counsel and adequate opportunity to prepare his defense to said charges.

Respectfully submitted,

RICHARD HAYNES  
HAYNES & FULLENWEIDER  
711 Fannin St., Suite 610  
Houston, Tx. 77002

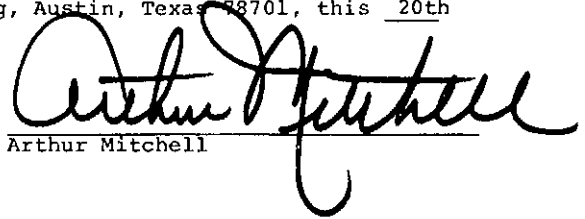
ARTHUR MITCHELL  
JAN WOODWARD FOX  
MITCHELL, GEORGE & BELT  
315 Westgate Building  
Austin, Tx. 78701

By   
Arthur Mitchell  
ATTORNEYS FOR O. P. CARRILLO

00065

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing First Motion for Indefinite Continuance has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General, Supreme Court Building, Austin, Texas 78701, this 20th day of October, 1975.

  
Arthur Mitchell

00066  
BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

---

INQUIRY CONCERNING A JUDGE, NO. 5

---

O.P. CARRILLO'S FIRST MOTION TO QUASH SUBPOENAS

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION,  
STATE OF TEXAS:

Comes now Honorable O.P. Carrillo, Judge of the 229th Judicial District of Texas, and makes this his First Motion to Quash Subpoenas and for grounds would show the Commission and/or the master in these proceedings the following:

I.

Incorporated herein for all purposes as if set out in its entirety is the Answer of Judge Carrillo to the First Amended Notice of Formal Proceedings.

II.

On or about the 8th of October, 1975, counsel for the Judge was served with three separate documents entitled Notice of Intention To Take Oral Depositions, which notices were signed by Mr. John W. Odam as Examiner for the Commission and which notices recited that subpoenas duces tecum for the depositions of the Judge and two witnesses and the production of documents would be issued. Said subpoenas were, in fact, issued on or about the 15th of October, 1975.

III.

Honorable O.P. Carrillo would show the Commission that,

R/P-7

00067

for the grounds and reasons set out in his Answer to First Amended Notice of Formal Proceedings, the Judicial Qualifications Commission, having improperly instituted formal proceedings against the Judge and improperly assumed jurisdiction over such proceedings under the Rules for Removal or Retirement of Judges and Art. V., Section 1-a, of the Constitution of Texas, does not have jurisdiction or authority over any proceedings based on the charges contained in the First Amended Notice of Formal Proceedings.

IV.

Lacking constitutional and statutory jurisdiction or authority over any such proceedings as the Commission has attempted to institute pursuant to the original and amended Notice of Formal Proceedings, the Commission has no jurisdiction to issue the subpoenas duces tecum to the individuals named in the Notices of Intention to Take Oral Depositions or to issue any subpoenas in connection with any proceedings on the charges contained in the First Amended Notice of Formal Proceedings.

WHEREFORE, PREMISES CONSIDERED, Honorable O.P. Carrillo respectfully prays that the Commission and/or the master order the quashal of the subpoenas referred to in the October 8th Notices of Intention to Take Depositions and in fact issued on or about October 15, 1975 on the grounds of no jurisdiction to issue the same.

Respectfully submitted,

RICHARD HAYNES  
HAYNES & FULLENWEIDER  
711 Fannin St., Suite 610  
Houston, Texas 77002

ARTHUR MITCHELL  
JAN WOODWARD FOX  
MITCHELL, GEORGE & BELT  
315 Westgate Building  
Austin, Texas 78701

By 

Arthur Mitchell

ATTORNEYS FOR O.P. CARRILLO

0068  
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing First Motion to Quash Subpoenas has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General and Examiner of the Judicial Qualifications Commission, Supreme Court Building, Austin, Texas 78701, this 20 day of October, 1975.

  
Arthur Mitchell

0069  
BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

---

INQUIRY CONCERNING A JUDGE, NO. 5

---

O.P. CARRILLO'S FIRST MOTION TO DISQUALIFY  
THE ATTORNEY GENERAL AND MOTION IN THE  
ALTERNATIVE FOR NOTICE OF APPOINTMENT OF  
ATTORNEY GENERAL

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION,  
STATE OF TEXAS:

Comes now Hon. O.P. Carrillo, Judge of the 229th  
Judicial District of Texas, and makes this his First Motion to  
Disqualify the Attorney General and Motion in the Alternative  
for Notice of Appointment of Attorney General and would show  
the Commission and/or the master in these proceedings the  
following:

I.

Incorporated herein for all purposes as if set out in its entirety  
is the Answer of Judge Carrillo to the First Amended Notice of  
Formal Proceedings.

II.

On or about the 8th day of October, 1975, counsel for  
Judge O.P. Carrillo was served with three documents each  
entitled Notice of Intention to Take Oral Depositions. Each of the  
three notices was signed John W. Odam, Executive Assistant  
Attorney General, Examiner. This was the first and only character  
of official notice the Judge has received to date of the appointment

R/P-8

of the Attorney General as examiner for the Judicial Qualifications Commission in these proceedings.

III.

While pursuant to Article 5966a, Section 2, V.A.C.S., the Commission may request the Attorney General to act as its counsel in any particular investigation or proceeding, it is submitted by Judge Carrillo that the Attorney General of Texas and/or members of his staff should be disqualified from participation in the present proceedings by and before the Judicial Qualifications Commission on the grounds of interest in the outcome of said proceedings.

IV.

Under the provisions of the Rules for Removal or Retirement of Judges, Article V, Section 1-a of the Constitution of Texas, and Article 5966a, V.A.C.S., the examiner is appointed by the Judicial Qualifications Commission and, in effect, acts on behalf of the Commission in the presentation of the evidence relating to the charges. Under the Rules and the applicable constitutional and statutory provisions, the Judicial Qualifications Commission occupies a unique position in proceedings of this character, in that the Commission must assume the dual roles of prosecutor of charges and judge of the qualifications of the judge under scrutiny. Occupying such a position, it should go without saying that the impartiality of the Commission in such proceedings should be without question and its actions and motives in such proceedings above reproach if the integrity of the Judicial Qualifications Commission is to be maintained.

V.

The history of the Attorney General's involvement in various proceedings against Judge Carrillo over the period of the last

several months is extensive, as indicated by the presentation of the factual background to the present proceedings as set out in Section I of the Answer of Judge Carrillo to the First Amended Notice of Formal Proceedings. The Attorney General's office was in frequent communication with the members of the House Select Committee on Impeachment during the course of its extensive hearings on the question of the impeachment of Judge Carrillo. The Attorney General's office was subsequently requested to assist and has assisted in the prosecution of charges against Judge Carrillo in the impeachment trial before the Senate. While participating in the impeachment activities by the House of Representatives and before the Senate, the Attorney General was actively engaged in the investigation of Judge Carrillo on its own and in securing indictments against Judge Carrillo and his political allies in the Duval County area, which investigation and indictments clearly have their basis in political rather than law enforcement considerations.

VI.

The participation of the Attorney General or any of his staff in the present proceedings by and before the Judicial Qualifications Commission, in the light of the demonstrated interest of the Attorney General in the removal of the Judge, cannot help but call the motivation of the Commission itself in these proceedings into question, and taint the entire proceedings with a question of bias, and deny to the Judge the due process rights guaranteed to him by Article V, Section 1-a, Subsection 11 of the Constitution of the State of Texas and Amendments Five, Six, and Fourteen of the Constitution of the United States of America.



00072

WHEREFORE, PREMISES CONSIDERED, Honorable O.P.

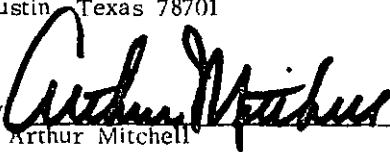
Carrillo respectfully prays this Commission and/or the master in these proceedings to order the disqualification of the Attorney General and his staff from participation in any capacity in the present proceedings before the Judicial Qualifications Commission. In the alternative, Judge O.P. Carrillo prays that the Commission and/or the master order that notice of the appointment of the Attorney General or a member or members of his staff, setting out the capacity in which the Attorney General is participating in the proceedings and the scope of his authority therein, be served in writing upon the Judge in order that the Judge may be aware of the exact capacity in which the Attorney General is acting and may inform himself of any proper objections he may have to such participation.

Respectfully submitted,

RICHARD HAYNES  
HAYNES & FULLENWEIDER  
711 Fannin Street, Suite 610  
Houston, Texas 77002

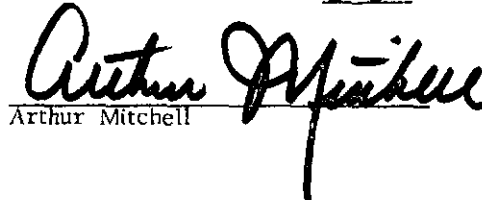
ARTHUR MITCHELL  
JAN WOODWARD FOX  
MITCHELL, GEORGE & BELT  
315 Westgate Building  
Austin, Texas 78701

By

  
Arthur Mitchell

ATTORNEYS FOR O.P. CARRILLO

I hereby certify that a true and correct copy of the above and foregoing First Motion to Disqualify the Attorney General and Motion in the Alternative for Notice of Appointment of Attorney General has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General, Mr. Max Flusche, Assistant Attorney General, Supreme Court Building, Austin, Texas 78701, this 23 day of October, 1975.

  
Arthur Mitchell

0073  
MITCHELL, GEORGE & BELT  
ATTORNEYS AT LAW  
AUSTIN, TEXAS 78701

ARTHUR MITCHELL  
THOMAS WILLIAM GEORGE  
TERRY L. BELT  
JAN FOX

WESTGATE - 1122 COLORADO  
Telephone (512) 477-9651

October 20, 1975

Mr. Maurice S. Pipkin  
Executive Director  
State Judicial Qualifications Commission  
P. O. Box 12265  
Capitol Station  
Austin, Texas 78701

Re: Answer to First Amended Notice of Formal Proceedings  
Inquiry Concerning a Judge, No. 5

Dear Mr. Pipkin:

Enclosed please find Answer to First Amended Notice of Formal Proceedings, a copy of the same being transmitted to Judge James R. Meyers, Master. I trust you will forward copies of this Answer to the Honorable Homer E. Stephenson, Chairman of the State Judicial Qualifications Commission, as well as to the vice chairman, secretary, and other members.

