

IN THE SUPREME COURT OF FLORIDA

MANUEL ESTEBAN PAYRET, )  
 )  
 Petitioner, )  
 )  
 -VS- )  
 )  
 THE HONORABLE DON T. ADAMS, )  
 As Acting Circuit Judge of the )  
 Fifteenth Judicial Circuit of )  
 Florida, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO. 67,739  
FOURTH DISTRICT COURT  
OF APPEAL NO. 85-1563

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BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

CASE AUTHORITIES ..... ii

OTHER AUTHORITIES ..... ii

HISTORY OF CASE AND STATEMENT OF FACTS ..... 1-8

SUMMARY OF ARGUMENT ..... 9-10

CERTIFIED QUESTION

    MAY A COUNTY JUDGE BE INDEFINITELY ASSIGNED  
    CIRCUIT COURT DUTIES IN A SPECIALLY CREATED  
    JURY DISTRICT OF THE 15TH JUDICIAL CIRCUIT? ..... 11

ARGUMENT ..... 12-22

CONCLUSION ..... 23

CERTIFICATE OF SERVICE ..... 24

INDEX TO APPENDIXES ..... 25

CASE AUTHORITIES

**Crusoe v. Rowls**, 472 So.2d 1163  
(Fla. 1985) ..... 7,9-10,13,14,15-16

**Payret v. Adams** (Case No. 85-1563)  
(Fla. 4th DCA, Sept. 18, 1985) ..... 7,9-10,12,19

**State ex rel. Treadwell v. Hall**, 274 So.2d 537  
(Fla. 1973) ..... 7,9-10,13,17,18,19,20

OTHER AUTHORITIES

Administrative Order 1.003-1/85 ..... 1,9-10,2

Administrative Order 1.004-1/85 ..... 1,2,3,9-10

Administrative Order 1.006-1/80 ..... 1,3,4,9-10

Florida Constitution, Art. V, Sec. 3(b)(4) ..... 12

Florida Rule of Judicial Administration 2.050(b)(4) ..... 5,9-10

Florida Statutes, Section 40.015 ..... 3

HISTORY OF CASE  
AND  
STATEMENT OF FACTS

Manuel Esteban Payret petitioned the Fourth District Court of Appeal for a writ of prohibition, to prohibit County Court Judge Don T. Adams, of Palm Beach County, from sitting as acting Circuit Judge on trial of a felony criminal case against Payret, which case was scheduled for jury trial in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, with County Judge Adams sitting as the "acting" Circuit Court Judge. The case was set for trial at the Glades Courthouse Annex, a branch courthouse in Belle Glade, Florida. (Appendix B)

Earlier Payret had presented his challenge directly to Judge Adams himself, by motion to transfer the case for trial before an appropriate judge of the circuit court. (Appendix C) Upon denial of transfer, Payret sought writ of prohibition in the District Court.

Payret, in both his motion before Judge Adams and again in his petition to the Fourth District, argued that local Administrative Orders Nos. 1.003-1/85, 1.004-1/85, and 1.006-1/80, are constitutionally invalid. (Appendixes B, C)

In pertinent part the following are the relevant provisions of those three administrative orders of the local circuit court.

The relevant provision of **Administrative Order 1.003-1/85**, RE: JUDICIAL ASSIGNMENTS TO CIRCUIT AND COUNTY COURTS ON A TEMPORARY BASIS, is a blanket authorization, for a full one year period, for all county court judges to sit as circuit court judges. It simply reads, " \* \* \* County Court Judges are authorized and empowered to hear and decide Circuit Court cases."

The same order also provides that, upon good cause shown and proper motion, either party may have a case transferred to an appropriate division of the Circuit Court. It was pursuant to the latter provision that Payret filed his motion for transfer of the case to a circuit court judge. (Appendix E)

The second of the three orders, **Administrative Order 1.004-1/85**, RE: HEARINGS - COURTHOUSE ANNEXES & BRANCHES, recognizes the Glades Courthouse Annex, on State Road 15 in Belle Glade, Florida, as an officially designated courthouse facility, and defines its jurisdiction to be that portion of Palm Beach County lying west of a north-south line at Twenty-Mile Bend, in other words, geographically, the entire western half of Palm Beach County, or that area of the county commonly known as "the Glades." It also authorizes all circuit and county court matters to be heard in the Glades Courthouse Annex. The same order officially recognizes other annex or branch courthouses around

Palm Beach County. And then in a separate one-sentence paragraph the order says,

A County Court Judge who has been assigned as a Circuit Court Judge will perform the duties set forth herein.

**Administrative Order 1.004-1/85** (Appendix F)

The third and final of the three orders, **Administrative Order 1.006-1/80**, the one which creates the Glades Jury District, was enacted by the circuit judges on authority of **Section 40.015, Florida Statutes**. The Florida statute upon which they relied says,

(1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and holds jury trials, the chief judge, with the approval of a majority of the circuit court judges of the circuit, is authorized to create a jury district for each courthouse location, from which jury lists shall be selected in the manner presently provided by law.

