I M P E A C H M E N T

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Report

of the

SELECT COMMITTEE ON IMPEACHMENT

to the

SPEAKER

and the

HOUSE OF REPRESENTATIVES

*

July 23, 1975

HOUSE SELECT COMMITTEE ON IMPEACHMENT

(H.S.R. 167---1975)

(In order of seniority)

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July 23, 1975

Honorable Bill Clayton
Speaker of the House
House of Representatives
Austin, Texas 78767

Sir:

We, the members of the Select Committee on Impeachment, under authority of House Simple Resolutions 161 and 221, have conducted a comprehensive investigation of the activities of the Honorable O. P. Carrillo, Judge of the 229th Judicial District, and respectively submit the attached report.

House Simple Resolution 161 by Representative Terry Canales, requesting the impeachment of Judge Carrillo, was reported favorably by the Committee on July 16, 1975, by a unanimous vote and the Committee report on this resolution was filed in the office of the Chief Clerk at 11:00 o'clock a.m. on July 17, 1975.

As the attached report demonstrates, there was some difference of opinion among the members of the Committee as to specific articles of impeachment; however, once the individual articles were adopted, the Committee was unanimous in adopting the Committee substitute and in reporting HSR 161 with a recommendation to the House that it do pass.

While no member of the Committee sought this assignment, each member has dedicated his efforts to a full and fair investigation and has acted with courage in meeting the responsibilities imposed upon him. The Committee believes that the attached report will amply support all action taken by the Committee with respect to HSR 161.

Respectfully submitted,

L. DeWitt Hale

L. DeWitt Hale, Chairman

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PART I

NATURE OF IMPEACHMENT

Although the practice has grown into disuse in recent years, impeachment as a parliamentary device for the removal of public officials is almost as old as the Common Law of England. Through the years there has developed a great deal of public misunderstanding concerning the nature of impeachment, what the term actually means, the procedures whereby impeachment is preferred and concluded, and the legal effect of such action. To many people, impeachment is synonymous with removal from office, whereas in fact impeachment is simply the charge or the accusation which in and of itself is not necessarily indicative of guilt and does not necessarily result in removal from office.

A. DEFINITION

Webster's International Dictionary Unabridged defines the word "impeach" as follows:

> To bring an accusation against, as of misdoing or impropriety; specifically, to charge with a crime or misdemeanor; to accuse; especially, to charge a public officer, before a competent tribunal, with misbehavior in office; to cite before a tribunal for official misconduct; to arraign; as, to impeach a judge.

In terms of governmental activities, impeachment is basically a process whereby a public official is charged by

an authorized legislative body with conduct unworthy of his office. Such an impeachment is merely an accusation and has frequently been compared by many authorities with the action of a grand jury in returning an indictment. Impeachment by a legislative body, similar to indictment by a grand jury, is not necessarily indicative of guilt, but is the instrumentality whereby charges are preferred and upon which a later finding of guilt or innocence is made by the proper tribunal.

B. PRACTICE IN ENGLAND

The impeachment process was originally developed in England as a device whereby Parliament could exercise some measure of control over the power of the King. It was used as a direct method of bringing to account in Parliament the ministers and other public officials of the King, men sufficiently powerful that they might otherwise have been beyond the reach of the King's Courts or the people of England. The process of impeachment played a continuing role in the struggles between king and Parliament over a period of several centuries that ultimately resulted in the development of the unwritten English constitution. Through the use of the impeachment process, Parliament was able to create a more responsive government and to prevent to some extent the development of imbalance

between the broad areas of governmental power.

The first record of an impeachment in England appeared in 1386 when the King's Chancellor was impeached in Parliament on a variety of charges including breaking a promise he had made to the full Parliament and in failing to expend certain sums directed to be spent by the Parliament. During the next 400 years there were literally hundreds of impeachments voted by the House of Commons on charges ranging from high treason to failure to exercise the full responsibilities of office. Generally, these impeachments involved such things as misapplication of funds, abuse of official power, neglect of duty, encroachment on the prerogatives of Parliament, corruption, and betrayal of trust.

In the English practice, the House of Commons was the impeaching agency and assumed the role of accuser and prosecutor. Trial was held in the House of Lords sitting as a high court of impeachment, and its decisions were final and nonappealable. In this procedure, it is said that the House of Commons was acting as the grand inquest of the whole kingdom in investigating charges against public officials and in agreeing upon and drafting the articles of impeachment.

The classic case in Parliament was the impeachment of

Warren Hastings in 1786. Hastings was the first governor general of India and the articles indicate that he was charged with gross maladministration, corruption in office, and cruelty towards the people of India. Trial began in the House of Lords in 1788 and was not concluded until 1795, at which time Hastings was acquitted of all charges and his reputation was cleared. It is worthy of note that history records that he was financially ruined by the expense of such a long trial.

Impeachment as a parliamentary procedure fell into disuse following the Hastings impeachment and only two have been recorded since that time, one in 1806 and the second in 1848. Since the 1848 effort, impeachment has largely become only of historic interest in Great Britain.

Notwithstanding, the American Constitutional Convention of 1787 adopted the British practice of impeachment and incorporated provisions therefor in the new constitution of the United States.

C. PRACTICE IN THE UNITED STATES

Article I, Section 2, of the Constitution of the United States provides that the House of Representatives shall have the sole power of impeachment. Article I, Section 3, provides that the Senate shall have the sole power to try all impeachments

with two-thirds of the members present concurring in order to convict. Section 3 further provides that judgment in cases of impeachment shall extend only to removal from office and disqualification to hold and enjoy any other public office, provided that the party convicted shall be liable and subject to indictment and trial according to law for any criminal offenses.

Impeachment in the United States was described by Congressional Quarterly in its "Guide to the U.S. Congress" as follows:

> Impeachment is perhaps the most awesome though the least used power of Congress. In essence, it is a political action, couched in legal terminology, directed against a ranking official of the federal government. The House of Representatives is the prosecutor. The Senate chamber is the courtroom; and the Senate is the judge and jury. The final penalty is removal from office and disqualification from further office. There is no appeal.

Since 1789 some 50 impeachment proceedings have been initiated in the House of Representatives. Only thirteen impeachments have been voted by the House, and only eleven of these went to trial before the Senate. Of the thirteen impeachments voted by the House, one was against the President of the United States (1868), one was against the Secretary of War (1876), one was against a United States Senator (1797), and ten were

against federal judges. The earliest of the impeachments against federal judges occurred in 1803 and the latest in 1936. Only four of these impeachments resulted in a conviction by the Senate, and all four of the convictions involved federal judges (1803, 1862, 1912, and 1936).

Very little information is available to explain the reasons for the failure of the House of Representatives to impeach in the thirty-seven other proceedings for impeachment which were initiated since 1789. Obviously, there were probably many reasons for declining to impeach, such as a failure of proof, legal insufficiency, political judgment, press of legislative business, or other reasons peculiar to the particular congress.

Each of the thirteen impeachments voted by the House of Representatives involved charges of misconduct incompatible with the official position of the officeholder. A study of each of these thirteen impeachments indicates that the misconduct falls into three broad categories: (1) exceeding the constitutional bounds of the powers of the office; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain. In some instances the misconduct involved the violation of a criminal statute, whereas

in other instances the misconduct was not necessarily of a criminal nature. In all instances, impeachment was considered a constitutional remedy when serious offenses against the system of government were involved. In any event, impeachment has not been limited to indictable offenses under the criminal law.

From a study of the thirteen impeachments voted since 1789, it is obvious that a requirement of violation of criminal law would be incompatible with the intent of the framers of the constitution to provide a broad mechanism for maintaining the integrity of constitutional government. Impeachment is a constitutional safety valve and it must be flexible enough to cope with emergencies which might not necessarily be foreseen at the time of enactment of criminal statutes. As proof of this intent for flexibility, congress has never undertaken to define impeachable offenses in the criminal code, but has left it to each succeeding congress to determine for itself what constitutes an impeachable offense.

In the United States impeachment is addressed only to serious offenses against the system of government. In many of the American impeachments the issue of violation of criminal statutes was not even raised. Emphasis has been on the significant

effects of the conduct: undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of governmental process, and adverse impact on the system of government. Such effects in many instances have no relation to the criminal law, and in this sense impeachment is designed to cope with both the inadequacy of criminal standards and the inability of the court system to deal with the conduct of great public figures. Thus in the United States, it was never intended that impeachment grounds be restricted to that conduct which was criminal in nature.

PART II

IMPEACHMENT IN TEXAS

From its earliest days as a governmental unit, Texas has provided for impeachment in a manner modeled on the federal practice and the historical precedents from Great Britain. Authority and jurisdiction with respect to impeachment is contained in the Texas Constitution, with statutory provisions outlining in more detail the procedures to be followed. Both constitutional and statutory provisions have been subject to interpretation by the courts on several occasions. This limited body of law provides the precedents and guidelines for current efforts at impeachment.

A. CONSTITUTION

Impeachment has been authorized in the Texas Constitution since the days of the Republic. Article I, Section 6, Constitution of the Republic of Texas, provides that the House of Representatives shall have the sole power of impeachment. Article I, Sections 11 and 12, provides that the Senate shall sit as a court of impeachment and shall convict only with the concurrence of two-thirds of the members present. Judgment in cases of impeachment extends only to removal from office and disqualification to hold future office.

These constitutional provisions have been carried forward in ever succeeding Texas Constitutions, with only minor change in text and with some increase in detail as to jurisdiction and procedure. Article IX of the Constitution of 1845, Article IX of the Constitution of 1861, Article IX of the Constitution of 1866, and Article VIII of the Constitution of 1869, all contain in substance the basic provisions for impeachment which were carried forward into the Constitution of 1876, with only minor changes.

Article XV of the Constitution of 1876 provides the basis for all impeachments during the past 99 years, such provisions being contained in the first 5 sections of said article, said sections reading as follows:

> Section 1. The power of impeachment shall be vested in the House of Representatives.
>
> Section 2. Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.
>
> Section 3. When the Senate is sitting as a court of impeachment, the senators shall be upon oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the senators present.
>
> Section 4. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor,

> trust or profit under this state. A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law.
>
> Section 5. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

It is worthy of note that nowhere in the Constitution of 1876 is there any specification as to the grounds for impeachment. Texas is one of nine states in which the constitution is silent on this matter, and the legal conclusion flowing therefrom is that grounds for impeachment in these states can be any misconduct of an officer, public or private, of such a character as to indicate unfitness for office.

In addition to impeachment, the Constitution of 1876 provides two other methods whereby a district judge may be removed from office. Article XV, Section 6, authorizes removal of a district judge by the Supreme Court of Texas on the petition in writing of not less than 10 lawyers practicing in such court, and Article XV, Section 8, authorizes the removal of certain judges, including district judges, by the governor on the address of two-thirds of each house of the legislature. Thus the constitutional provisions in Texas create three separate

procedures whereby a district judge may be removed from office, and it would appear from the limited law available on the subject that none of these methods is exclusive.