You will note further in the Answer that there are numerous special exceptions, constitutional pleas, and pleas in abatement. I hereby request a hearing before the Commission and/or the Supreme Court for a determination of the questions of law involved in this Answer prior to the trial of the case.

A copy of this letter of transmittal is being sent to each member of the Commission in order to place them in privity with our correspondence.

You will note also that part of the Answer herein involves quotes by you to Mr. Stuart Long in an interview that occurred apparently around October 12, 1975 as regards the proceedings before the Commission, your using as justification for your interview with Mr. Long "that the statutory secrecy of that Commission's actions [meaning the Judicial Qualifications Commission] was broken by Carrillo's attorney, Arthur Mitchell." Mr. Long therefore quoted you at quite some length apparently on the theory that the undersigned attorney had broken the statutory secrecy, therefore justifying your doing likewise. I would like to request in this connection that you answer

R/P-9

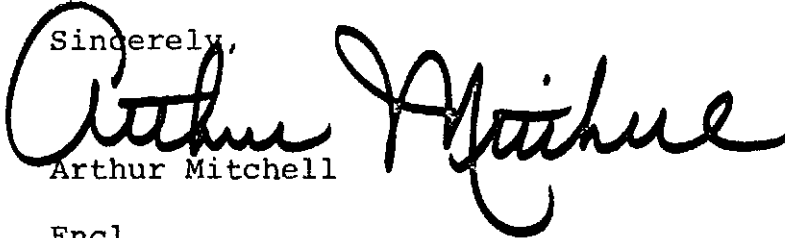
0074

Mr. Maurice S. Pipkin  
October 20, 1975  
Page 2

formally the plea based on your discussion with Mr. Long, stating the time, date, place and circumstances of your interview with Mr. Long and the date, time, place and circumstances when the undersigned attorney broke the secrecy mandated by the statute as to secrecy of the Commission's action, justifying your discussions of this case with Mr. Long. Otherwise, I shall be required to take your deposition to establish a factual background for the plea contained on page 24 in this Answer.

Thanking you, I am

Sincerely,



Arthur Mitchell

Encl.

cc: Homer E. Stephenson, Chairman  
Howard C. Davison, Vice Chairman  
Robert C. McGinnis, Secretary  
Vernon Butler  
Donald Eastland  
F. Ray McCormick  
Phil Peden  
R. C. Vaughan  
Hon. James R. Meyers

0075  
BEFORE THE

STATE JUDICIAL QUALIFICATIONS COMMISSION

---

INQUIRY CONCERNING A JUDGE, NO. 5

---

MOTION SUGGESTING CONTINUED DUE PROCESS VIOLATIONS

TO THE HONORABLE JUDICIAL QUALIFICATIONS COMMISSION,  
STATE OF TEXAS:

Comes now Judge No. 5 and makes this suggestion to the Judicial Qualifications Commission of a continued violation of his constitutionally protected rights as made explicit and express in these proceedings:

1. Judge No. 5 incorporates herein again for all purposes his Original Answer to the Notice and Amended Notice.

The Judicial Qualifications Commission hearing on Judge No. 5 commenced on November 3, 1975 in Corpus Christi, Texas, and continued daily from that date through and including November 7, 1975, at which time it was adjourned for Saturday and Sunday. The procedure commenced on Monday, November 10, 1975 and continued daily until Thursday afternoon, November 13, 1975, at which time it was adjourned in favor of presetting for Motion for New Trial in U. S. v. Carrillo before the Honorable Owen Cox, Federal Judge in Corpus Christi, Texas. At that time counsel for Judge No. 5 was in attendance through Friday, November 14, 1975 on hearing on Motion for New Trial as well as Monday, November 17, 1975, until 5:30 P.M. on the latter date.

On Tuesday, November 18, 1975, counsel appeared with Judge No. 5 and several hundred pounds of record in the Senate at Austin, Texas, prepared to go to trial at 10:00 A.M., at which time the proceedings were abrogated by motion from the Senate which prevailed to postpone until January 5, 1976. Thereafter, the Master noticed the attorneys for Judge No. 5 that the

R/P-10

00076

Judicial Qualifications Commission would commence in Corpus Christi, Texas on the morning of November 19, 1975, at 10:00, and all parties then proceeded back from Austin to Corpus Christi to comply with said order.

2. Denial of Effective Assistance of Counsel

That the failure to provide daily transcript of the proceedings constitutes deprivation of the Judge's right to effective assistance of counsel, demand having been previously made before the Master and order having been given by the Master for said delivery and delivery not being forthcoming as of this date. Failure to comply with the Master's order, when taken in connection with the impossible physical itinerary dictated by the State acting by either the Senate or the Judicial Qualifications Commission, is so oppressive as to destroy the Judge's right to effective assistance of counsel.

3. Denial of Due Process

Incorporated herein are the preceding paragraphs.

In addition, Judge No. 5 complains of the filing of Va by the Examiners and in addition to the offering of testimony in connection with VII, VIII, IX, X, <sup>II</sup>~~A~~ and XII, in that the same go beyond the Notice and the Amended Notice. To allow a filing of Va does violence to the Rules of Amendment and Judge No. 5 objects to the filing with no assurance of ample notice.

To permit the introduction of testimony in VII, VIII, IX, X, ~~XI~~ and XII and "Cleofas Gonzalez-Couling" related transactions goes beyond the Notice and Amended Notice of hearings and puts Judge No. 5 to trial without due process, in that he has no notice of the same.


All factors set out herein and in the Original Answer effectively lead to a denial of constitutionally protected

rights of Judge No. 5 as guaranteed by the Federal and State Constitutions and as relate to the right of effective assistance of counsel, due process, fair notice, and other constitutional provisions.

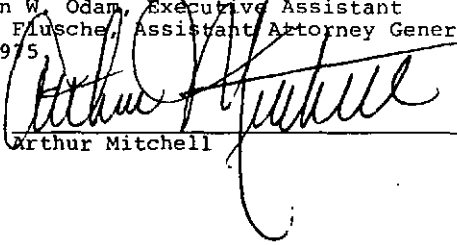
Respectfully submitted,

RICHARD HAYNES  
HAYNES & FULLENWEIDER  
711 Fannin Street, Suite 610  
Houston, Texas 77002

ARTHUR MITCHELL  
JAN WOODWARD FOX  
MITCHELL, GEORGE & BELT  
315 Westgate Building  
Austin, Texas 78761

By   
Arthur Mitchell

I hereby certify that a true and correct copy of the above and foregoing Motion Suggesting Continued Due Process Violations has been forwarded to Mr. John W. Odam, Executive Assistant Attorney General, and Mr. Max Flusche, Assistant Attorney General, this 19 day of November, 1975.

  
Arthur Mitchell

juv. 6/11  
Revised. 11/2/11

0078  
BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

TO THE HONORABLE STATE JUDICIAL QUALIFICATION COMMISSION:  
SUPPLEMENTARY SUGGESTION OF CONTINUED VIOLATIONS  
OF CONSTITUTIONALLY PROTECTED RIGHTS

TO THE HONORABLE JUDICIAL QUALIFICATION COMMISSION:

COMES NOW, Judge No. 5 and respectfully makes this suggestion of continuance violation of his constitutional protected rights in the above captions proceedings.

NON-WAIVER

I.

Judge No. 5 does not intend by this instrument to waive any pleadings filed by him previously, but to the contrary continue to asserts the same herein again.

RIGHT OF CONFRONTATION

II.

Judge No. 5 suggest a violation of his right to confrontation by his accuser in that he is being denied the right to the tax returns as per the subpoena on filed herein of Rudolfo Couling for the year 1968 - 1971 as provided in Art. 5, Section 1-a, by state and/or Federal Action.

PROCEDURAL AND OR SUBSTANTIVE OF DUE PROCESS

III.

Judge No. 5 states that he is deprived of due process rights herein in that is not being provided with a copy of the transcripts of the testimony of the witnesses as the same become available to the attorney for the examiner and the master.

IV.

Judge No. 5 further contends that the trial herein of facts beyond the Formal notice and upon facts of which he has no notice amount to a destruction of Vested property rights without due process if provided for in paragraph (11), Art, 5, Section 1-a.

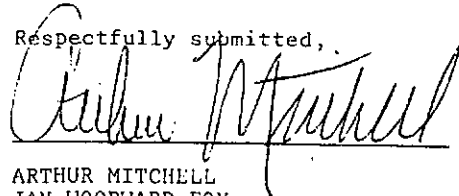
(R/P-11)

v. 0079

Judge No. 5 contends further that he has been denied due process in these proceedings by reason of the conduct of the examiner in not revealing fact favorable to Judge No. 5 and which tend to show his innocence of all wrong doings enumerated in the specifications. This conduct upon the part of the examiner is kin to suppression of evidence per cases similar to Alcorta, Brady, and related judicial pronouncements.

WHEREFORE, PREMISES CONSIDERED, Judge No. 5 respectfully filed this Supplementary Suggestion of Continued Violations of Constitutionally protectal rights.

Respectfully submitted,



ARTHUR MITCHELL  
JAN WOODWARD FOX  
MITCHELL, GEORGE & BELT  
315 Westgate Building  
Austin, Texas 78701



CLERK'S OFFICE - SUPREME COURT

Austin, Texas, Nov. 26, 1975

Dear Sir:

In the case of JUDGE NO. 5 v. JUDICIAL QUALIFICATIONS  
COMMISSION ET AL., No. B-5668, motion for leave to file  
petition for writ of mandamus was this day overruled.

Very truly yours,  
GARSON R. JACKSON, Clerk

R/p-12

08000

Honorable Maurice Pipkin, Executive Director  
Judicial Qualifications Commission  
Austin, Texas 78711

THIS SIDE OF CARD IS FOR ADDRESS

CLERK, SUPREME COURT OF TEXAS  
BOX 12448, CAPITOL STATION  
AUSTIN, TEXAS 78711

00081

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
-----

PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling Ramiro D. Carrillo, Sr. to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed Ramiro D. Carrillo, Sr., a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-13

00082

appropriate district court as provided for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Arthur Mitchell", written over a horizontal line.

ARTHUR MITCHELL  
Counsel for Judge No. 5

0083

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, Ramiro D. Carrillo, Sr., is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

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under oath.

THE WITNESS: Yes, sir.

- - - - -

RAMIRO CARRILLO,  
recalled as a witness, having been previously sworn,  
testified as follows, to-wit:

E X A M I N A T I O N

BY MR. MITCHELL:

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

A Ramiro D. Carrillo.

MR. MITCHELL: Your Honor, this  
question relates to Roman Paragraph I of the  
First Amended Notice of Formal Proceeding.

Q Let me ask you, please, sir, did you have an  
agreement or a conspiracy with O. P. Carrillo,  
from a period of time of January, 1971, until  
May, 1975, to wrongfully obtain the sum of three  
hundred dollars every month from Duval County?

EX-A

00085

1 A I respectfully decline to answer the question put  
2 to me by the Commission on the grounds that the  
3 answer might tend to incriminate me. I claim  
4 this right under the provisions of the Fifth  
5 Amendment to the Constitution of the United States  
6 and Article I, Section 10 of the Constitution of  
7 the State of Texas.

8 THE MASTER: You may simply say in the  
9 future that you decline to answer and it will  
10 be understood and agreed by both the  
11 Examiner and Mr. Mitchell that the answer,  
12 I decline to answer, encompasses the full  
13 statement you just made.

14 Is that agreeable, gentlemen?

15 MR. MITCHELL: Yes, Your Honor.

16 THE MASTER: Did you say yes, Mr. Odam?

17 MR. ODAM: Yes, sir.

18 MR. MITCHELL: I move now to Roman

19 Paragraph III of the First Amended Notice.

20 Q (By Mr. Mitchell) During the period of January  
21 1st, 1972, through September, 1973, did you  
22 conspire with your brother O. P. Carrillo and  
23 Roberto Elizondo to steal two hundred twenty-five  
24 dollars a month from the Road and Bridge Fund of  
25 Duval County?

00086

1 A I decline to answer.

2 MR. MITCHELL: I move now to Roman IV.

3 Q (By Mr. Mitchell) Mr. Ramiro Carrillo, during  
4 the period of January 1st, 1971, through June or  
5 July, 1974, did you, either individually or  
6 combined with O. P. Carrillo or other persons,  
7 conspire to appropriate for your own personal use  
8 and benefit or for the personal use and benefit  
9 of O. P. Carrillo or other persons, the services  
10 of one Francisco Ruiz?

11 A I decline to answer.

12 MR. MITCHELL: This is Roman V.

13 Q Mr. Ramiro Carrillo, I will ask you, if during  
14 the year 1971, you had a conspiracy with your  
15 brother O. P. Carrillo to wrongfully appropriate  
16 and use for your own benefit or the benefit of  
17 O. P. Carrillo or any other person, the services  
18 and labor of Oscar Sanchez?

19 A I decline to answer.

20 Q Did you, in 1971, agree to use or conspire  
21 with or combine or agree with any person to  
22 appropriate for your own use or the use of any  
23 other person any equipment belonging to Duval  
24 County?

25 A I decline to answer.

00087

MR. MITCHELL: Roman VI.

1  
2 Q Did you, during the year of 1973, take, in  
3 combination individually or with Tomas or  
4 Roberto Elizondo or O. P. Carrillo for your own  
5 use and benefit or for the benefit of others, the  
6 usage of a backhoe belonging to Duval County?

7 A I decline to answer.

8 MR. MITCHELL: I move now to E-192-1.

9 Q I will ask you if you know Rudolfo Couling?

10 A I decline to answer.

11 Q Do you know the Benavides Implement and Hardware  
12 Company?

13 A I decline to answer.

14 Q Did you have, in May, 1971, a partnership  
15 agreement with Mr. Rudolfo Couling, D/B/A  
16 Benavides Implement and Hardware Company?

17 A I decline to answer.

18 Q Did you at any time, up to date, from 1971 to  
19 date, have a partnership agreement with Rudolfo  
20 Couling or anyone as regards Benavides Implement  
21 and Hardware Company?

22 A I decline to answer.

23 Q Tell me the nature of the checks issued to you by  
24 Benavides Implement and Hardware Company. These  
25 include E-186-11, 12, and this one is Check No.



00088

1 109, 113, 119, 118, 125, 128. These are all in  
2 1971, being April, May and June, and continuing,  
3 as shown in E-192-1, and through and including  
4 E-192-12, payable to Mr. Ramiro Carrillo.

5 A I decline to answer.

6 Q I will ask you the same question as regards  
7 checks issued to you out of the same account from  
8 April 16, 1971, through and including the present  
9 date, and through and including E-192-12,  
10 specifically, checks to Ramiro Carrillo  
11 individually during that period of time?

12 A I decline to answer.

13 Q I will ask you the same question as regards the  
14 same exhibits and same time span as to checks  
15 issued to Ramiro Carrillo and Brothers.

16 A I decline to answer.

17 Q Did you have any character of agreement or  
18 understanding with Rudolfo Couling as regards  
19 appropriating money belonging to Duval County,  
20 The Duval County Water District or Duval County  
21 School District and sharing those funds with  
22 yourself or with others?

23 A I respectfully decline to answer.

24 Q In the same time span, E-192-1 through E-192-12,  
25 as regards two checks issued from Benavides

00089

- 1 Implement and Hardware account to Oscar Carrillo?
- 2 A I decline to answer.
- 3 Q Did you have any understanding concerning
- 4 yourself or Oscar Carrillo or your brother O. P.
- 5 Carrillo, as to ripping off the County of Duval
- 6 for funds and using the Benavides Implement and
- 7 Hardware Company vehicle as to appropriate those
- 8 funds?
- 9 A I decline to answer.
- 10 Q Did you at any time, beginning 4-16-71, through
- 11 and including today, have an understanding or
- 12 agreement or conspiracy that if you and O. P.
- 13 Carrillo or Oscar Carrillo or anyone else, to
- 14 use any county equipment for your own personal
- 15 use and benefit or for the benefit of others?
- 16 A I decline to answer.
- 17 Q And for the use and benefit of O. P. Carrillo or
- 18 Oscar Carrillo?
- 19 A I decline to answer.
- 20 Q Or any other person?
- 21 A I decline to answer.
- 22 Q Did you enter into a conspiracy or agreement in
- 23 1971, and did that continue through to today, as
- 24 regards the use of any monies from any
- 25 governmental agency of the county or water or

00090

1 school district through and by use of the vehicle  
2 Benavides Implement and Hardware for your family,  
3 your trust or friends?

4 A I decline to answer.

5 Q I will ask you the same question, Mr. Ramiro  
6 Carrillo, if you had any understanding, beginning  
7 at any time, from 4-16-71, to date, to appropriate  
8 or use your office wrongfully as regards the  
9 appropriation of funds under your control,  
10 particularly the County of Duval or the water  
11 district or school district, through any vehicle,  
12 appropriate any funds for your own benefit or for  
13 other persons or relations?

14 A I decline to answer that.

15 Q That includes D. C. Chaps, your father?

16 A I decline to answer.

17 MR. MITCHELL: Pass the witness.  
18  
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G-3

00091

EXAMINATIONBY MR. FLUSCHE:

Q Mr. Carrillo, have you been removed from office as a county commissioner in Duval County?

A I decline to answer.

Q Has there been a petition filed against you asking your removal because of stealing money from the county?

A I decline to answer.

Q Did you participate with Mr. Rudolfo Couling in stealing money from the county, from the water district and from the independent school district over a period of approximately three years from 1971 to 1974?

A I decline to answer.

Q Do you know Paul Ramirez?

A I decline to answer.

Q How about Juan Garcia? Do you know Juan Garcia?

A I decline to answer.

Q Mr. Couling has testified that Juan Garcia was a fictitious person and that you used this name to conceal some of the thefts that you participated in from the county, is that correct?

00092

- 1 A I decline to answer.
- 2 Q Are you a partner with Judge O. P. Carrillo in
- 3 a firm called the Farm and Ranch Store of Benavides,
- 4 Texas?
- 5 A I decline to answer.
- 6 Q Is R. Carrillo and Brothers, is that a trust that
- 7 was created by your father?
- 8 A I decline to answer.
- 9 Q Who are the children who are the participants in
- 10 that trust?
- 11 A I decline to answer.
- 12 Q When the -- Mr. Couling would issue checks to
- 13 R. Carrillo and Brothers, who participated in
- 14 the proceeds of those checks?
- 15 A I decline to answer.
- 16 Q Rogelio Guajardo, Junior, is your nephew, is
- 17 that correct?
- 18 A I decline to answer.
- 19 Q How about -- there has been some testimony here
- 20 that on occasions Mr. Couling would give you a
- 21 check which was signed and dated and that you
- 22 would later fill it out and reap the benefits
- 23 of the check.
- 24 One such check is made out to Miller and
- 25 Miller in the amount of two hundred and ten

0093

1 dollars on October the 18th, 1971?

2 A I decline to answer.

3 Q How about A. Garcia, who is A. Garcia?

4 A I decline to answer.

5 Q There has been some testimony here that rather  
6 large sums of money were spent at the Gulf Hard-  
7 ware Company in Corpus Christi for the purpose  
8 of buying hunting equipment for you and your  
9 brother, O. P., and for D. C. Chapa, ammunition,  
10 shotguns.

11 MR. MITCHELL: There is no testimony  
12 about O. P. The witness Couling testified  
13 he purchased, and I am going to object to  
14 the form of the question as assuming a fact  
15 that is not in evidence, there was a purchase  
16 that was given to D. C. Chapa and that is  
17 an unfair question.