While the committee did not attempt an exhaustive study of the historical precedents, it did find six examples of the use of the procedure for removal of judges by the governor on address of the legislature. Five of these examples occurred in 1874, prior to the adoption of the 1876 Constitution, and one occurred in 1887, subsequent to the adoption of the 1876 Constitution. If this procedure has been used subsequent to 1887, the committee failed to find a record thereof in its limited search of the historical records.

One example was found of a removal of a district judge by the Supreme Court of Texas on petition of ten practicing attorneys. This removal occurred on March 17, 1954, when the Honorable C. Woodrow Laughlin, Judge of the 79th Judicial District, was removed by order of the supreme court. In its opinion in this case, the supreme court called attention to the three constitutional procedures for removal of a district judge and indicated that in each of the procedures a trial was necessary prior to a conclusive judgment of removal. The supreme court also held that while it had the power under the

constitution to remove a district judge, it lacked the power to disqualify him from holding office in the future. In re Laughlin, Supreme Court, 1954, 265 S.W. 2d 805.

B. STATUTES

Implementing the constitutional provisions, discussed above, the legislature has provided statutory provisions with respect to each of the three methods of removal of a district judge.

Articles 5961-63, Vernon's Annotated Civil Statutes, provide detailed provisions for impeachment. Article 5964 implements the constitutional provision for removal of judges by the governor on the address of two-thirds of each house of the legislature. Articles 5965-66 outline the procedure for removal of district judges by the supreme court on petition of ten lawyers practicing in such court.

Since the Laughlin case was decided by the supreme court in 1954, the constitution has been amended by the addition thereto of Section 1-a of Article V, creating the Texas Judicial Qualifications Commission, and prescribing a procedure for the filing of complaints before said commission, hearings thereon, and ultimate discipline or removal by the supreme court based on a recommendation of the commission. It would

appear for all practical purposes that filing of a complaint before the judicial qualifications commission would be a procedure now superseding the method used in the Laughlin case when ten attorneys filed a petition directly with the supreme court.

One case has reached the appellate courts of Texas involving an attempted removal of a district judge by action of the Judicial Qualifications Commission. The supreme court reviewed in detail the evidence presented before the master, and decided that the judge should be censured but not removed. Two judges filed a dissenting opinion in which they stated that the conduct of the judge did not warrant censure. One judge filed a dissenting opinion in which he held that the conduct was sufficient to justify removal from office. In re Brown, Supreme Court, 1974, 512 S.W. 2d 317.

C. IMPEACHMENT CASES

Impeachment as a procedure for removal has rarely been used in Texas. The committee could find only four instances wherein a district judge had been impeached, and three of these occurred prior to the adoption of the 1876 Constitution (1871, 1873, and 1874). Although these impeachments occurred under the 1869 Constitution, they create no real legal distinction from the current procedure, since the constitutional provisions

governing impeachment were substantially the same in the 1869 Constitution as in the 1876 Constitution.

The fourth instance of the use of the impeachment procedure in removal of a district judge occurred in 1931 when the House of Representatives voted to impeach the Honorable J. B. Price, Judge of the 21st Judicial District of Texas. Multiple articles of impeachment were voted by the House of Representatives, and an extensive trial was held in the Senate sitting as a court of impeachment. The defendant filed a general demurrer to each of the articles of impeachment. After hearing substantial evidence, the Senate sustained demurrers to all except six articles. Further testimony was taken on these remaining six articles. At the conclusion of the testimony, Judge Price was acquitted by the Senate on each of the six remaining articles, by a vote of 11 yeas, 19 nays, on four of the articles; by a vote of 0 yeas, 30 nays on one article; and by a vote of 7 yeas, 23 nays on one of the articles. Whereupon, the Senate concluded its proceedings by entering a final judgment acquitting and discharging the defendant and finding him not guilty on the articles of impeachment.

The classic impeachment case in Texas occurred in 1917 with the impeachment and trial of the Governor of Texas, James

E. Ferguson. Articles of impeachment against the Governor were voted by the House of Representatives on August 24, 1917, by a vote of 74 yeas, 45 nays. The instrument of impeachment included 21 separate articles, 19 of which were sustained by conviction after a lengthy trial in the Senate sitting as a court of impeachment. Senate votes on the individual articles varied from a high of 27 yeas, 4 nays on one article to a low of 21 yeas, 10 nays on another. After each of 19 articles were sustained, the entire committee report containing the 19 articles of impeachment was adopted by the Senate by a vote of 25 yeas, 3 nays.

It is worthy of note that prior to final conviction by the Senate, Governor Ferguson tendered his resignation. His attorneys then argued that the entire trial became moot as a result of such resignation, but this argument was rejected by the Senate, the trial was continued, and conviction was obtained upon 19 of the articles of impeachment. The final judgment entered by the Senate not only provided for the removal of the Governor from office, which was a futile gesture in view of his resignation, but also provided that he should never again be eligible to hold a public office in the State of Texas.

PART III

PROCEDURE FOR IMPEACHMENT

While precise procedures for impeachment action have never been codified in Texas, a review of the pertinent constitutional and statutory enactments, plus a study of House and Senate action in the Ferguson and Price impeachments, provide a sound foundation upon which to predicate the various steps in the impeachment process. The Select Committee on Impeachment has drawn liberally from all of these sources in developing the procedures which it believes to be the best possible that could have been followed in the present circumstances.

A. RESOLUTION

Impeachment action is initiated in the House of Representatives by the filing of a simple resolution calling for the impeachment of a public official. This was done in the instant case when Rep. Terry Canales filed H.S.R. No. 161 with the Chief Clerk, calling for the impeachment of District Judge O. P. Carrillo. Such a resolution initiates the impeachment procedures, and forms the vehicle whereby the House can prefer articles of impeachment, if it elects and desires to do so.

B. COMMITTEE HEARINGS

Once an impeachment resolution has been filed, it is

referred by the Speaker of the House to a committee for the gathering of evidence and the conduct of committee hearings. In this sense an impeachment resolution is treated no differently in a parliamentary manner from any other resolution setting state policy. The resolution could have been referred to a standing committee, but the House decided that a select committee would be more appropriate. Accordingly, H.S.R. No. 167 was introduced and adopted by the House, creating a select committee of 11 members with authority to conduct hearings, issue subpoenas, and otherwise obtain such information and data as the committee felt necessary to enable it to make recommendations to the House with respect to the request for impeachment.

The purpose of committee hearings is to develop testimony and documents to establish the necessary factual background upon which individual members of the House can make a decision with respect to proposed articles of impeachment. Based upon the evidence, it is the responsibility of the committee to frame articles of impeachment which correctly allege the complaints or charges being made against the accused public official. Theoretically, every complaint or charge made against the public official should be drafted in legal terminology into an article of impeachment. Each such article would then be

adopted or rejected by the committee, based upon the evidence developed by the committee hearings.

If the committee finds that one or more articles of impeachment is supported by the evidence, the committee would vote such articles of impeachment to the House for its consideration and action.

Prior to its adjournment on June 2, 1975, the House of Representatives adopted H.S.R. No. 221 as recommended by the Select Committee on Impeachment. H.S.R. No. 221 set up procedures for reconvening the House of Representatives to consider articles of impeachment, if articles are voted by the Select Committee on Impeachment. The filing with the Chief Clerk of a committee report on H.S.R. No. 161 on Thursday, July 17, triggered the mechanics outlined in H.S.R. No. 221, resulting in the Speaker recalling the House into session at 10:00 o'clock a.m. on Monday, August 4, 1975, for consideration of the articles of impeachment recommended by the Select Committee on Impeachment.

C. ACTION BY HOUSE

When the House of Representatives convenes on August 4, 1975, its sole and only function will be to consider the articles of impeachment recommended by the Select Committee on Impeachment in the committee substitute for H.S.R. No. 161. Available

for members of the House at that time will be individual copies of a comprehensive committee report, outlining the work of the committee and indexing the evidence to a comprehensive statement of facts and a comprehensive compilation of exhibits.

During the impeachment session, the members of the House will have available for their study multiple complete sets of the 15 volume Statement of Facts, containing verbatim all evidence adduced before the committee. Each member of the House can make his decision based upon this comprehensive record compiled by the committee. A possible alternative would be for the House to decide to hear additional testimony from live witnesses, in which event the House could resolve itself into a committee of the whole for the purpose of taking additional testimony. In any event, the ultimate question to be decided by each member is whether or not the evidence justifies the House in adopting one or more of the articles of impeachment recommended by the committee.

The function of the House sitting in matters of impeachment was clearly defined by the Supreme Court of Texas in Ferguson v. Maddox, Supreme Court, 1924, 263 S.W. 888, when the Court said in part as follows:

> But the sole function of the House and Senate is not to compose "the Legislature,"

> and to act together in the making of laws. Each, in the plainest language, is given separate plenary power and jurisdiction in relation to matters of impeachment: The House the power to "impeach," that is, to prefer charges; the Senate the power to "try" those charges. These powers are essentially judicial in their nature. Their proper exercise does not, in the remotest degree, involve any legislative function.
>
> In the matter of impeachment the House acts somewhat in the capacity of a grand jury. It investigates, hears witnesses, and determines whether or not there is sufficient ground to justify the presentment of charges, and, if so, it adopts appropriate articles and prefers them before the Senate. In doing these things, the House is not "legislating," nor is it conducting an investigation in order that it may be in better position to legislate. It is investigating facts in order that it may determine whether one of the people's servants has done an official wrong worthy of impeachment under the principles and practices obtaining in such cases, and, if so, to present the matter for trial before the constituted tribunal. All of this is judicial in character.

When it convenes on August 4, 1975, the House will be acting in a judicial, rather than a legislative capacity. Its inquiry will be limited to whether or not there is justification for preferring articles of impeachment against Judge O. P. Carrillo. In that capacity, the House is serving in a capacity roughly comparable to that of a grand jury. Its function is not to determine guilt or innocence; it will decide only if there is sufficient evidence to justify further legal proceedings.

On that basis, the ultimate action by the House will be a final vote on the several articles of impeachment as recommended by the Select Committee.

D. TRIAL IN SENATE

If articles of impeachment are voted by a majority of the House, such action will trigger procedure for the recall of the State Senate into session to sit as a court of impeachment. The provisions for such recall are contained in Article 5963, Vernon's Annotated Civil Statutes, wherein a proclamation by the Governor is to be issued within 10 days after articles of impeachment are preferred by the House. In the event the governor fails or refuses to act, provisions are contained for other persons to convene the Senate.