18 MR. FLUSCHE: All right, I will rephrase  
19 the question.

20 THE MASTER: All right.

21 Q D. C. Chapa is your father, is that right?

22 A I decline to answer.

23 Q And do you have any knowledge of Mr. Couling  
24 spending twenty-three hundred dollars with the  
25 Gulf Hardware Store here in Corpus Christi for the

0094

1 purpose of buying hunting supplies for your  
2 father, D. C. Chapa?

3 A I decline to answer.

4 Q There has been other testimony that on occasion  
5 Mr. Guling would give you a blank check signed,  
6 dated, with no amount filled in that -- and that  
7 you would later negotiate it at a place called  
8 Charlie's Truck Parts in San Antonio.

9 A I decline to answer.

10 Q One such check was made out in the amount of  
11 seventeen hundred and ten dollars on February the  
12 8th, 1972.

13 A I decline to answer.

14 Q There is another check dated March the 27th of  
15 1972 in the amount of six hundred dollars payable  
16 to International Harvester. There has been some  
17 testimony that that check was given to you, signed  
18 in blank, dated without the amount filled in and  
19 that you later negotiated this check at the  
20 International Harvester.

21 A I decline to answer.

22 Q Did you ever get any cow pellets from Julian  
23 Trevino in Laredo for your cattle?

24 A I decline to answer.

25

MR. FLUSCHE: That's all I have.

0095

1 THE MASTER: Thank you, Mr. Carrillo,  
2 you may step down and I will ask you to  
3 wait outside.

4  
5 (Whereupon the witness Mr. Remiro  
6 Carrillo left the courtroom.)

7 MR. MITCHELL: Your Honor, I am informed  
8 that Mr. Oscar Carrillo and Mr. D. C. Chapa  
9 are on their way, they are not here, and  
10 Roberto Elizondo and Tomas Elizondo. I  
11 wonder if I might proceed with examination  
12 of Mr. Couling, and as they -- may I check  
13 to see, they might be here, Judge?

14 MR. ODAM: I saw Eloy Carrillo out  
15 there.

16 MR. MITCHELL: He is in connection with  
17 another matter, but I did have Mr. D. C.  
18 Chapa subpoenaed and Mr. Oscar Carrillo  
19 subpoenaed and Mr. Roberto and Mr. Tomas  
20 Elizondo.

21 THE MASTER: Well, my suggestion is  
22 that we begin the cross-examination of Mr.  
23 Couling and that it go on, if it does, and  
24 I suspect it will, until the break and then  
25 if these other witnesses are here that is a



C0096

1 natural interruption and you can develop  
2 the record with respect to them at the noon  
3 hour.

4 MR. MITCHELL: Thank you, Judge Meyers.

5  
6 (Discussion off the record.)

7 MR. MITCHELL: Your Honor, may these  
8 witnesses be excused, subject to a standby  
9 on a telephone basis?

10 THE MASTER : Yes, sir.

11 MR. MITCHELL: Because we will prepare  
12 a petition.

13 THE MASTER: Yes, certainly.

14 MR. MITCHELL: May I call the witness  
15 Couling?

16 THE MASTER : Yes, get Mr. Couling.  
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0097

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS  
-----

INQUIRY CONCERNING JUDGE NO. 5  
  
-----

O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

00088

the same be granted, as evidenced by petition prepared by the Master to be filed forthwith pursuant to the dictates and mandates of Sections 8 and 14, and the related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge

**0099**  
BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION  
AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
-----

PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling David H. Carrillo to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed David H. Carrillo, a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-14

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, David H. Carrillo, is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

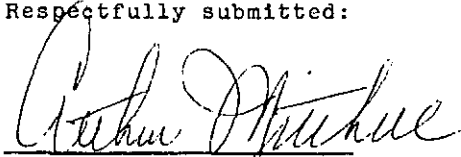
(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

appropriate district court as **00191** provided for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Arthur Mitchell".

ARTHUR MITCHELL  
Counsel for Judge No. 5

00102

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THE MASTER: Who is your next witness?

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

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

MR. MITCHELL: That is right, Your Honor.

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

(Discussion off the record.)

THE MASTER: Mister Carrillo, raise your right hand please.

- - - - -

EX-A

00103

D. H. CARRILLO,

1  
2 called as a witness, having been duly sworn upon his  
3 oath testified as follows, to-wit:

4  
5 E X A M I N A T I O N

6 BY MR. MITCHELL:

7  
8 Q State your name, please, sir.

9 A David H. Carrillo.

10 Q Do you know O. P. Carrillo?

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

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

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

24 A Yes, sir.

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



00104

- 1 Carrillo?
- 2 A I respectfully decline to answer.
- 3 Q Do you know Oscar Carrillo?
- 4 A I respectfully decline to answer.
- 5 Q Do you know Eloy Carrillo?
- 6 A I decline to answer.
- 7 Q Do you know D. C. Chapa?
- 8 A I decline to answer.
- 9 Q Do you know Mr. Rudolfo Couling?
- 10 A I decline to answer, sir.
- 11 Q Do you know the Benavides Implement and Hardware
- 12 that had a business there in Benavides, Texas?
- 13 A I decline to answer.
- 14 Q Do you know Rudolfo Couling?
- 15 A I decline to answer the question.
- 16 Q Do you know Rudy Couling?
- 17 A I decline to answer.
- 18 Q Do you know the Farm and Ranch Supply Store?
- 19 A I respectfully decline to answer, sir.
- 20 Q Mister, Carrillo, I am going to ask you some
- 21 questions as regards checks that are in evidence
- 22 in the form of E-192-1 specifically, and I will
- 23 ask you did you receive from the Benavides Imple-
- 24 ment and Hardware a check in the amount of five
- 25 hundred dollars?

00105

- 1 MR. MITCHELL: Which for the record,  
2 Your Honor, is identified here as E-188-17--  
3 Q On the 15th day of July, 1971?  
4 A I respectfully decline to answer, sir.  
5 Q I will ask you the same question as regards the  
6 receipt of a check in the amount of five hundred  
7 dollars on the 22nd day of September, 1971, being  
8 check number 168 from the Benavides Implement and  
9 Hardware payable to D. H. Carrillo?  
10 A I decline to answer.  
11 Q I will ask you whether or not you received on  
12 or about the 12th day of November, 1971, a check  
13 in the amount of five hundred dollars being check  
14 number 207 from the Benavides Implement and Hard-  
15 ware payable to you?  
16 MR. MITCHELL: And, Your Honor, for the  
17 record that is E-188-41.  
18 Q Did you receive such a check from Mr. Couling,  
19 Mr. Carrillo?  
20 A I decline to answer, sir.  
21 Q I will ask you whether or not on or about the  
22 17th day of December, 1971, by check number 223  
23 in the amount of five hundred dollars, Benavides  
24 Implement and Hardware, payable to you, you  
25 received the amount of five hundred dollars from

00106

- 1 Benavides Implement and Hardware?
- 2 A I respectfully decline to answer.
- 3 Q I will ask you the same question as regards check  
4 number 236 dated about the 14th day of January,  
5 1972 from Benavides Implement and Hardware  
6 payable to D. H. Carrillo, did you receive five  
7 hundred dollars from Mr. Rudolfo Couling in behalf  
8 of the Benavides Implement and Hardware, Mr.  
9 Carrillo?
- 10 A I decline to answer.
- 11 Q I will ask you the same question as regards check  
12 number 257 in the amount of five hundred dollars  
13 on or about the 18th day of February, 1972, did  
14 you receive that check from the Benavides Implement  
15 and Hardware?
- 16 A I respectfully decline to answer, sir.
- 17 Q I'll ask you the same question as regards to a  
18 check in the amount of a thousand dollars on or  
19 about the 20th day of March, 1972.
- 20 MR. MITCHELL: That being check number  
21 E-188-87 in this record, Your Honor.
- 22 Q And being check number 271, did you receive that  
23 check for a thousand dollars from Benavides Imple-  
24 ment and Hardware?
- 25 A I decline to answer.

00187

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

5 A I decline to answer.

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

13 A I decline to answer.

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

21 A I decline to answer.

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

00138

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

6           A   I decline to answer.

7                           MR. MITCHELL:  No further questions.

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10                           - - - - -

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

13  
14           BY MR. ODAM:

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

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

24           A   I respectfully decline to answer.

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

00109

- 1 received a total of six thousand five hundred  
2 dollars from the Benavides Implement and Hardware?  
3 A I respectfully refuse to answer.  
4 Q What is -- what was your position with respect  
5 to the water district in 1971?  
6 A I decline to answer the question, sir.  
7 Q Do you know of the arrangement whereby seven hun-  
8 dred and fifty dollars was taken out of the water  
9 district each month for a period of time and from  
10 that you received five hundred dollars on a  
11 monthly basis?  
12 A I respectfully decline to answer.  
13 Q Do you know of the arrangement whereby the other  
14 two hundred and fifty dollars of that seven hun-  
15 dred and fifty dollars went to R. Carrillo and  
16 Brothers?  
17 A I respectfully decline to answer.  
18 Q Have you been indicted by the Duval County Grand  
19 Jury?  
20 A I respectfully decline to answer.  
21 Q Who represents you here today?  
22 A I decline to answer.  
23 Q Is your attorney present with you today?  
24 A I decline to answer.  
25 Q Have you been advised by counsel to take the Fifth

00110

1 Amendment today?

2 A I decline to answer that, sir.

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

5 A I decline to answer, sir.

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

10 A I decline to answer, sir.

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

13 A I decline to answer that question, sir.

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

16 A I decline to answer, sir.

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

20 A I decline to answer, sir.

21 MR. ODAM: Pass the witness.

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

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

0111  
BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION  
AUSTIN, TEXAS  
-----

INQUIRY CONCERNING JUDGE NO. 5  
  
-----

O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that



06112  
the same be granted, as evidenced by petition prepared  
by the Master to be filed forthwith pursuant to the  
dictates and mandates of Sections 8 and 14, and the  
related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge

00113

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
-----

PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling Jose H. Saenz to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed Jose H. Saenz, a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-15

00114

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, Jose H. Saenz, is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

**00115**

appropriate district court as provided for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Arthur Mitchell", written over a horizontal line.

ARTHUR MITCHELL  
Counsel for Judge No. 5

G0126

1 MR. MITCHELL: We call Jose Saenz.

2 THE MASTER: Mr. Saenz, you have been  
3 here before and were sworn earlier and are  
4 reminded that you are still under oath.

5 You may be seated.

6  
7  
8 - - - - -  
9  
10  
11 JOSE SAENZ,

12 recalled as a witness, having been previously sworn,  
13 testified as follows, to-wit:

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

16  
17 BY MR. MITCHELL:

18  
19 Q Would you state your full name for the record.

20 A Jose Saenz.

21 Q I am going to ask you some questions --

22 MR. MITCHELL: Your Honor, these  
23 questions primarily relate to Roman Paragraph  
24 III of the First Amended Notice of Formal  
25 Proceeding.

EX-A

00117

1 Q Do you -- strike that.

2 Did you, during a period from January 1,  
3 1972, to September, 1973, know Roberto Elizondo?

4 A I respectfully decline to answer the question put  
5 to me on the grounds that the answer might tend  
6 to incriminate me. I claim this right under the  
7 provisions of the Fifth Amendment to the  
8 Constitution of the United States and Article I,  
9 Section 10 of the Constitution of the State of  
10 Texas.

11 Q I will ask you the same question as relates to  
12 the same period, did you know Ramiro Carrillo?

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

20 Q I will ask you the same question as regards Oscar  
21 Carrillo.

22 A I respectfully decline to answer the question put  
23 to me on the grounds that the answer to the same  
24 might tend to incriminate me. I claim this right  
25 under the provisions of the Fifth Amendment to

1 the Constitution of the United States and Article  
2 I, Section 10 of the Constitution of the State  
3 of Texas.

4 Q I will ask you the same question as regards  
5 Rogelio Guajardo.

6 A I respectfully decline to answer the question put  
7 to me on the grounds that the answer might tend  
8 to incriminate me.

9 I claim this right under the provisions of  
10 the Fifth Amendment to the Constitution of the  
11 United States and Article I, Section 10, of the  
12 Constitution of the State of Texas.

13 MR. ODAM: We would have no objection,  
14 for the brevity of the record, if it is all  
15 right with Mr. Mitchell, to have his answer  
16 shortened to include those items.

17 THE MASTER: Yes, I decline to answer  
18 can be your answer henceforth, with the  
19 understanding that it includes and  
20 encompasses the full provisions of what you  
21 have just stated.

22 MR. MITCHELL: Thank you.

23 Q (By Mr. Mitchell) I will ask you the same  
24 question as regards O. P. Carrillo.

25 A I decline to answer.

0119

- 1 Q And the same question with regard to Tomas  
2 Elizondo.  
3 A I decline to answer.  
4 Q David Carrillo.  
5 A I decline to answer.  
6 Q Now, with respect to --  
7 MR. MITCHELL: Your Honor, we will now  
8 move to E-192-1 for this series of questions.  
9 Q Rudolfo Couling.  
10 A I decline to answer.  
11 Q Eloy Carrillo.  
12 A I decline to answer.  
13 Q D. C. Chapa.  
14 A I decline to answer.  
15 Q Rudy Couling.  
16 A I decline to answer.  
17 Q R. Ramirez.  
18 A I decline to answer.  
19 Q E. E. Powell.  
20 A I decline to answer.  
21 Q How about D. H. Carrillo?  
22 A I decline to answer.  
23 Q R. R. Carrillo.  
24 A I decline to answer.  
25 Q Ramiro Carrillo, Jr.



1 A I decline to answer. 06120

2 Q E. Carrillo.

3 A I decline to answer.

4 MR. MITCHELL: I pass the witness.

5

6

7

8

9

10

E X A M I N A T I O N

11

12

BY MR. FLUSCHE:

13

14

Q Have you been indicted yet?

15

A I decline to answer.

16

Q The last time you were in this courtroom, you represented your lawyer was Arthur Mitchell, is that still true?

18

19

A I decline to answer.

20

Q Do you know anything about the operation of Benavides Implement and Hardware Company?

21

22

A I decline to answer.

23

Q Did you ever get any of the money that was being distributed by Benavides Implement and Hardware Company?

24

25

00121

- 1 A I decline to answer.
- 2 Q Are you still on the county payroll of Duval
- 3 County?
- 4 A I decline to answer.
- 5 Q You are not going to tell us whether you are
- 6 employed or not?
- 7 A I decline to answer.
- 8 Q If I were to ask you any other questions, even
- 9 about the weather, would you decline to answer
- 10 those?
- 11 A I decline to answer.

12 MR. FLUSCHE: I believe that is all I

13 have.

14 MR. MITCHELL: May we have a

15 transcription of this witness' testimony

16 and request that he be excused?

17 THE MASTER: Not excused.

18 MR. MITCHELL: I am sorry, asked to

19 stand aside.

20 THE MASTER: Yes, you may step down,

21 but I want you to remain available.

22 MR. MITCHELL: May I get Ramiro Carrillo?

23 THE MASTER: Yes.

24 Mr. Carrillo, you are previously sworn

25 and you are reminded that you are still

CG122  
BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION  
AUSTIN, TEXAS  
-----

INQUIRY CONCERNING JUDGE NO. 5  
  
-----

O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

0123  
the same be granted, as evidenced by petition prepared  
by the Master to be filed forthwith pursuant to the  
dictates and mandates of Sections 8 and 14, and the  
related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge

00124

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
-----

PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling D.C. Chapa to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed D.C. Chapa, a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-16

00125

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, D.C. Chapa, is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

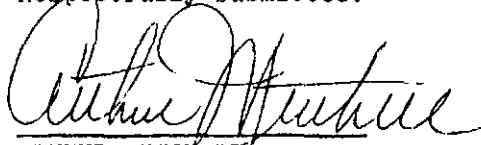
(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

appropriate district court as ~~provided~~<sup>00126</sup> for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:

  
ARTHUR MITCHELL  
Counsel for Judge No. 5

00127

1 is no problem, no problem.

2 THE MASTER: All right.

3 (Discussion off the record.)  
4

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

7 MR. LEE: Only very small manner.

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

17 MR. LEE: Yes, sir.

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

23 MR. LEE: Yes, sir.

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



00128  
MR. LEE: Yes, sir.

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

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

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

(Discussion off the record.)

00129  
D. C. CHAPA,

1  
2 having been duly sworn, testified upon his oath as  
3 follows, to-wit:  
4

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

6 BY MR. MITCHELL:  
7

8 Q State your name for the record, please.

9 A D. C. Chapa.

10 Q Do you know O. P. Carrillo?

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

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

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



00131

R-2

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

4 A I respectfully request to decline to answer.

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

8 A I respectfully request to decline to answer.

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

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

16 A I respectfully request to decline to answer.

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

22 A I respectfully request to decline to answer.

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

00132

1 or Duval County or anyone else?

2 A I respectfully request to decline the answer.

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

6 A I respectfully request to decline to answer.

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

11 A I respectfully request to decline the answer.

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

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

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

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

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

25 THE WITNESS: I respectfully request to

decline to answer. 00133

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

5 A I respectfully request to decline the answer.

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

8  
9  
10  
11  
12  
13 E X A M I N A T I O N

14  
15 BY MR. ODAM:

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

21 Who is your attorney advising you today?

22 A I respectfully decline to answer the question.

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

25 A I respectfully decline to answer the question.

CG134

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

00135

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

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

5 MR. ODAM: Pass the witness.

6 MR. MITCHELL: No further questions.

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

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

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

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

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

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



60136

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

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

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

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

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

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

00137

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

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

6 Who else, John?

7 MR. ODAM: D. H. Carrillo.

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

9 MR. ODAM: Tomas and Roberto Elizondo.

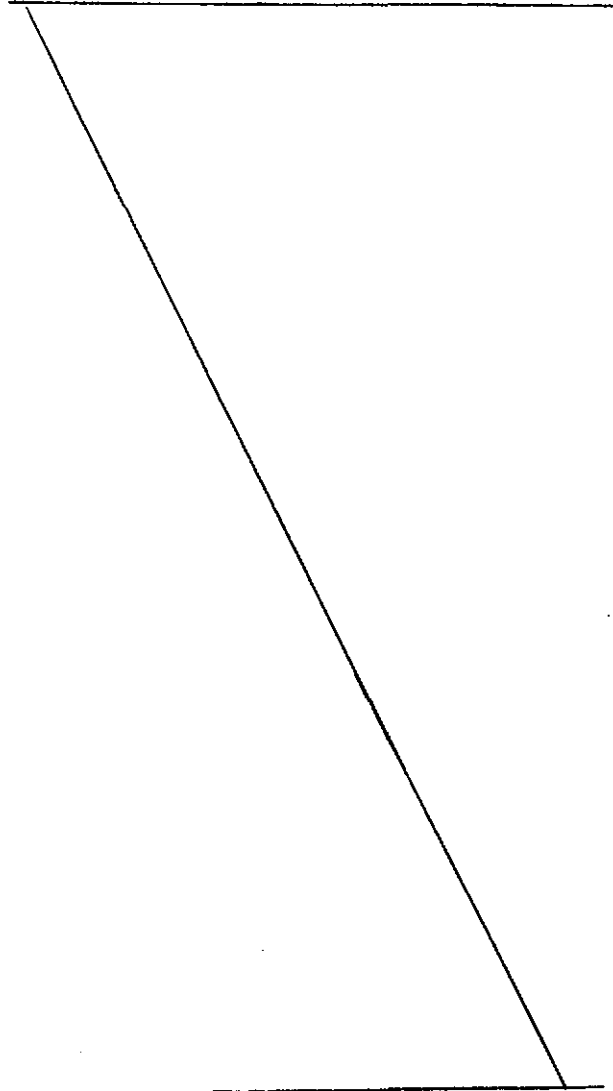
10 MR. MITCHELL: No, I have consulted  
11 with them, because they were used as witnesses  
12 in this proceeding and I have not, however,  
13 been employed nor did I prepare -- I think  
14 Mr. Odam asked and I don't have an obligation  
15 to make this statement, but I do want to  
16 make it. The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

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

0138

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



CG139

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS  
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INQUIRY CONCERNING JUDGE NO. 5  
-----

O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

CC140

the same be granted, as evidenced by petition prepared by the Master to be filed forthwith pursuant to the dictates and mandates of Sections 8 and 14, and the related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

---

JAMES R. MEYERS  
Judge

00141

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
-----

PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling Rogelio Guajardo, Jr. to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed Rogelio Guajardo, Jr., a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-17

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, Rogelio Guajardo, Jr. , is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

appropriate district court as provided for in Section <sup>00143</sup> 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:



ARTHUR MITCHELL  
Counsel for Judge No. 5



00144

(Discussion off the record.)