Once the Senate convenes, its sole function will be to sit as a court of impeachment for the trial of Judge O. P. Carrillo on those articles which have been preferred by the House. The role of the Senate in impeachment matters was also outlined in definitive form by the Supreme Court in Ferguson v. Maddox, wherein the court stated as follows:

> The same is true of the Senate, except its powers are so clearly judicial as to make argument on the point almost superfluous. "Impeachment," says the Constitution, shall be "tried" by the Senate. During the trial the Senate sits "as a court of impeachment,"

> and at its conclusion renders a "judgment." Obviously, a body authorized to sit as a "court" to "try" charges preferred before it, that is, to hear the evidence and declare the law and to render "judgment," possesses judicial power, and in its exercise acts as a court. The Senate sitting in an impeachment trial is just as truly a court as is this court. Its jurisdiction is very limited, but such as it has is of the highest. It is original, exclusive, and final. Within the scope of its constitutional authority, no one may gainsay its judgment.

In matters of impeachment the Senate has broad and final authority and from its decision there is no appeal. This was made abundantly clear by the Supreme Court in Ferguson v. Maddox, when the court said:

> The Senate must decide both the law and the facts. It must determine whether or not the articles presented by the House set forth impeachable offenses, and it must determine whether or not these charges are sustained by the evidence produced. Its action with reference to these matters is undoubtedly within its constitutional power and jurisdiction. This is as it should be. The power reposed in the Senate in such cases is great, but it must be lodged somewhere, and experience shows there is no better place. The courts, in proper cases, may always inquire whether any department of the government has acted outside of and beyond its constitutional authority. The acts of the Senate, sitting as a court of impeachment, are not exempt from this judicial power; but so long as the Senate acts within its constitutional jurisdiction, its decisions are final. As to impeachment, it is a court of original, exclusive, and final jurisdiction.

Since the Senate sits as a court of impeachment, all of

its actions are judicial in nature. Evidence will be heard by the Senate in the same manner as evidence is heard before a trial court, and on the basis of the evidence admitted before the Senate, each Senator will decide how he should vote on each of the articles of impeachment being considered by the Senate. Ultimately, each of said articles will come to a final vote, with two-thirds of the Senators present and voting being required to convict on any article of impeachment.

E. JUDGMENT

After the Senate has voted on each of the articles of impeachment, the final step in the impeachment process will be the preparation and adoption by the Senate of a final judgment in the case. This judgment is comparable to one entered by a trial court in a civil lawsuit. It will dispose of all issues pending before the Senate. If the Senate has rejected all of the articles of impeachment (that is, if each of said articles fails to receive at least two-thirds of those present and voting), the judgment will be one of acquittal of the accused and a finding of not guilty of the charges preferred against him. Should any of the articles of impeachment obtain the necessary two-thirds vote for conviction, the judgment of the Senate will recite such conviction and will order the accused

removed from office. Simultaneously, the Senate must decide whether or not to include in its judgment a prohibition against the accused ever again holding public office in the State of Texas. This is a discretionary power vested in the Senate, to be exercised concurrently with its determination of guilt or innocence on the articles of impeachment. The final judgment of the Senate should dispose of all of these matters.

PART IV

SELECT COMMITTEE ON IMPEACHMENT

In the instant case, the filing in the House of Representatives of House Simple Resolution No. 161 by Rep. Terry Canales placed in motion various procedures looking ultimately to a final vote of guilt or innocence on the charges made against Judge O. P. Carrillo.

A. ORGANIZATION

To enable fair and adequate consideration of H.S.R. No. 161, the House of Representatives passed H.S.R. No. 167, creating the Select Committee on Impeachment to be composed of 11 members appointed by the Speaker of the House. These appointments were promptly made and the committee held its organizational meeting on May 19, 1975, at which time it was decided to proceed immediately with public hearings commencing on May 20, 1975.

As the committee began its difficult task on May 20, 1975, the Chair outlined the challenge before the committee in these words:

> The proposition before us imposes upon this committee a heavy responsibility and a solemn duty. For more than a century and a half, Texas has been blessed with many great men serving in the judicial branch of our government. These men have maintained high standards of courage, honesty, and integrity. We are all dedicated to the protection of the

> honor of the judicial branch of government. To do this, we must leave no stone unturned in our efforts to uncover any misconduct that would tarnish the reputation of the judiciary and simultaneously we must strive to protect the innocent from any charges which are not well founded in fact.
>
> I think each member of this committee is fully cognizant of the gravity of the charges which we consider. I am confident that each of you will approach the charges before us with a completely open mind, dedicated to the development of facts and firm in the conviction that any decision made by this committee will be amply supported by the evidence which we now begin to hear.

The Chair then quoted extensively from the Supreme Court in Ferguson v. Maddox, and outlined the responsibilities of the Select Committee as follows:

> The Supreme Court has defined the function of this committee as judicial in character rather than legislative. Our responsibility is neither that of prosecutor or jury. Our sole function is to conduct an investigation to determine whether or not there are sufficient grounds to justify the presentment of charges, and if so, to adopt appropriate articles of impeachment and recommend such articles for the consideration of the House of Representatives.

Recognizing that the work of the committee would not be entirely pleasant, the Chair urged each member of the committee to acknowledge and accept the heavy responsibility placed upon, and the historic challenge to, the committee, and to

conduct himself in such a fair and impartial manner that history would look favorably upon the results of the committee's work.

B. HEARINGS

Following the organizational meeting of the committee on May 19, 1975, public hearings were commenced on May 20, 1975. Since the legislature was still in session in the closing days of the regular session, and was meeting both in the morning and in the afternoon, public hearings were scheduled by the committee for the evening hours with many of these sessions continuing until late in the night. The work load became staggering on members of the committee as they attempted to perform committee functions as well as to fulfill their responsibilities as members of the House. It soon became apparent that the work of the committee could not be completed prior to the end of the regular session and at the meeting on May 27, 1975, the Committee decided to recess until June 3, 1975, the day following sine die adjournment of the legislature.

To enable the work of the committee to continue unimpaired, the committee presented to the House on the final day of the regular session, June 2, 1975, H.S.R. No. 221, providing for an extension of the work of the committee into the interim and for the reconvening of the House of Representatives in

the event the committee should vote articles of impeachment. H.S.R. No. 221 was adopted by the House prior to sine die adjournment, and the work of the committee continued thereafter under authority of such resolution.

The committee resumed public hearings on the afternoon of June 3, 1975 and continued intermittently with such work until the final public hearing of the committee on July 16, 1975 at which time all witnesses who desired to offer testimony had been heard by the committee.

During its extensive deliberations, the Select Committee on Impeachment held 21 meetings and spent a total in excess of 90 hours in committee session. Testimony was heard from 32 witnesses involving approximately 70 hours of public hearings. Members of the committee have studied a statement of facts which consists of 15 volumes of testimony, plus approximately 170 documents which were offered into evidence during committee hearings. While this record is by no means exhaustive, it indicates a thorough study by the committee of more than sufficient testimony and evidence to justify the final action of the committee on proposed articles of impeachment.

All sessions of the committee wherein public testimony was taken were open to the public and were conducted as fairly

as possible under accepted rules of parliamentary procedure. The committee attempted to move with all due deliberation in considering the evidence, yet attempted to expedite the work of the committee in every way possible, at all times striving for the truth without doing violence to the rights of due process. The record amply supports the objective of the committee to conduct a full, complete and fair investigation of the charges before the committee.

C. ROLE OF THE ACCUSED

From the inception of the public hearings, the committee at all times recognized the delicate position of Judge O. P. Carrillo and attempted to accord him every courtesy and every right at each stage of the proceedings of the committee.

The first official action of the Chairman of the committee following its organization was to dispatch a telegram to Judge O. P. Carrillo which telegram reads as follows:

> The House Select Committee on Impeachment will meet in the State Capitol at 8 p.m. on Tuesday, May 20, to consider HSR 161 by Canales, seeking your impeachment from the office of District Judge. Daily meetings thereafter are contemplated until the inquiry is completed. You are invited to be present in person or by attorney; however, cross examination of witnesses will not be permitted, since this is only an investigation and not a

> prosecution. Any evidence you care to present bearing on the inquiry will be welcome. The principal function of this committee is to develop facts and your assistance in this endeavor will be appreciated.

Pursuant to the invitation contained in said telegram, Judge Carrillo appeared in person at the initial public hearing on May 20, accompanied by his counsel, Mr. Arthur Mitchell, an attorney of Austin, Texas. Judge Carrillo and/or his counsel or representative were present thereafter at every public meeting of the committee where testimony was received.

From the start of public hearings, the committee took the position that its role was similar to that of a grand jury, yet in deference to Judge Carrillo, the committee decided to waive many of the fundamental requirements of a grand jury. A grand jury meets in secret; the committee decided to hear all testimony in public session in order that Judge Carrillo and his attorney would be fully informed of the accusations against him. Like a grand jury, the committee decided that its function was not to determine guilt or innocence, but merely to decide if there was sufficient evidence to justify further legal proceedings. For this reason, unlimited cross examination of witnesses was not permitted, since the function of cross examination is to impeach, and this is a basic function

of the trial court, not the grand jury. Unlimited cross examination would unnecessarily lengthen the record and the time required for the committee's deliberations. It should be noted that no cross examination is permitted in grand jury proceedings, since the accused is not present during testimony at grand jury deliberations. The Chair permitted cross examination where appropriate and did permit the attorney for Judge Carrillo to submit written questions to the Chair, and where deemed pertinent, the Chair saw that such questions were propounded to the indicated witnesses. Several witnesses were recalled by the Committee for this purpose.

In addition, the committee made available to Judge Carrillo, free of charge, a complete set of the 15 volume statement of facts containing all the evidence adduced before the committee, together with photocopies of all of the instruments which were introduced in evidence before the committee. Every courtesy was accorded Judge Carrillo and his attorney, and on one occasion, a public hearing was postponed some four days to accommodate Mr. Arthur Mitchell.

In view of the fact that Judge Carrillo stands charged by indictment in the U. S. District Court for the Southern District of Texas with criminal charges pertaining to income

tax matters, the committee decided early that it would not attempt to compel him to testify before the committee. Notwithstanding, the Chairman on numerous occasions advised Judge Carrillo that the committee would welcome his testimony if he cared to testify. This invitation was never accepted. At the final public hearing on July 16, 1975, in the absence of Judge Carrillo, the Chair again specifically addressed this invitation to Mr. Arthur Mitchell and indicated to Mr. Mitchell that this would be the last opportunity for Judge Carrillo to testify. Mr. Mitchell indicated on each occasion that the Judge did not plan to offer testimony before the committee. On inquiry by the Chair, Mr. Mitchell indicated that Judge Carrillo would invoke his Fifth Amendment privilege against self-incrimination if the Committee should reverse its decision and attempt to compel Judge Carrillo to testify.

Also, the Chairman indicated on numerous occasions to Judge Carrillo and to his attorney that the committee would welcome any testimony or evidence which Judge Carrillo cared to present to the committee. Mr. Mitchell offered numerous exhibits into evidence and presented such testimony to the committee as he desired, all of which was received by the committee and included as a part of the record in the voluminous

proceedings of the committee.

Through his attorney, Judge Carrillo requested that committee subpoenas be issued for numerous witnesses to give testimony to the committee. Each of these requests was carefully considered by the committee. Most of these witnesses were called before the committee at one time or another during committee hearings, and those subpoenas which were not honored by the committee were refused for the reason that the committee felt the testimony of such witnesses either to be not pertinent to the matter under inquiry or to be strictly defensive in nature and appropriate only for a trial of the issues, not the preliminary investigation.

At the last public hearing of the Committee on July 16, 1975, the Chair inquired of Mr. Mitchell (1) if Judge Carrillo would testify, and (2) did Mr. Mitchell have any further evidence to present to the Committee. The record then reflects in part the following:

> MR. MITCHELL: Thank you, Mr. Chairman. As the Committee knows, we have, of course, made use of that offer by the introduction of a considerable amount of documentary. However, I have advised my client as his attorney I would not allow him to testify . . . (XV, 54)

* * *

But I do appreciate the opportunity. I have, as the committee knows, introduced a tremendous amount of documentary, . . . (XV, 55)

* * *

CHAIRMAN HALE: . . . the Chair would make inquiry of you at this time, have you anything further to present to the Committee in the way of evidence with respect to your client? (XV, 57)

* * *

MR. MITCHELL: I had, Mr. Chairman, several questions that I had requested in written form for cross examination of some of those early witnesses . . . (XV, 57)

* * *

. . . but I think they might have been washed out—— (XV, 58)

* * *

I think with that statement then, Mr. Hale, that I have about exhausted my available evidence, documentary and verbal. (XV, 59)

In addition, by letters dated July 21, 1975, addressed to the chairman and vice-chairman, Mr. Mitchell expressed his appreciation for the fine manner in which the Committee conducted its business and conceded that the record reflects a "judicious approach to a difficult problem." (Appendix E)

D. ACTION BY THE COMMITTEE

Final action by the committee came at its afternoon

meeting on July 16, 1975, at which time the committee voted to adopt eleven (11) articles of impeachment against Judge O. P. Carrillo.

In its deliberation on these proposed articles of impeachment, the committee was well aware of the broad area of its authority as outlined by the Supreme Court of Texas in Ferguson v. Maddox. In pointing out the unlimited nature of the impeachment process, the Supreme Court said in part as follows:

> "Impeachment," at the time of the adoption of the Constitution, was an established and well-understood procedure in English and American parliamentary law, and it had been resorted to from time to time in the former country for perhaps 500 years. It was designed, primarily, to reach those in high places guilty of official delinquencies or maladministration. It was settled that the wrongs justifying impeachment need not be statutory offenses or common-law offenses, or even offenses against any positive law.

In elaborating on its decision that an impeachable offense need not be criminal in nature, the Supreme Court further compared the Penal Code to the impeachment sections of the Constitution and reached the following conclusion with respect thereto:

> There is no conflict between article 3 of the Penal Code and the sections of article 15 of the Constitution relating to impeachment. They relate to different

> matters and operate in entirely different spheres. "The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law." The Constitution, in relation to impeachment, has in mind the protection of the people from official delinquencies or malfeasances. The Penal Code, on the other hand, has in mind an offender merely as a member of society who should be punished for his individual wrongdoing. The primary purpose of an impeachment is to protect the state, not to punish the offender. True, he suffers, as he may lose his office and be disqualified from holding another; but these are only incidents of a remedy necessary for the public protection. There is no warrant for the contention that there is no such thing as impeachment in Texas because of the absence of a statutory definition of impeachable offenses.

Thus the court said in effect that an impeachable offense need not be criminal in nature and that it could be any character of wrongdoing that in the opinion of the House of Representatives constituted justification for removal from office. The fact that impeachable offenses are not defined in the Constitution or in the statutes is immaterial, said the Court, leaving broad discretion to the House as to the nature of the impeachment charges.

In pursuance thereof, eleven articles of impeachment were adopted by the committee, each of said articles having been adopted by the following vote in committee, to-wit:

Article I: 10-0

Article II: 10-0

Article III: 10-0

Article IV: 10-0

Article V: 10-0

Article VI: 10-0

Article VII: 5-4

Article VIII: 7-1-1

Article IX: 7-2

Article X: 10-0

Article XI: 5-4

Ten of the eleven members of the committee were in attendance at the meeting on July 16 when articles of impeachment were voted. Rep. Richard Slack was absent but sent word to the Chairman that, if present, he would have voted with the majority of the committee to adopt articles of impeachment.

Having adopted eleven articles of impeachment on an individual basis, the committee then voted unanimously for the committee substitute to H.S.R. No. 161, following which H.S.R. No. 161 was unanimously adopted and recommended for favorable action by the House of Representatives.

The committee report on H.S.R. No. 161 was signed by

the Chairman on July 17, 1975, and filed with the Chief Clerk of the House of Representatives on such date at approximately 11:00 o'clock a.m., thereby triggering the mechanics under H.S.R. No. 221 for a reconvening of the House of Representatives at 10:00 o'clock a.m. on Monday, August 4, 1975, to consider matters of impeachment against Judge O. P. Carrillo as charged in HSR 161.

PART V

ARTICLES OF IMPEACHMENT

During the course of its deliberations, the Select Committee on Impeachment carefully considered each and every charge of misconduct made against Judge O. P. Carrillo. Many of these charges were summarily dismissed by the Committee for lack of evidence. Those remaining were grouped by type of conduct into eleven separate articles, although Articles IX, X and XI involved the same conduct with respect to three different persons. Each article was drafted in such manner that it is complete in itself, and all eleven articles are grouped into one package termed articles of impeachment.

In the paragraphs to follow, the text of each article is quoted in full. Following each article is a summary of the evidence pertaining to such article. This evidence is coded to the statement of facts consisting of some 15 volumes and to the exhibits, consisting of approximately 166 documents.

Each reference to the statement of facts is coded by volume and page, volume being indicated by a Roman numeral and page being indicated by an arabic numeral. For example, the first reference to the statement of facts under Article I is (VI, 24). This means that evidence on this point will be

found in Volume VI of the statement of facts beginning on page 24.

Documentary evidence is coded in three series of numbers. Basic exhibits total 87 and are coded as Exhibit No. 1, Exhibit No. 2, etc. A second series of documents totaling 74 were introduced into evidence by Judge Carrillo, and are identified as CAR-1, CAR-2, etc. A third series of documents totaling 5 in number were introduced by Mr. Arthur Mitchell in connection with his representation of clients before the Committee, and these documents are coded as AM-1, AM-2, etc.

Multiple copies of the statement of facts and multiple copies of all documentary evidence have been prepared by the Committee and are available for the use of all members of the House in the office of the Sergeant at Arms. The Committee believes that the summaries which follow the text of each article, coded to the committee record, will enable each member of the House to quickly and efficiently study the charges, ascertain the evidence pertaining thereto, and decide whether or not such article should be voted by the House of Representatives.

A. ARTICLE I

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to have Duval County pay for groceries, to which he was not entitled, for his personal use and benefit.

For several years, Duval County paid up to $800 per month to the Cash Store in Benavides, Texas, out of funds earmarked to pay for groceries for the poor under a welfare program operated by the county, according to the assistant county auditor, Octavio Hinojosa, Jr. (VI, 24). Mrs. Lauro Yzaguirre, whose husband owns the Cash Store and who operates the cash register and maintains the store's accounting records, testified that $300 per month of the $700 to $800 paid each month by the county to the Cash Store actually paid for groceries purchased for and consumed by O. P. Carrillo and his employees and guests; a similar amount paid for the personal groceries of his brother, Ramiro Carrillo, the county commissioner for that precinct in Duval County (V, 64-69, 82-85). According to Mrs. Yzaguirre, O. P. Carrillo, his employees (Tomas Elizondo, Roberto Elizondo, and Patricio Garza), and his nephews frequently purchased groceries in the Cash Store for O. P. Carrillo and charged them to his account. At the end of the month, Ramiro Carrillo took a county warrant to the Cash Store drawn against

the county welfare budget to pay for groceries charged to O. P. and Ramiro Carrillo during that month and for groceries sold to welfare recipients (see, e.g., Exh. No. 25). If the amount charged to O. P. Carrillo in a particular month exceeded his $300 allowance, he either stopped by and paid the balance or it was carried over to the next month, and if it was less than his monthly allowance, the balance carried over to the next month (V, 64-65).

The payments for O. P. Carrillo's groceries were initially disguised by delivering welfare orders or "chits," prepared at either O. P. or Ramiro Carrillo's direction, authorizing, for example, $20 worth of groceries for J. Garza (see Exh. No. 27), according to both Cleofas Gonzalez, who worked for Commissioner Ramiro Carrillo and often prepared the "chits," and Mrs. Yzaguirre. Enough of the "chits" named either nonexistent persons, persons not in the county, or persons who otherwise did not get the groceries to pay for both O. P. Carrillo's and Ramiro Carrillo's grocery allowance (I, 51-59 & 131-132; V, 51-59 & 71-75). More recently, Commissioner Ramiro Carrillo periodically furnished the Cash Store with a list of the names of persons purportedly participating in the county welfare program and the amount of groceries each was entitled to receive

(see Exh. No. 43). Again, enough of the persons listed did not buy the groceries to cover O. P. Carrillo's and Ramiro Carrillo's grocery allowance (Mrs. Yzaguirre: V, 50-53). At the end of the month, Commissioner Ramiro Carrillo picked up the lists and completed receipts for groceries prepared by Mrs. Yzaguirre, had a claim voucher to cover the amount prepared, and submitted them to the commissioners court for approval. After the claim was approved, a county warrant was issued for that amount, according to Octavio Hinojosa, Jr., the assistant county auditor (VI, 18-27). Mrs. Yzaguirre testified that Ramiro Carrillo then delivered the warrant to the Cash Store (V, 55).

O. P. Carrillo submitted to the committee several unverified photocopies of checks drawn on his account and payable to the Cash Store, apparently to show that he was paying for groceries at the store (see Exh. Nos. Car-23, Car-27, Car-32, Car-33, Car-39, and Car-40). Mrs. Yzaguirre, when shown the checks, denied that they were issued in payment for groceries except to the extent that some represented payment of the balance due above his $300 monthly allowance from the county. She stated that Benavides does not have a bank, that the Cash Store performs check cashing services for its customers as a

convenience to them, and that most of O. P. Carrillo's checks to the Cash Store were for cash. She pointed out that the checks shown her were almost invariably for even amounts, e.g., $10, $25, etc., and that grocery purchases almost never add up to a round figure (XII, 113-136).