1  
2  
3 THE MASTER: Mr. Guajardo, you have  
4 not testified here before, have you?

5 MR. GUAJARDO: No, sir.

6 THE MASTER: Would you raise your  
7 right hand, please, sir?  
8  
9

10 ROGELIO GUAJARDO, being called as  
11 a witness, was duly sworn and testified as follows:  
12

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

14 MR. MITCHELL: May I proceed, Your  
15 Honor?

16 THE MASTER: Yes, sir.

17 Q State your name for the record, please, sir.

18 A Rogelio Guajardo, Junior.

19 Q Mr. Guajardo, I represent you, I believe. In some  
20 matters that are unrelated to the present inquiry,  
21 am I correct?

22 A Yes, sir.

23 Q What was your answer to that?

24 A Yes, sir.

25 Q All right, and I stated to you that in connection

1 with proceedings here, <sup>00145</sup> that you would be required  
2 to get other counsel, am I correct?

3 A Yes, sir.

4 Q Now, there has been some questions asked Mr.  
5 Rudolfo Couling concerning an account called  
6 Benavides Implemet and Hardware account, Mr.  
7 Guajardo.

8 I will ask you this, and I will make this  
9 preliminary statement, there has been some ques-  
10 tions asked regarding some questions that were  
11 written by Rudolfo Couling to you back in 1971  
12 and 1972 that is R -- or Rogelio Guajardo.

13 Now, my question to you is, and I intend  
14 to question you concerning the checks from Mr.  
15 Rudolfo Couling to you.

16 MR. MITCHELL: They are specifically  
17 identified as Exhibits E-188-22, Your Honor,  
18 in that series.

19 Q I would ask you if you will testify freely as  
20 to those transactions or would you claim your  
21 privilege?

22 A I respectfully decline and refuse to answer any  
23 questions put to me on the grounds that the  
24 answer might tend to incriminate me.

25 Q And that would be as to any check I might ask you

00146

1 from proceeds from Rudolfo Couling to you out of  
2 the Benavides Implement and Hardware account?

3 A Yes, s'r.

4 MR. MITCHELL: Specifically, Judge  
5 Meyers, I refer to E-192-1 and I refer to  
6 the items, and I would be glad to outline  
7 a few of them, Judge Meyers, so the Court  
8 will have them before him.

9 For example, those asked about this  
10 morning, E-188-22, appearing on E-192-2,  
11 and also, Your Honor, E-188-25, appearing  
12 on E-192-2, and that type of item.

13 The checks specifically -- my questions  
14 would be to this witness, what was the nature  
15 of those checks, what, if any, agreement did  
16 you have with Mr. Couling: did you have  
17 any kind of an agreement or understanding  
18 with Judge O. P. Carrillo about those checks  
19 and what -- and was there an agreement or  
20 understanding between you and Judge Carrillo  
21 and a combination of D. C. Chapa, Oscar  
22 Carrillo, Ramiro Carrillo, Eloy Carrillo,  
23 David Carrillo, Jose Saenz, Tomas Elizondo  
24 and Roberto Elizondo. Those would be my  
25 questions specifically of this witness,

Judge Meyers.

00147

1  
2 Q And I understand you, Mr. Guajardo, you would  
3 plead the Fifth Amendment if asked about those?

4 A Yes, sir.

5 MR. MITCHELL: If the Court cares for  
6 me to be more explicit, I can go down through  
7 some of the other items, Judge.

8 THE MASTER: No, if you're free to  
9 pass the witness --

10 MR. MITCHELL: Yes, sir.

11 THE MASTER: -- with the understanding  
12 that he is not released?

13 MR. MITCHELL: Yes, Judge, and my  
14 petition to the Court, to the Master, would  
15 be to request immunity of this -- to compel  
16 this witness and to grant him immunity and  
17 my specific request would be to the specific  
18 checks and as to any agreement, that is the  
19 checks listed on Examiner's E-192-1 through  
20 and including 12, so that the Court is  
21 aware.

22 The request would be as to these specific  
23 items and any contract or agreement between  
24 Rudolfo Couling, the witness, Rogelio Guajardo  
25 and/or O. P. Carrillo, and/or D. C. Chapa,

00148

1 and/or Ramiro Carrillo, and/or David Carrillo,  
2 and/or Eloy Carrillo, Oscar Carrillo, Jose  
3 Saenz, Roberto Elizondo and Tomas Elizondo.  
4

5 I pass this witness, Judge Meyers.  
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10 EXAMINATION

11 BY MR. ODAM:

12 Q Mr. Guajardo, is that --

13 A Guajardo.

14 Q Pardon me for my Spanish. Have we ever met  
15 before today?

16 A I don't think so.

17 Q Do you know my name?

18 A (Witness shakes head no.)

19 Q My name is John Odam and I work for the Attorney  
20 General's office and I would like to ask you a  
21 couple of questions also, please, sir.

22 Mr. Mitchell said that he had represented  
23 you in some unrelated matters. Could you please  
24 explain for us what those unrelated matters are?

25 A I respectfully decline and refuse to answer the

00149

1 questions put to me on the grounds that the answer  
2 I might give might tend to incriminate me.

3 Q Mr. Mitchell said that he had represented you in  
4 those unrelated matters before he advised you that  
5 you should get other counsel for this particular  
6 matter.

7 My question to you, who is your attorney  
8 representing you in this particular matter?

9 A I respectfully decline and refuse to answer any  
10 questions put to me.

11 Q Who is -- is your attorney who represents you --  
12 MR. ODAM: Strike that.

13 Q Have you been advised by a counsel to invoke the  
14 Fifth Amendment here?

15 A I respectfully decline and refuse to answer any  
16 questions put to me.

17 Q Could you tell me the name of your attorney who  
18 represents you here today?

19 A I respectfully decline and refuse to answer.

20 Q Is your attorney who represents you in this  
21 matter, is he present in the courtroom today?

22 A I also respectfully refuse to answer any questions  
23 out to me.

24 Q Who is Paul Ramirez?

25 A I respectfully decline and refuse to answer any

00150

1 questions put to me on the grounds that the  
2 answer I might give might tend to incriminate me.

3 Q Did you ever rent any equipment to Benavides  
4 Implement and Hardware?

5 A I respectfully decline and refuse to answer any  
6 questions put to me.

7 Q In 1971, what was your position with the water  
8 district?

9 A I respectfully decline and refuse to answer the  
10 questions put to me on the grounds that the answer  
11 might tend to incriminate me.

12 Q Do you know of any arrangement whereby checks  
13 would come from the water district and in turn  
14 checks would be issued to you in amounts identical  
15 to those which Mr. Mitchell asked you about?

16 A I respectfully decline and refuse to answer the  
17 questions put to me on the grounds that the  
18 answer might tend to incriminate me.

19 Q Did you ever have any discussion with Rudolfo  
20 Couling about having checks made out to Mr. Paul  
21 Ramirez?

22 A I respectfully refuse and decline to answer the  
23 questions put to me on the grounds that the  
24 answer might tend to incriminate me.

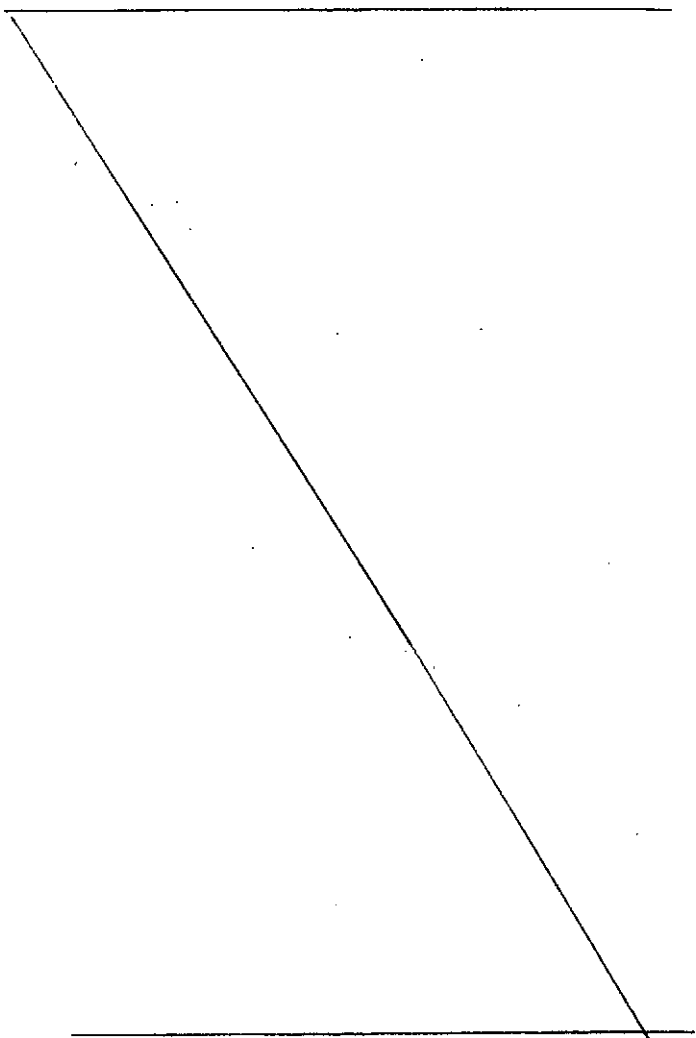
25 Q Were you ever employed by Benavides Implement and

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Hardware?