B. ARTICLE II

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo used his official powers in a manner calculated to subvert the principles of democratic government and obstruct the fair and impartial administration of justice, thereby bringing the district court for the 229th Judicial District of Texas into scandal and disrepute to the prejudice of public confidence in the judiciary of the state.
>
> This conduct included but was not limited to one or more of the following:
>
> (1) in the case of Clinton Manges versus M. A. Guerra, et al., Cause No. 3953 in the district court for the 229th Judicial District of Texas, which involved a party with whom O. P. Carrillo had numerous financial ties, he refused to recuse and disqualify himself;
>
> (2) in the case of State of Texas on relation of Jose R. Nichols versus Archer Parr, Cause No. 8890 in the district court for the 229th Judicial District of Texas, which involved the suspension and removal from office of a former political ally with whom O. P. Carrillo had publicly split and who was involved in heated competition for political control of the governmental entities in Duval County, he refused to recuse and disqualify himself;

(3) he conspired with others to improperly influence the membership and proceedings of the grand jury of Duval County impaneled in February, 1975;

(4) he conspired with others to dominate and control the Benavides Independent School District by arbitrarily suspending from their offices his political opponents on the school district board of trustees and appointing his political allies as replacements.

(1) Judge O. P. Carrillo refused to recuse and disqualify himself in the case of Clinton Manges versus M. A. Guerra, et al., Cause No. 3953 in the district court for the 229th Judicial District of Texas, which involved a party with whom he had numerous financial ties.

The cause of action in the first specification in this article against O. P. Carrillo was filed originally in 1968 and involved the confirmation of Mr. Manges' purchase of the majority of the stock in the First State Bank and Trust Company of Rio Grande City and of certain ranch land from M. Guerra and Son, a family partnership. After assuming office in 1971, Judge Carrillo did confirm the purchases. In 1973 the defendants in the case filed a motion for disqualification or recusation of the judge on the grounds that the judge had accepted benefits from Mr. Manges that might prevent him from conducting a fair and impartial trial (Exh. Nos. 1 and 3). At the time the

motion for disqualification or recusation was filed, Judge Carrillo was serving as a director of the bank. His appointment as director occurred after Mr. Manges obtained a controlling interest in the bank, and the appointment could not have been made without Mr. Manges' consent and active participation. Furthermore, Mr. Manges' interest in the bank stock had been confirmed by his order after he became judge. O. P. Carrillo had acquired 10 shares of stock in the bank from Mr. Manges in a transaction involving the exchange of property owned by Carrillo in Benavides for the stock and payment by Mr. Manges of the $6,915.55 balance due on a Cadillac Carrillo had ordered. Carrillo also had a lease agreement with Mr. Manges that allowed the judge to graze cattle on the ranch land acquired by Mr. Manges in the transaction involved in the suit (Exh. No. 4 & Car-53).

The defendants argued that Judge Carrillo was disqualified from further action in the case under the provisions of Article V, Section 11, of the Texas Constitution and Article 15, Revised Civil Statutes of Texas, 1925. In addition, the defendants argued that the judge's conduct was inconsistent with the Canons of Judicial Ethics adopted by the American Bar Association (Exh. Nos. 1 and 3).

Judge Carrillo refused to disqualify himself from the case but did disqualify himself from hearing the motion on his disqualification, and that motion was heard by Judge Magus F. Smith. Judge Smith found that the transactions between Judge Carrillo and Clinton Manges invested the judge with a disqualifying interest (Exh. No. 2, M. K. Bercaw: III, 123-127). After reviewing the various ties between Mr. Manges and Judge Carrillo, Judge Smith stated: "I don't see how a person in that predicament could possibly render an impartial judgment." (M. K. Bercaw: III, 125).

By accepting benefits from a litigant in a case pending in his court and by failing to disqualify himself from further action in the case after accepting those benefits, Judge Carrillo failed to abide by the standards of judicial ethics necessary to insure the public's confidence in the judiciary of the state.

(2) Judge O. P. Carrillo also refused to recuse and disqualify himself in the removal of Archer Parr, a former political ally with whom the judge had publicly split.

On March 19, 1975, an article appeared in the Corpus Christi Caller quoting O. P. Carrillo as stating that he had split with the Parr family because of differences over the

impending election of trustees for the Benavides Independent School District. Also on March 19, George Parr appeared at the courthouse and threatened to kill Judge Carrillo (George Powell: VIII, 255; Zenadia Montemayor: XIV, 187). In spite of motions made to disqualify Judge Carrillo on the grounds that he had a personal bias or prejudice in the case, Judge Carrillo refused to disqualify himself from presiding over the trial to determine whether Archer Parr should be permanently removed from his office. Venue for the suit was changed four times before the case was heard, and at the conclusion of the trial Judge Carrillo instructed the jury to find against Judge Parr who had failed to appear or comply with a request for a written deposition.

Judge Carrillo's actions in refusing to disqualify himself in the case are in conflict with the Code of Judicial Conduct adopted by the Supreme Court of Texas in 1974. The code requires a judge to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The code also requires a judge to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including cases where he has a personal bias or prejudice concerning a party (Exh. No. 5).

(3) Judge Carrillo conspired with others to improperly influence the membership and proceedings of the grand jury of Duval County impanelled in February, 1975.

On January 24, 1975, Judge O. P. Carrillo appointed Roberto Elizondo, Morris Ashby, and Manuel Amaya as grand jury commissioners (Exh. No. 12). Mr. Elizondo is Judge Carrillo's court reporter. Morris Ashby is executive vice-president of the Duval County Ranch Company which is owned by Clinton Manges. Manuel Amaya at one time worked for Mr. Manges (Bercaw: III, 144-148). Of the 12 members of the grand jury appointed by the commissioners, 7 have a direct relationship to either Judge O. P. Carrillo or Mr. Clinton Manges. Mr. Manges' ranch foreman was appointed as foreman of the jury. Two of the grand jury commissioners and three of the grand jury members were appointed to fill vacancies on the school board or commissioners court which resulted from removal actions ordered by Judge Carrillo (Canales: IV, 48-54).

According to the testimony of Mr. Aurelio Correa, the secretary of the grand jury, a meeting was held between Mr. Manges, Mr. Amaya, and himself prior to the first meeting of the grand jury. At that time Mr. Manges discussed the matters which he wanted the grand jury to investigate (Correa: XIV,

42-50). Mr. Correa quoted Mr. Amaya as telling Mr. Manges that the jury would investigate the people Mr. Manges wanted investigated (Correa: XIV, 92). When Mr. Correa raised the possibility of the jury indicting personal acquaintances, Mr. Manges is quoted as saying, "Those people that we feel we can grant immunity to, we will grant immunity to." (Correa: XIV, 48). Mr. Correa further testified that he met with Mr. Manges and Jose Nichols and that the grand jury's difficulty in obtaining county records was discussed. Mr. Correa was directed by Mr. Manges to make several phone calls, including calls to Judge Carrillo and Arnulfo Guerra, the district attorney, to insure that the records would be made available. Calls were also made to the members of the grand jury to call a special meeting of the jury the next day (Correa: XIV, 61-67, 104-112).

On another occasion a meeting was held with Judge Carrillo in his office to discuss the work of the grand jury and the possibility of indicting Rudolf Couling, Marvin Foster, and Charles Orr. Besides Mr. Correa and Judge Carrillo, George Parr also attended the meeting (Correa: XIV, 55-60, 86-91).

(4) Judge O. P. Carrillo conspired with others to dominate and control the Benavides Independent School District by arbitrarily

suspending from their offices his political opponents on the school district board of trustees and appointing his political allies as replacements.

On March 18, 1975, Judge O. P. Carrillo made statements to the press announcing that he had split with the Parr family because Hilda Parr had refused to withdraw as a candidate for the board of trustees of the Benavides Independent School District when D. C. Chapa, the judge's father, entered the race. An article appeared in the Corpus Christi Caller on March 19 (Exh. No. 11). On March 20, on the relation of Jose Nichols, the judge ordered the temporary suspension of four members of the school board who were supporters of the Parr faction (Exh. Nos. 6-9). Two of the three remaining members of the board were nephews of the judge. Judge Carrillo appointed Morris Ashby, Pete Hunter, Lionel Garza, and Bill Ham to fill the vacancies on the board resulting from the removals.

Several days later, a petition was filed for the removal of the three remaining elected school board trustees on the relation of the county attorney. Judge Carrillo disqualified himself as to his two nephews, severed the cause of Al Schuenemann and then ordered his suspension, and named J. R. Cosas to fill the vacancy (Bercaw: III, 138-140).

On March 25, 1975, an article appeared in the Corpus Christi Caller quoting Bill Ham, one of Judge Carrillo's appointees, as saying that he was a Parr man (Exh. No. 10). On the same day, Judge Carrillo appointed E. V. McMichael to fill the vacancy on the school board which he had previously appointed Bill Ham to fill. The records indicate that Mr. Ham took his oath of office and filed his bond on March 25 (Exh. No. 8, Bercaw: III, 141-143; Correa: XIV, 68-71).

C. ARTICLE III

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo acted alone or conspired with others to divert the services of governmental employees to his personal benefit when he was not entitled to receive those services.
>
> This conduct included but was not limited to one or more of the following:
>
> (1) Cleofas Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership between O. P. Carrillo and another;
>
> (2) Pat Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership owned by O. P. Carrillo and another;
>
> (3) Francisco Ruiz, while employed and being paid by Duval County, worked as a welder on O. P. Carrillo's property;
>
> (4) Oscar Sanchez, while employed and being paid by Duval County, worked in the

construction of a reservoir on O. P. Carrillo's ranch;

(5) Patricio Garza, while employed and being paid by Duval County, worked on O. P. Carrillo's ranch.

Testimony before the committee included a number of allegations that O. P. Carrillo has, for several years, used public employees to perform private services for him and for the Farm and Ranch Store, a partnership owned by him and his brother, County Commissioner Ramiro Carrillo, while the public employees were supposed to be performing services for the governmental entities that employed them. The evidence did not establish all of the accusations, and several public employees, Tomas Elizondo and Roberto Elizondo in particular, were excluded from the specifications in this article of impeachment. The evidence of diversion of public employees for O. P. Carrillo's private benefit is uncontroverted, for the most part, as to those persons named in the specifications.

The evidence regarding Cleofas Gonzalez shows that he was employed full time by the county and was paid by the county. His place of work until approximately 18 months ago was at a building owned by the Carrillos that is used both as the warehouse and shop yard for Precinct 3, of which Ramiro Carrillo, O. P. Carrillo's brother, is county commissioner, and as the premises

of the Farm and Ranch Store, which is a retail store operated as a partnership between O. P. Carrillo and his brother, Commissioner Ramiro Carrillo. Cleofas testified that, while working at that location, he performed several duties for the county and also ran the Farm and Ranch Store. Except for Pat Gonzalez, another county employee who worked in the Farm and Ranch Store and who is discussed in the following paragraph, and possibly occasional contract labor, Cleofas Gonzalez was the only person working in the Farm and Ranch Store and conducted all its business other than the occasional managerial decisions made by O. P. and Ramiro Carrillo. The store had no payroll and Cleofas Gonzalez was never paid anything by the Farm and Ranch Store, by O. P. or Ramiro Carrillo, or by anyone else for his work at the store (I, 37-43, 64-67, 94-101; XII, 11-13, 37-51, 79). That Cleofas Gonzalez worked in the Farm and Ranch Store is uncontroverted and is confirmed by every witness who knew him. His employment by the county is confirmed by the county payroll records and the testimony of the assistant county auditor, Octavio Hinojosa, Jr. (III, 38, 40, 42).

Until his death sometime in 1973, Pat Gonzalez, too, was employed by Duval County and paid only by Duval County while working at the Farm and Ranch Store location. Cleofas

stated that Pat's duties were the same as his and primarily involved the private business operations of the Farm and Ranch Store (Cleofas Gonzalez: I, 80-81, 130-131, 137; XII, 37-38, 56, 71-72, 78-79; Ruben Chapa: II, 59, 89-90).

County employees also performed services on O. P. Carrillo's ranch for his personal benefit. The uncontroverted testimony of Francisco Ruiz establishes that on several occasions Ramiro Carrillo or O. P. Carrillo directed him to go to O. P. Carrillo's ranch to do some welding on O. P.'s personal equipment. Oscar Sanchez testified, without contradiction, that Ramiro sent him to O. P.'s ranch to operate some heavy equipment in the construction of a water reservoir. Neither was paid by any private source for the work (II, 115-119, 125-129, 147-154). Octavio Hinojosa, Jr., confirms that both are employees of the county (III, 40-43).

The evidence indicates that Patricio Garza's primary duties involve private work at O. P.'s ranch as a cook and ranch hand. Although Mr. Garza stated that he has only worked on O. P. Carrillo's ranch for the past year and a half (IX, 144-147), during which time he has not been paid by the county, the other witnesses state that he has worked on the ranch for many years, that he has always been considered to be O. P.'s

ranch hand, and that he was working on the ranch while he was being paid by the county (Cleofas Gonzalez: I, 139-140; Ruben Chapa: II, 14-15, 56; Lauro Yzaguirre: V, 27-29, 40-44; Mrs. Lauro Yzaguirre: 53, 75-76; Thomas Elizondo: V, 142, 147, 169).

D. ARTICLE IV

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to misapply government equipment, which he was not entitled to use, to his personal benefit.
>
> This conduct included but was not limited to one or more of the following:
>
> (1) the use of a backhoe owned or leased by the Duval County Water Control and Improvement District in the construction of a private building on his property;
>
> (2) the use of equipment owned or leased by Duval County in the construction of a water reservoir on his property;
>
> (3) the use of a truck, mounted with posthole digging equipment, owned or leased by Duval County in the construction of fences on his property;
>
> (4) the use of welding equipment and supplies owned or leased by Duval County to make repairs on his property;
>
> (5) the use of trucks owned or leased by Duval County to haul equipment and materials to his property for his private use.

Uncontroverted testimony establishes several instances

in which governmental equipment was used for O. P. Carrillo's private purposes. Ruben Chapa testified that in the fall of 1973 Tomas Elizondo operated a backhoe belonging to the Duval County Conservation and Reclamation District, while O. P. Carrillo's father, D. C. Chapa, was president of the water district board, in the construction of a private building on O. P.'s ranch (II, 11-13, 16-18, 27-29, 33-34, 39-45, 55-56), and Tomas Elizondo confirmed that he operated the water district's backhoe on the ranch under instructions from O. P. Carrillo (V, 142-144, 146-147, 156-157, 161, 170). Ruben Chapa also testified that on several occasions he saw a truck identified as a county truck by its exempt license plates on which county posthole digging equipment was mounted, digging postholes on O. P. Carrillo's ranch (II, 46-48, 85-86).

Francisco Ruiz testified without contradiction that he used a county truck and the county welding equipment mounted on it to perform various welding operations on O. P. Carrillo's equipment on several occasions under instructions from Commissioner Ramiro Carrillo, O. P. Carrillo's brother.

Oscar Sanchez's unchallenged testimony is that he used heavy equipment belonging to the county to construct a water reservoir on O. P. Carrillo's ranch under instructions of

Ramiro. Finally, Ruben Chapa identified the truck and trailer that hauled the backhoe (and other trucks hauling equipment) to and from O. P.'s ranch as belonging to the county because the trucks had exempt license plates (II, 11-12, 82-85), although Tomas Elizondo, one of O. P.'s longtime employees, stated that the backhoe was hauled on O. P. Carrillo's private truck and trailer.

A substantial amount of testimony on O. P. Carrillo's use of government equipment indicated that the instances mentioned above were not isolated occurrences but part of an established pattern of almost everyday usage. For example, a couple of witnesses saw government trucks being used to haul O. P. Carrillo's grain (Cleofas Gonzalez: I, 50-51, 98-99, 126, 170-171; Ruben Chapa: II, 91-94, 97-98; see also George Powell: XI, 48; Rogelio Sanchez: IX, 85-94), and several witnesses mentioned having seen government maintainers, trucks, and other equipment working on O. P. Carrillo's ranch at various times.

E. ARTICLE V

> While holding office as district judge for the 229th Judicial District of Texas and, prior to that, while simultaneously holding office as county attorney for Duval County and a member of the board of trustees for the Benavides Independent School District, O. P. Carrillo conspired with public officials and others to violate the

> constitution, oaths of office, statutes, and public policy against public officials doing private business with governmental entities they serve.
>
> This conduct included but was not limited to the sale of goods and services and the rental of equipment, either directly from the Farm and Ranch Store, an entity owned by O. P. Carrillo and another public official, or by sham transactions through Zertuche General Store and other business entities, to various governmental entities in Duval County when O. P. Carrillo and close relatives with whom he had a joint economic interest served as officers of those governmental entities.

Cleofas Gonzalez testified that he was employed by Duval County as a warehouseman from the early 1960's until May, 1974, when he began working for the county welfare department. During the mid- or late-1960's, O. P. and Ramiro Carrillo acquired the Vaello Lumber Yard in a bankruptcy sale and moved the Precinct 3 warehouse to that location. At that same location they operated a private business, the Farm and Ranch Store, as a partnership. Cleofas Gonzalez managed the store under the supervision of the Carrillos, and he and Pat Gonzalez, also on the county payroll, were its only employees. Neither Cleofas nor Pat received any compensation except from the county.

During the 1960's, when O. P. Carrillo was county attorney

and a member of the school board, D. C. Chapa, his father, was president of both the school board and the water district board, and Ramiro Carrillo, his brother, was a county commissioner. Cleofas Gonzalez said O. P. and Ramiro Carrillo told him that the Farm and Ranch Store could not make sales to governmental entities in the county. They provided him with a register in the name of "Zertuche General Store" and told him to use Zertuche invoices when making sales to the county, the school district, the water district, or the City of Benavides. He testified that under their instructions he did make sales to these governmental entities of merchandise belonging to Farm and Ranch Store and in each case billed the sale through Zertuche General Store. Payments for the goods were made by warrant or check of the governmental entity to the Zertuche General Store; Cleofas Gonzalez endorsed the warrant or check "for deposit only, Zertuche General Store," and signed his name; he deposited the warrant or check in the First State Bank of San Diego to the account of Zertuche General Store; and finally, according to his instructions, he usually made out a check from the Zertucne General Store, signed in blank by Arturo Zertuche, to the Farm and Ranch Store in an amount identical to the amount ot the check or checks deposited to the Zertuche

account, and deposited that check to the Farm and Ranch Store account in the same bank. He testified that Arturo Zertuche provided checks signed in blank for this purpose.

Cleofas Gonzalez testified that Zertuche General Store, during this period, existed only by invoice register; that it had no inventory of merchandise, except for one month, when it had some Christmas merchandise; that the Zertuche register was used only for sales to governmental entities; and that whenever a member of the public made a purchase it was made from the Farm and Ranch Store and recorded on the Farm and Ranch Store register. He also testified that he never saw a store license for the Zertuche General Store (See I, 35-42, 64-69, 71-73, 81-86, 97, 106, 113, 115-125, 164; XII, 21-27, 39-41, 57-59, 76).

Cleofas Gonzalez testified that the procedure of billing governmental entities through Zertuche General Store was stopped sometime in 1971 (I, 162). Exhibit 28 shows Zertuche invoices for sales to the school district in February and March, 1971. Exhibit 42 shows records of county payments to Zertuche General Store from January 12, 1970, to March 10, 1971, and to the Farm and Ranch Store on March 12, 1973, and November 15, 1974.

Cleofas Gonzalez's testimony that a Zertuche Store never

existed except for one month for a Christmas sale (I, 35-36), is disputed by Mrs. Elvira Rodriguez and Tomas Elizondo, both of whom contend that a separate business concern in a separate building with its own inventory existed prior to a hurricane in September, 1967 (Tomas Elizondo: V, 141, 145, 149, 173-174, 193-194; Mrs. Elvira Rodriguez: XI, 64-77, 88, 99-108, 121, 125, 132-133, 143-149). The dispute has little bearing on the misconduct alleged in the article, however, and may be the result of confusion caused by the fact that the store's name was changed from "General Store" to "Zertuche General Store." Evidence that Zertuche General Store did not exist as a separate entity after the hurricane, however, is undisputed, and several witnesses, including persons in business in Benavides for many years, have never heard of it or never seen a building in which it was operating.

Documents submitted to the committee do show that the comptroller issued a sales tax permit to Zertuche General Store on June 1, 1968, effective January 1, 1967, and that the store went out of business on December 1, 1970 (Exh. No. Car-62).

F. ARTICLE VI

While holding office as district judge for the 229th Judicial District of Texas,

O. P. Carrillo filed false and fraudulent financial statements with the Secretary of State for Texas.

Testimony before the committee established that O. P. Carrillo was a beneficiary and a trustee of a family trust from which he receives a substantial annual income (Oscar Kirkland: XII, 170-185; Exh. Nos. Car-7, Car-8, and Car-71). His financial statement for 1973, which was filed with the secretary of state as required by law, however, reflects neither the existence of the trust as a source of income nor the fact that he was a trustee (Exh. No. 67), both of which are required by law to be disclosed. The testimony indicates that the financial statement was prepared under O. P. Carrillo's supervision and sworn by him (Jose Saenz: IX, 28-30).

G. ARTICLE VII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to use for his personal benefit materials and supplies owned by Duval County and other governmental entities, which he was not entitled to receive.

This conduct included but was not limited to the following: O. P. Carrillo used fuel owned by Duval County in his personal vehicles.

A number of allegations were made and highly suspicious transactions pointed out involving various kinds of materials and supplies purchased by the county. For example, the county

purchased large amounts of barbed wire, the use of which is not clear, and O. P. Carrillo built a large amount of fence; some testimony indicated that county cement was used to construct a building on O. P.'s ranch, but another swore he sold cement to O. P.; and the county purchased a large volume of pecan wall paneling near the time a building was being completed on O. P.'s ranch. The use of the various materials is still unclear, and the committee made no charges in that connection.