A I respectfully decline and refuse to answer the questions put to me on the grounds that the answer might tend to incriminate me.





00152

R-3

- 1 Q Could you please state whether or not you have  
2 been indicted for testimony concerning any money  
3 involved in these checks?  
4 A I respectfully decline to answer on the grounds  
5 the answer might tend to incriminate me.  
6 Q Do you know who Raul Ramirez is?  
7 A I respectfully decline to answer the question put  
8 to me on the grounds that the answer might tend  
9 to incriminate me.

10 MR. ODAM: I pass the witness.

11 MR. MITCHELL: May we request that we  
12 include in our request for the order of the  
13 district court the questions put to this  
14 witness by counsel, if they are not included  
15 within the confines of the one I originally  
16 requested?

17 I wanted to be sure those are answered  
18 also.

19 THE MASTER: Yes, you can put anything  
20 in the petition you want. It seems to me  
21 that you asked this witness a question in  
22 substance that inquired if you represented  
23 him on some unrelated matters, but not in  
24 any matters connected with this proceeding  
25 and further that you had advised him he

00153

1 needed to get other counsel for this  
2 proceeding and he answered those questions.

3 Now, I am not sure but what he has  
4 waived his Fifth Amendment privilege with  
5 respect to cross-examination as to what  
6 matters you do represent him on and whether  
7 or not you told him to get another lawyer  
8 and whether or not he has done so, however,  
9 that is really not a matter I think for me  
10 to decide, because if Mr. Odam should  
11 request me to direct him to answer those  
12 questions and I did and he refused, it  
13 would still be a petition to a district  
14 judge to compel him, but -- well, that is  
15 where we are.

16 MR. MITCHELL: Could I have counsel  
17 join me in such a petition where this witness  
18 is concerned?

19 THE MASTER: You can certainly make that  
20 request.

21 MR. ODAM: Out of fairness to the  
22 witness, and I don't mean this facetiously,  
23 I don't know if his attorney is present in  
24 the room, but perhaps he has been advised  
25 to take the Fifth Amendment to everything

00154

1 I asked. Maybe if I asked the questions  
2 again, he would at least, since Mr. Mitchell  
3 asked him those two questions, which he did  
4 testify to, perhaps if I asked him again, he  
5 would volunteer those answers.

6 For one thing, I think it is extra-  
7 ordinary for a witness to take a Fifth  
8 Amendment privilege when his counsel is not  
9 present. It is also extraordinary -- well,  
10 that is all to say I would like to, with  
11 leave of Court and opposing counsel, to  
12 restate the questions.

13 THE MASTER: You may do so.

14 Q (By Mr. Odam) Who represents you here today,  
15 who is your lawyer?

16 A I respectfully decline to answer the question put  
17 to me on the grounds that the answer might tend  
18 to incriminate me.

19 Q Did you get a lawyer?

20 Well, let me complete that question.

21 After Mr. Mitchell had talked to you and you  
22 answered the question a while ago, did you  
23 contact a lawyer to represent you today?

24 A I respectfully decline to answer the question put  
25 to me on the grounds that the answer may tend to

00155

1           incriminate me.

2                   MR. ODAM: No further questions.

3                   MR. MITCHELL: We have nothing further.

4                   THE MASTER: You may step down, but  
5                   wait outside.

6                   Do you want to call another witness at  
7                   this time, Mr. Mitchell, or do you want to  
8                   break at this time?

9                   MR. MITCHELL: Well, Your Honor --

10                  THE MASTER: Well, let's break until  
11                  10:15.

12                  MR. MITCHELL: I thought I could run  
13                  another one in, but I had better not, because  
14                  I don't know what the progress is.

15                  THE MASTER: Well, we'll be in recess  
16                  until 10:15.

17  
18                  (A short recess was taken.)  
19

20                  - - - - -  
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CC156  
BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION  
AUSTIN, TEXAS  
-----

INQUIRY CONCERNING JUDGE NO. 5  
-----

O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

CG157

the same be granted, as evidenced by petition prepared by the Master to be filed forthwith pursuant to the dictates and mandates of Sections 8 and 14, and the related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION  
AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
-----

PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling Tomas Elizondo to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed Tomas Elizondo, a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-18

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, Tomas Elizondo, is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

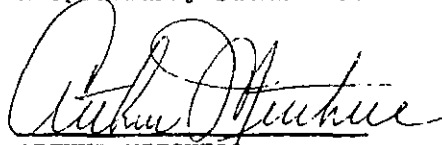


00-00160

appropriate district court as provided for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:



ARTHUR MITCHELL  
Counsel for Judge No. 5

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

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

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

MR. ELIZONDO: Yes, sir.

THE MASTER: You are reminded you are  
still under oath and you may have a seat.

EX-A

TOMAS ELIZONDO,

called as a witness, having been previously sworn,  
testified upon his oath as follows, to-wit:

E X A M I N A T I O N

BY MR. MITCHELL:

Q State your name for the record.

A Tomas Elizondo.

Q Tomas Elizondo?

A Right.

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

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

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

THE MASTER: Yes, Mr. Elizondo, in the

0000163

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

5 A All right.

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

7 A Decline to answer.

8 Q Do you know Mr. Oscar Carrillo?

9 A I decline to answer.

10 Q Do you know Mr. Ramiro Carrillo?

11 A I decline to answer.

12 Q Do you know Roberto Elizondo?

13 A I decline to answer.

14 Q Do you know Rogelio Guajardo?

15 A I decline to answer.

16 Q Eloy Carrillo?

17 A I decline to answer.

18 Q David Carrillo?

19 A I decline to answer.

20 Q Jose Saenz?

21 A I decline to answer.

22 MR. MITCHELL: This question, Your  
23 Honor, is out to the witness in connection  
24 with Roman VI.

25 Q I ask you, Mr. --

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

11 MR. MITCHELL: I think he is correct.

12 THE MASTER: I think perhaps he is.

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

16 THE MASTER: All right. Go ahead.

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

18 A I decline to answer.

19 Q Do you know the Benavides Implement and Hardware?

20 A I decline to answer.

21 Q Do you know the Farm and Ranch Supply?

22 A I decline to answer.

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

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

4 A I decline to answer.

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

11 A I decline --

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

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

25 MR. MITCHELL: The reason for this case,

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

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

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

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

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1 MR. MITCHELL: Has the witness answered?

2 THE MASTER: No, he has not.

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

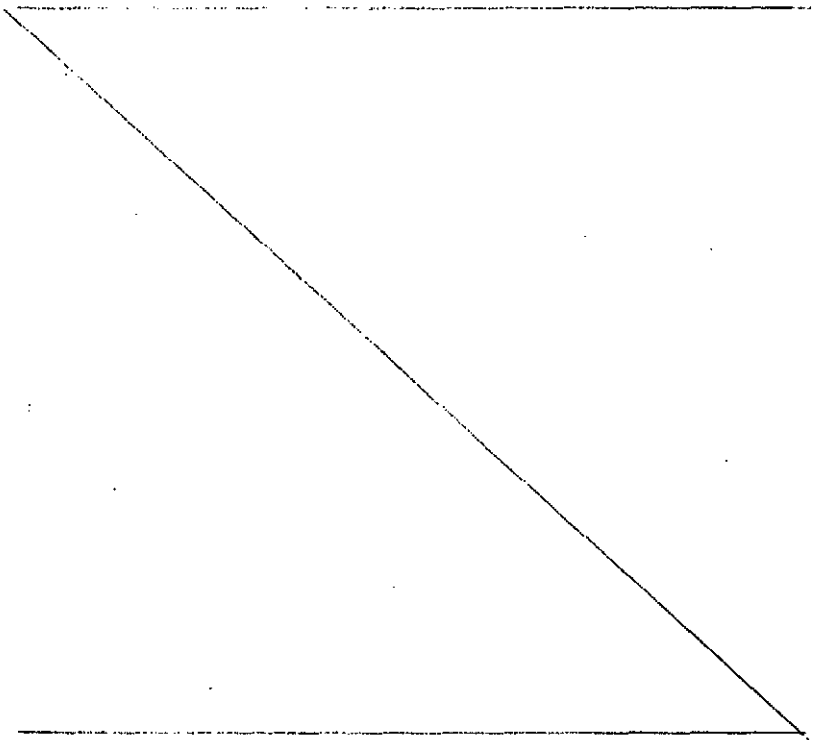
5 A I decline to answer.

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

8 A I decline to answer.

9 MR. MITCHELL: No further questions.

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BY MR. ODAM:

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

Who is your attorney representing you here today?

A I decline to answer.

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

A I decline to answer.

Q Is your attorney present in the courtroom today?

A I decline to answer.

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

A I decline to answer.

Q Did you ever -- strike that.

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

A I decline to answer.

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

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Benavides Implement and Hardware?

A I decline to answer.

Q How much did you receive through the water district?

A I decline to answer.

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

A I decline to answer.

MR. ODAM: I pass the witness.

MR. MITCHELL: No further questions.

THE MASTER: You may step down.

MR. MITCHELL: We will call Roberto Elizondo.

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

ROBERTO ELIZONDO: Yes, sir.

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

- - - - -

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

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INQUIRY CONCERNING JUDGE NO. 5

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O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

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the same be granted, as evidenced by petition prepared by the Master to be filed forthwith pursuant to the dictates and mandates of Sections 8 and 14, and the related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge

00172

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

-----  
INQUIRY CONCERNING JUDGE NO. 5  
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PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling Oscar Carrillo, Sr. to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed Oscar Carrillo, Sr., a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-19

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, Oscar Carrillo, Sr., is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

00174

appropriate district court as provided for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Arthur Mitchell", written over a horizontal line.

ARTHUR MITCHELL  
Counsel for Judge No. 5

00175

R-1

1

MR. MITCHELL: May I call Oscar

2

Carrillo?

3

THE MASTER: Yes, you may.

4

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9

OSCAR CARRILLO,

10

called as a witness, was duly sworn upon his oath

11

to tell the truth, the whole truth and nothing but

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the truth, testified as follows, to-wit:

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14

MR. MITCHELL: May I proceed?

15

THE MASTER: Yes, please.

16

17

E X A M I N A T I O N

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19

BY MR. MITCHELL:

20

21

Q State your name.

22

A Oscar Carrillo, Sr.

23

Q Are you the brother of Ramiro Carrillo?

24

A I respectfully decline to answer the questions

25

put to me by the Commission. I claim this right

EX-A



00176

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

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

10 MR. MITCHELL: Yes.

11 MR. ODAM: Yes.

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

14 A I respectfully decline to answer.

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

16 A I respectfully decline to answer.

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

19 A I respectfully decline to answer.

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

22 A I decline to answer.

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

00177

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

5 A I respectfully decline to answer.

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

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

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

19 You can impeach on a collateral matter.  
20 I will overrule the objection.

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

24 THE MASTER: You may.

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

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

6 A I respectfully decline to answer.

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

9 A I respectfully decline to answer.

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

15 A I respectfully decline to answer.

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

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

24 A I decline to answer.

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

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

5 A I respectfully decline to answer.

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

11 A I respectfully decline to answer.

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

16 A I respectfully decline to answer.

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

20 A I respectfully decline to answer.

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

25 A I decline to answer.

G-1

- 1 Q I will ask you the same question as regards an  
2 agreement between you and your brother, Ramiro,  
3 O. P. and/or your father as regards the use of  
4 services of the Duval County water district or  
5 school district.
- 6 A Respectfully refuse to answer.
- 7 Q Is David Carrillo your son?
- 8 A Respectfully refuse to answer.
- 9 Q Did you have any agreement or understanding with  
10 David Carrillo as regards the sums being paid to  
11 him under the -- by the Benavides Implemnet and  
12 Hardware accounts and specifically by Rudolfo  
13 Couling from 4-16-71 through and including 12-3-74?
- 14 A I respectfully refuse to answer.

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

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

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

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

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

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

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

12 A Yes, sir.

13 MR. MITCHELL: No further questions.  
14  
15  
16  
17

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

19 BY MR. ODAM:  
20

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

22 A I don't think so.

23 Q Have we even met today?

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

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

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

4 A I refuse to answer.

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

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

9 A I refuse to answer.

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

12 A I refuse to answer.

13 Q Is your counsel sitting beside you today?

14 A I refuse to answer.

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

19 A I refuse to answer.

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

21 A I refuse to answer.

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

23 A I refuse to answer.

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

C0183

1 A I refuse to answer.

2 Q Did Judge O. P. Carrillo have an opponent in his

3 last race for District Judge?

4 A I refuse to answer.

5 Q Did he have an opponent in the first race, the

6 first time he ran for district judge?

7 A I refuse to answer.

8 MR. ODAM: Pass the witness.

9 MR. MITCHELL: No further questions,

10 Your Honor.

11 THE MASTER: Thank you, you may step

12 down, Mr. Carrillo.

13 (Discussion off the record.)

14 (Discussion off the record.)

15 THE MASTER: Who is next?

16 (Discussion off the record.)

17 (Discussion off the record.)

18 THE MASTER: Well, now, we can use Mr.

19 Don Lee if that is agreeable with you. I

20 understand Mr. Abarca is in the hospital.

21 MR. FLUSCHE: That is correct, sir.

22 THE MASTER: With you being fluent in

23 Spanish, it seems to me that that is a suffi-

24 cient check.

25 JUDGE CARRILLO: Yes, that is fine, there



00184

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS  
- - - - -

INQUIRY CONCERNING JUDGE NO. 5  
  
- - - - -

O R D E R

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

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the same be granted, as evidenced by petition prepared by the Master to be filed forthwith pursuant to the dictates and mandates of Sections 8 and 14, and the related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge

00186

BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS

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INQUIRY CONCERNING JUDGE NO. 5  
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PETITION UNDER SECTION 8, ARTICLE 5966a,  
V.A.C.S., TO COMPEL WITNESS TO TESTIFY  
IN THE INQUIRY CONCERNING JUDGE NO. 5

COMES NOW ARTHUR MITCHELL, the undersigned attorney, representing Judge No. 5, and respectfully files this his request in behalf of Judge No. 5, for a petition to the appropriate district court for an Order by the appropriate district court compelling Roberto Elizondo to attend and testify before the Master in the above styled proceedings concerning the matters relating to the First Amended Notice of Formal Proceeding. In support of this request, the following facts are alleged:

(1) The undersigned attorney for Judge No. 5 caused to be subpoenaed Roberto Elizondo, a witness whose testimony was vitally necessary to the defense of Judge No. 5, during the inquiry concerning Judge No. 5 before the State Judicial Qualifications Commission, Judge James R. Meyers, Master.

(2) Questions (attached hereto and marked Exhibit A) were put to said witness during the course of the proceedings all within the confines of and within the intent of Sections 8 and 14 of Article

R/P-20

5966a, V.A.C.S., and as contemplated in Article 5, Section 1-a, Texas Constitution. The witness refused in all things to respond to said questions. Judge No. 5 will be deprived of valuable defensive material unless the witness is given immunity and permitted to answer freely all relevant questions put to him by counsel for Examiner and Judge No. 5.

(3) In this connection, the undersigned states that the witness, Roberto Elizondo, is a person "who refused to testify" as contemplated by Section 8 and Section 14 of Article 5966a, V.A.C.S. and that he hereby requests the Master and/or the Commission to petition the appropriate district court to compel said witness to attend and to answer questions put to him relating to the matters relevant to the questions appearing in the attached exhibit and those relating logically thereto.

(4) Undersigned attorney in behalf of his client, Judge No. 5, hereby requests the Examiner to join in this request that the Master and/or Commission petition the appropriate district court for said Order.

(5) The undersigned requests further that he be given appropriate notice of the time and place for the hearing before the district court, so that he may be in attendance in order to be assured that the immunity granted be broad enough to include each and every inquiry which is a legitimate subject of this proceeding.

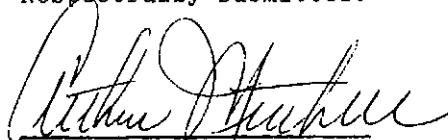
WHEREFORE, premises considered, the undersigned prays that the Master cause to be prepared and filed the necessary petition, in the proper and

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appropriate district court as provided for in Section 8 and Section 14 of the appropriate statute in terms and conditions as set out and blueprinted in said statute, and to all other reliefs to which he is entitled.

CORPUS CHRISTI, TEXAS, December 30, 1975.

Respectfully submitted:

  
ARTHUR MITCHELL  
Counsel for Judge No. 5

ROBERTO ELIZONDO, 00189

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

4  
5 E X A M I N A T I O N

6  
7 BY MR. MITCHELL:

8  
9 Q Your name, please, sir.

10 A Roberto Elizondo.

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

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

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

21 MR. MITCHELL: Thank you, Judge Meyers.

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

23 A I respectfully decline to answer.

24 Q Do you know Oscar Carrillo?

25 A I respectfully decline to answer.

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

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00191  
services of individuals from the water district  
or school district or Duval County?

A I decline to answer.

MR. MITCHELL: Pass the witness.

- - - - -

E X A M I N A T I O N

BY MR. ODAM:

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

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

A I decline to answer.

Q Was Arthur Mitchell your attorney?

A I decline to answer.



1 Q At the time you are here today, who is your  
 2 attorney?  
 3 A I decline to answer.  
 4 Q Have you retained counsel to advise you today?  
 5 A I respectfully decline to answer.  
 6 Q Has an attorney given you the sheet of paper  
 7 that has the Fifth Amendment privilege written  
 8 on it?  
 9 A I respectfully decline to answer.  
 10 Q Are you acquainted with Judge O. P. Carrillo?  
 11 A I respectfully decline to answer.  
 12 Q Are you a court reporter for Judge O. P. Carrillo?  
 13 A I respectfully decline to answer.  
 14 Q How long have you been a court reporter?  
 15 A I decline to answer.

16 MR. ODAM: Pass the witness.  
 17 MR. MITCHELL: No further questions.  
 18 THE MASTER: You may step down.  
 19 MR. MITCHELL: Your Honor, we have no  
 20 further witnesses or testimony. I do have  
 21 a motion, or petition would be the proper  
 22 denomination of the document, that I would  
 23 like to call to the attention of the Master  
 24 and with the Master's permission, I would  
 25 like to read off the petition and its

C0193

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

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

7 MR. MITCHELL: All right, sir.

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

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

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

18 MR. MITCHELL: Yes, that is true.

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

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

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

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BEFORE THE STATE JUDICIAL QUALIFICATIONS COMMISSION

AUSTIN, TEXAS  
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INQUIRY CONCERNING JUDGE NO. 5  
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**ORDER**

CAME ON TO BE HEARD in the above styled matter, the application of the attorney for Judge No. 5, addressed to the Master and/or Commission, for a Section 8 petition to compel the witness, \_\_\_\_\_, to appear at a specific time and place to be questioned by the attorneys representing Judge No. 5, and the Examiner, as regards matters that have arisen and are now relevant in this inquiry.

The Master having read the petition, and having been in attendance at the proceeding leading up to the filing of the petition, and having acquainted himself with the applicable statute and the sections applicable thereto, and the appropriate section of the Constitution; and it appearing to the Court that said motion is proper in all things, and having been timely filed and presented to the Master and brought to his attention;

IT IS, THEREFORE, ORDERED AND DECREED that

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the same be granted, as evidenced by petition prepared by the Master to be filed forthwith pursuant to the dictates and mandates of Sections 8 and 14, and the related sections of Article 5966a, V.A.C.S.

CORPUS CHRISTI, TEXAS, December 30, 1975.

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JAMES R. MEYERS  
Judge