Uncontroverted testimony indicated that O. P. Carrillo has used county gasoline and diesel fuel for his personal benefit, however (Cleofas Gonzalez: I, 50, 117-118, 139).

H. ARTICLE VIII

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use.

Cleofas Gonzalez testified that he billed various governmental entities for substantial sums for the rental of tractors, trucks, and other equipment from the Zertuche General Store (see the discussion of Article V above) on instructions from O. P. and Ramiro Carrillo, but that he knew of no equipment owned by Zertuche General Store or the Farm and Ranch Store

(I, 43-44, 100-103, 105). His testimony is uncontroverted, and the exhibits introduced into the record indicate that the county leases several items of equipment but none from Zertuche General Store or Farm and Ranch Store (Exh. No. 53). The financial records the committee has received in response to its subpoenas indicate that the Carrillos receive substantial income from rentals of equipment.

I. ARTICLE IX

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Arturo Zertuche, who was not entitled to receive the funds.

That county funds were paid to Arturo Zertuche, purportedly for personal services, is not controverted. Official Duval County records show that Arturo Zertuche was paid from the county's road and bridge fund at the rate of $225 per month for each of the first eight months of 1970 and each of the first four months of 1971, a total of $2,700 for 12 months of seasonal employment (Exh. No. 42). An additional payment from the same fund was made to Arturo Zertuche on August 10, 1970, purportedly for tractor or truck rental (III, 79; Exh. No. 42).

Octavio Hinojosa, Jr., assistant county auditor of Duval

County, stated that the payments made to Arturo Zertuche were charged to Precinct 3 of Duval County (III, 65). Judge O. P. Carrillo's brother, Ramiro Carrillo, is now and was at the time these payments were made, the Commissioner of Precinct 3, Duval County. According to the testimony of Cleofas Gonzalez, Arturo Zertuche is the cousin of Ramiro and O. P. Carrillo (I, 71).

During the time Arturo Zertuche was allegedly furnishing the labor for which these $225 monthly payments were made, he was attending North Texas State University at Denton, over 400 miles from Duval County.

Although there is no evidence in the record that Arturo Zertuche was in fact registered as a student at North Texas State University during the relevant months, the committee has confirmed that he was enrolled there during those months.

J. ARTICLE X

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Roberto Elizondo, who was not entitled to receive the funds.

The evidence that Roberto Elizondo was paid $225 a month for 20 months during which he attended school in Houston is uncontroverted. There is disagreement about whether or not

Elizondo performed any work for the county during those 20 months.

Roberto Elizondo is now court reporter for the 229th District Court. He has held that position since his appointment by O. P. Carrillo in September, 1973 (V, 204).

When O. P. Carrillo was county attorney of Duval County, Roberto Elizondo was employed by the county to do clerical work in the county attorney's office. Apparently, when Carrillo became judge of the district court, Elizondo transferred to the district judge's office as a clerical employee, remaining on the Duval County payroll.

Some time after O. P. Carrillo became district judge, Elizondo began to experience financial difficulties, as his salary was insufficient to support his family. He decided to attempt to become a court reporter so he could earn a larger salary, according to his testimony (V, 214, 216). When he discussed his aspiration to become a court reporter with O. P. Carrillo, Carrillo was sympathetic. According to Elizondo, Carrillo offered to "help me out, if I would work in the [judge's] office on the weekend." (V, 214).

According to Roberto Elizondo's testimony, he enrolled in McMahon College, a court reporting school in Houston, on

January 8, 1972, and was continuously enrolled as a student there until September (he does not specify a date), 1973, at which time he was appointed court reporter for the 229th Judicial District by Judge O. P. Carrillo (V, 204-205, 212-213). During this entire 20-month period Elizondo attended classes five days each week except for two weeks' vacation each July (V, 213).

County payroll records indicate that Roberto Elizondo was paid by the county as a seasonal employee at the rate of $225 a month during the entire period he attended school in Houston (Exh. No. 42). This on its face tends to indicate that Roberto Elizondo was paid by the county for work he did not perform, as Houston is approximately 250 miles from Duval County.

Elizondo maintains that he did indeed perform work to earn the $225 a month he was paid by commuting from Houston to Benavides on "mostly" every weekend to do clerical work for O. P. Carrillo (V, 213-214), but the record does not corroborate Elizondo's claim.

Sgt. Silverio Valadez, a full-time employee of a national guard unit in Alice, testifying from official unit records, stated that Roberto Elizondo was a member of the unit during

the 20-month period in question and that Elizondo attended Saturday-Sunday unit drills at Alice or other locations once each month (XIV, 13-22, 24-26, 30-31). Sgt. Valadez, again testifying from unit records, testified that Elizondo also attended a 15-day training session each of the two summers involved (XIV, 17, 19-20). These summer sessions each took up three weekends. It therefore appears that Elizondo was on duty with the national guard during a substantial number of the weekends during the 20-month period. Roberto Elizondo's brother Tomas testified that although Roberto did return to Benavides on weekends during this time (he does not state how often), Tomas had no knowledge of whether Roberto did any work for Judge Carrillo on those weekends (V, 134). Tomas Elizondo's lack of knowledge is unusual not only because Tomas resided in Benavides and was Roberto's brother, but also because Tomas states that he was Judge Carrillo's bailiff during the relevant period (V, 118).

Mrs. Zenadia Montemayor, who was a receptionist in Judge Carrillo's office during the time in question, testified that she had no knowledge of Roberto Elizondo's having done any work in the office on weekends while he was at court reporter school, that she never saw any sign that he had been in the

office when she opened it on Monday mornings, and that all the judge's official work was completed during the week by Jerry Parmer, who was the judge's court reporter at that time (XIV, 178-179).

K. ARTICLE XI

> While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Patricio Garza, who was not entitled to receive the funds.

That funds were paid to Patricio Garza from the Duval County treasury, purportedly in payment for labor, is not disputed (Exh. No. 66). The evidence is in conflict as to whether or not Patricio Garza ever actually worked for the county.

Garza's own testimony regarding his alleged work for the county is somewhat confused. Garza said that he worked for Duval County two or three years (IX, 155). He is not sure exactly when he stopped working for the county, but his testimony indicates that he last worked for the county around June of 1973 (IX, 146, 151). When questioned regarding the nature of his work for the county, Garza answered vaguely. He said that he did "whatever they told me to do" (IX, 146, 156). Garza claims to have fixed fences and repaired flat

tires as a county employee (IX, 156). Garza is now an employee on O. P. Carrillo's ranch. He testified that he first went to work for Carrillo about a year and a half ago (IX, 144).

Garza's testimony that he worked for the county and not for O. P. Carrillo until about 18 months ago is controverted by almost every witness who knows Garza. Witnesses familiar with the O. P. Carrillo ranch speak of Garza as a longtime employee at the ranch. Tomas Elizondo, long familiar with the Carrillo ranch, testified that Garza has been employed there as long as Elizondo has known Garza, or at least as long as Elizondo has worked at the ranch (which is much longer than the last one and one-half years) (V, 169). No one other than Garza himself testified that Garza ever did any work for the county.

PART VI

SUMMARY AND CONCLUSIONS

In this report, the Committee has attempted to provide a discussion of the impeachment process, the historical background on which impeachment procedures are predicated, the procedure followed in Texas in the presentment and trial of impeachment charges, the articles of impeachment as recommended by the select committee, and annotations to the extensive record made by the committee during hearings conducted on these articles. Obviously, this report alone cannot form the basis of a decision by members of the House. For that reason, multiple copies of the complete committee record are being made available for use by members of the House for further study of the matters under consideration.

The committee hopes and believes that the annotated articles of impeachment as contained in this report will make the complete record of the committee more useable to members of the House. By citing volume and page of the statement of facts pertaining to particular matters of proof, House members can readily do their own research and read more extensively concerning each charge and the testimony relative thereto. In addition, members of the committee will be personally available

at all times for consultation with other House members to aid such members in their research and study of the many problems presented by this report.

Again, at the price of repetition, the committee reiterates that the function of the committee, and the function of the House, is not to determine the guilt or innocence of Judge O. P. Carrillo on the charges which have been made against him. Our function is comparable to that of a grand jury. Our responsibility is to determine whether or not there are sufficient hard facts to justify further legal proceedings. In this quest for information, neither the committee nor the House need be exhaustive in its research. That is the function of the court of impeachment which will try these charges if the House sees fit to vote favorably on them. Such a trial will be conducted under rules of procedure which will preserve to Judge Carrillo all of the legal rights which he would have if he were standing trial before a regular court in the judicial system of Texas. Such safeguards are imperative in the trial court; such safeguards are unnecessary and unwieldly at the investigation and accusation stage.

Likewise, the committee felt that matters in defense of the charges, or matters in extenuation thereof, were not pertinent

to the present inquiry. These, too, are matters for the trier of facts, not for the grand jury. For that reason, the committee attempted to limit the testimony and evidence before the committee to those matters having a direct bearing on specific charges. If there are matters of defense which justify the actions taken by Judge Carrillo, such matters of defense can well be presented in the Court of Impeachment and be used as a justification for a finding of not guilty in such court.

On this basis, the committee commends the articles of impeachment to the consideration of the House of Representatives. Without passing judgment on the guilt or innocence of the accused, the committee believes and finds that the evidence presented before the committee amply justifies the presentment of articles of impeachment by the House of Representatives. By such action, all charges may be further explored in a court of impeachment to be conducted by the State Senate, with such trial to the forum wherein a final decision will be made as to whether or not Judge Carrillo should be removed from his office as District Judge and whether or not he should be barred from forever holding public office again in the State of Texas.

APPENDICES

A. COMMITTEE SUBSTITUTE FOR H.S.R. NO. 161

B. H.S.R. No. 167

C. H.S.R. No. 221

D. LIST OF WITNESSES

E. LETTER FROM MITCHELL

APPENDIX A

COMMITTEE SUBSTITUTE FOR HOUSE SIMPLE RESOLUTION NO. 161

A RESOLUTION IMPEACHING O. P. CARRILLO, DISTRICT JUDGE FOR THE 229TH JUDICIAL DISTRICT OF TEXAS, AND PREFERRING ARTICLES OF IMPEACHMENT AGAINST HIM

BE IT RESOLVED by the House of Representatives of the State of Texas, That O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, is impeached and that the following articles of impeachment be exhibited to the senate:

Articles of impeachment exhibited by the House of Representatives of the State of Texas in the name of itself and of all the people of the State of Texas against O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, in maintenance and support of its impeachment against him.

ARTICLE I

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to have Duval County pay for groceries, to which he was not entitled, for his personal use and benefit.

ARTICLE II

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo used his official powers in a manner calculated to subvert the principles of democratic government and obstruct the fair and impartial administration of justice, thereby bringing the district court for the 229th Judicial District of Texas into scandal and disrepute to the prejudice of public confidence in the judiciary of the state.

This conduct included but was not limited to one or more of the following:

(1) in the case of Clinton Manges versus M. A. Guerra, et al., Cause No. 3953 in the district court for the 229th Judicial District of Texas, which involved a party with whom O. P. Carrillo had numerous financial ties, he refused to recuse and disqualify himself;

(2) in the case of State of Texas on relation of Jose R. Nichols versus Archer Parr, Cause No. 6890 in the district court for the 229th Judicial District of Texas, which involved the suspension and removal from office of a former political ally with whom O. P. Carrillo had publicly split and who was involved in heated competition for political control of the governmental entities in Duval County, he refused to recuse and disqualify himself;

(3) he conspired with others to improperly influence the membership and proceedings of the grand jury of Duval County impaneled in February, 1975;

(4) he conspired with others to dominate and control the Benavides Independent School District by arbitrarily suspending from their offices his political opponents on the school district board of trustees and appointing his political allies as replacements.

ARTICLE III

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo acted alone or conspired with others to divert the services of governmental employees to his personal benefit when he was not entitled to

receive those services.

This conduct included but was not limited to one or more of the following:

(1) Cleofas Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership between O. P. Carrillo and another;

(2) Pat Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership owned by O. P. Carrillo and another;

(3) Francisco Ruiz, while employed and being paid by Duval County, worked as a welder on O. P. Carrillo's property;

(4) Oscar Sanchez, while employed and being paid by Duval County, worked in the construction of a reservoir on O. P. Carrillo's ranch;

(5) Patricio Garza, while employed and being paid by Duval County, worked on O. P. Carrillo's ranch.

ARTICLE IV

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to misapply government equipment, which he was not entitled to use, to his personal benefit.

This conduct included but was not limited to one or more of the following:

(1) the use of a backhoe owned or leased by the Duval County Water Control and Improvement District in the construction of a private building on his property;

(2) the use of equipment owned or leased by Duval County in the construction of a water reservoir on his property;

(3) the use of a truck, mounted with post-hole digging equipment, owned or leased by Duval County in the construction of fences on his property;

(4) the use of welding equipment and supplies owned or leased by Duval County to make repairs on his property;

(5) the use of trucks owned or leased by Duval County to haul equipment and materials to his property for his private use.

ARTICLE V

While holding office as district judge for the 229th Judicial District of Texas and, prior to that, while simultaneously holding office as county attorney for Duval County and a member of the board of trustees for the Benavides Independent School District, O. P. Carrillo conspired with public officials and

others to violate the constitution, oaths of office, statutes, and public policy against public officials doing private business with governmental entities they serve.

This conduct included but was not limited to the sale of goods and services and the rental of equipment, either directly from the Farm and Ranch Store, an entity owned by O. P. Carrillo and another public official, or by sham transactions through Zertuche General Store and other business entities, to various governmental entities in Duval County when O. P. Carrillo and close relatives with whom he had a joint economic interest served as officers of those governmental entities.

ARTICLE VI

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo filed false and fraudulent financial statements with the Secretary of State for Texas.

ARTICLE VII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with

others to use for his personal benefit materials and supplies owned by Duval County and other governmental entities, which he was not entitled to receive.

This conduct included but was not limited to the following: O. P. Carrillo used fuel owned by Duval County in his personal vehicles.

ARTICLE VIII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use.

ARTICLE IX

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Arturo Zertuche, who was not entitled to receive the funds.

ARTICLE X

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Roberto Elizondo, who was not entitled to receive the funds.

ARTICLE XI

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Patricio Garza, who was not entitled to receive the funds.

* * *

In all of this, O. P. Carrillo has acted in a manner contrary to the trust reposed in him as district judge and is guilty of gross violations of the constitution and statutes of this state, of the duties of his office, and of the Code of Judicial Conduct. By such conduct he has rendered himself

unfit to hold the office of judge of the district court for the 229th Judicial District of Texas and he warrants trial and conviction, removal from office, and disqualification from holding any future office in this state, and the house of representatives, saving to itself the liberty to exhibit additional articles of impeachment against O. P. Carrillo at any future date, if it decides any are necessary, requests that O. P. Carrillo be required to answer the articles of impeachment against him.

APPENDIX B

H.S.R. No. 167

HOUSE RESOLUTION

BE IT RESOLVED by the House of Representatives of the 64th Legislature, That there is hereby created a select committee of the House of Representatives composed of 11 members appointed by the Speaker, the chairman and vice-chairman thereof to be appointed by the Speaker, to consider House Simple Resolution No. 161 and investigate charges brought against O. P. Carrillo, and report back to the House its recommendations on whether presenting to the Senate of Texas a bill of impeachment against O. P. Carrillo is in order; and, be it further

RESOLVED, That the committee is authorized to meet at the call of the chairman, meet in executive session when ordered by the committee, and expend funds for necessary expenses and employment of personnel as approved by the Committee on House Administration; and, be it further

RESOLVED, That the committee shall have all powers granted to committees of the House by Article 5962, Revised Civil

Statutes of Texas, 1925, the Legislative Reorganization Act of 1961, and the Rules of the House of Representatives.

APPENDIX C

H.S.R. No. 221

HOUSE RESOLUTION

WHEREAS, The select committee on impeachment created by House Simple Resolution No. 167 to consider House Simple Resolution No. 161 and to investigate charges brought against O. P. Carrillo is continuing its investigation; and

WHEREAS, It is apparent that extensive testimony still to be heard by the committee will preclude completion of its work prior to June 2, 1975, on which date the 64th Regular Session shall expire by limitation; now, therefore, be it

RESOLVED by the House of Representatives of the 64th Legislature, That the select committee on impeachment, as created by House Simple Resolution No. 167 and as constituted by appointment by the speaker of the house, continue its investigation of all charges against O. P. Carrillo after the adjournment sine die of the 64th Regular Session; and, be it further

RESOLVED, That formal meetings of the select committee

may be called by the chairman at any time without regard to the provisions of Section 13 of Rule VIII of the Rules of Procedure of the House of Representatives; and, be it further

RESOLVED, That during its continuing investigation the select committee have all the powers granted to it by House Simple Resolution No. 167; and, be it further

RESOLVED, That after completing its deliberations the committee file with the chief clerk of the house a report containing its recommendations on whether O. P. Carrillo should be impeached; and, be it further

RESOLVED, That if impeachment is recommended by majority report of six or more members, or by minority report of five members:

1. The report shall include a resolution of impeachment and articles of impeachment against O. P. Carrillo for consideration by the house and action thereon.

2. The house of representatives shall be reconvened to sit and consider matters of impeachment at 10 a.m. on the third Monday following the date the committee report is filed with the chief clerk of the house.

3. The speaker of the house, when notified by the chief clerk of the house that the report recommending impeachment

has been filed, shall immediately notify each member of the house of the date and time of reconvening the house and shall forward to each member a copy of the committee report including the resolution of impeachment and articles of impeachment; and, be it further

RESOLVED, That on reconvening the house shall proceed at its pleasure and may continue to meet until such time as the matter of impeachment of O. P. Carrillo may be resolved.

APPENDIX D

SELECT COMMITTEE ON IMPEACHMENT

Witnesses

Cleofas Gonzalez
Clerk for Duval County Welfare Dept.
Benavides, Texas

Rodolfo M. Couling
Rancher/Tax Collector
Drawer M.
Benavides, Texas

Ruben Chapa
Texaco Service Station Owner
P.O. Box 265
Benavides, Texas

Francisco Ruiz
Welder
Box 365
Benavides, Texas

Oscar Sanchez
Water District Employee
Box 502
Benavides, Texas

M. K. Bercaw, Jr.
Attorney
P.O. Box 179
Freer, Texas

Octavio Hinojosa
Assistant County Auditor
P.O. Box 392
San Diego, Texas

Eudocio Garcia
City Manager of Roma
P.O. Box 18
Roma, Texas

F. H. Canales
Director of Conservation & Reclamation
District
P.O. Box 422
Benavides, Texas

Roberto Elizondo
Court Reporter
P.O. Box 71
San Diego, Texas

Tomas Elizondo
Bailiff for 229th Judicial Dist.
P.O. Box 71
San Diego, Texas

Lauro Yzaguirre
Owner, Cash Store
P.O. Box 511
Benavides, Texas

Mrs. Lauro Yzaguirre
Cash Store
P.O. Box 511
Benavides, Texas

Jose R. Nichols
Ranch Foreman, Duval County Ranch Co.
P.O. Box 570
Freer, Texas

Marvin Foster
Lawyer
P.O. Box 1036
San Diego, Texas

Joe C. Guerra
Former Mayor of Roma
P.O. Box 186
Roma, Texas

Arnulfo Guerra
District Attorney, 229th Judicial Dist.
P.O. Box 454
Rio Grande City, Texas

George E. "Gene" Powell
Texas Ranger
P.O. Box 1354
Kingsville, Texas

Clinton Manges
Rancher
P.O. Box 356
Freer, Texas

J. H. Saenz
Clerk
P.O. Box 71
San Diego, Texas

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Benavides, Texas

Rogelio Sanchez
Heavy Equipment Operator
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APPENDIX E

ARTHUR MITCHELL
THOMAS WILLIAM GEORGE
TERRY L. BELT

WESTGATE - 1122 COLORADO
Telephone (512) 477-9351

July 21, 1975

Mr. DeWitt Hale
House of Representatives
Austin, Tx. 78711

Dear Mr. Hale:

Thank you for your letter of July 17, 1975 transmitting to me the Articles of Impeachment voted out by the committee.

The reason for this letter is not so much to acknowledge the receipt for the Articles but to thank you for the lawyerlike method in which you conducted the business of the committee. The hearings were hard, long and arduous, and quite frankly, in the heat of battle things were said and done which in the quietude of one's office one would like not to have said. However, in this case I feel that you handled the chairmanship in a lawyerlike manner and now that the books are closed on the proceedings, we can say that the record reflects the judicious approach to a difficult problem, for which I thank you.

Sincerely,

Arthur Mitchell

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APPENDIX E

July 21, 1975

Mr. Robert Maloney
House of Representatives
State of Texas
Austin, Tx. 78711

Dear Mr. Maloney:

The purpose of this letter is to thank you for performing a most difficult duty serving on the House Select Committee.

The reason that I am writing this letter is as indicated to thank you for your service and also to express my appreciation for the fine manner in which the Committee conducted its business in the performance of a most difficult and arduous task.

I have recommended to many of my friends since this was my first experience working with a legislative committee, that before they make any appraisals as to whether or not members of the Legislature work, they should follow one of these committees around who works until 2 in the morning and one who works from days on end with them, and certainly as this committee did, and they will have no doubt about the hardworking members of our House.

Again I want to thank you for the courtesies extended to me during those hearings, and I leave the hearings with a great deal of respect for those conducting the hearings.

Sincerely,

Arthur Mitchell