(2) In determining the boundaries of a jury district to serve the court located within the district, the board shall seek to avoid any exclusion of any cognizable group. Each jury district shall include at least 6,000 registered voters.

**Administrative Order 1.006-1/80**, RE: **GLADES JURY DISTRICT/EASTERN JURY DISTRICT**, enacted pursuant to that statute, creates

a Glades Jury District, thereby effectively dividing the Fifteenth Judicial Circuit, which is Palm Beach County, into two jury districts. In pertinent part the administrative order reads,

A Glades Jury District has been established by a majority vote of the Judges of the Fifteenth Judicial Circuit and by resolution of the Board of County Commissioners of Palm Beach County. In implementing this District, the Glades Courthouse Annex is designated as a situs for holding the following jury trials:

Circuit Court Criminal

Normally, all felony jury trials are held at the main courthouse in West Palm Beach; however, where the situs of the crime is within the Glades Jury District, defendant's counsel may request a jury trial at the Glades Annex. In all such cases, the Clerk shall furnish defendant's counsel with form of "Notice and Preference re Jury District," which form shall be signed and filed by him no later than fifteen days after the case is set for trial.

\* \* \*

Grand Jury

This Order does not affect the Palm Beach County Grand Jury, which shall be drawn from the county at large.

Similar provision is made in the same order for jury trials in the Glades Jury District of cases falling in the Circuit Court's civil jurisdiction. (Appendix G)

In challenging the validity of those administrative orders, Payret argued to the trial judge and to the District Court that the orders of the local court are constitutionally invalid because they are permanent in nature, that they really do not effect a "temporary assignment" of a county court judge to the circuit court bench, inasmuch as the appointments to the circuit bench are for a one-year period, and are regularly renewed from year to year. Payret argued that the appointments are not limited in scope, for they are simply a blanket authorization for all county court judges to sit, for a one-year period, on the circuit court, in all nature of circuit court cases, civil and criminal. Payret argued that since the orders authorizing county judges to sit as circuit court judges are neither temporary nor limited, they violate Florida Rule of Judicial Administration 2.050(b)(4). He argued they also are invalid because the manner in which they affect local court practice violates the constitutional scheme of a two-tier court system: it violates the two-tier system because Judge Adams is the only circuit court judge, acting or otherwise, to regularly sit as a circuit judge in what is known as "the Glades" area of Palm Beach County, for which a special jury district has been created. (Appendixes B, C, & D)

When those arguments were made to the trial judge, Judge Adams himself acknowledged that he was, for all intents and



purposes, the circuit judge for the Glades Jury District. The District Court later acknowledged the same practicality.

Specifically, Judge Adams was asked by counsel for Payret to concede for the record that he was the circuit judge for the Glades Jury District, and that when other circuit court judges did come to sit there, it was on a visiting basis, practically speaking. Judge Adams said he agreed with that. (Transcript of 7/5/85 at p. 11) (Appendix D) But in acknowledging that to be the case, Judge Adams also made clear his wish that this matter be litigated and resolved at the appellate level. He went on to say,

THE COURT: \* \* \* I think your motion raises an issue that should have been raised at square one. I think I am probably the judge in the Glades, and that this should settle the issue once and for all. I think you raised it properly, and I kind of wished that it had been raised years ago, and not have left a cloud over many of the things we have done.

(Transcript of 7/5/85 at p. 11) (Appendix D)

Having said that, Judge Adams denied transfer of the case to a circuit judge for trial, and defendant Payret immediately filed his petition for writ of prohibition in the Fourth District Court of Appeal.

The District Court did much the same thing as Judge Adams had done, that is, they denied the relief sought by Payret while

at the same time acknowledging the court's concerns with the jurisdictional issue raised by Payret and expressing a wish for it to be finally litigated, on its merits, in a higher court. (Appendix A)

Specifically, the District Court denied prohibition on authority of *Crusoe v. Rowls*, 472 So.2d 1163 (Fla. 1985), and, *State ex rel. Treadwell v. Hall*, 274 So.2d 537 (Fla. 1973). In its per curiam decision the District Court concluded that the Supreme Court's reaffirmance of its prior decision in *State ex rel. Treadwell v. Hall*, id., foreclosed the District Court from acting on Payret's petition. But, having so concluded, the District Court went on to say,

Nevertheless, we are concerned with the extent to which a county judge may assume the duties of a circuit judge and, particularly, with the issue presented here where the county judge in question conceded that for all intents and purposes, he was the circuit judge for the western section of Palm Beach County, for which a separate jury district has been created. Accordingly, we certify the following as an issue of great public importance:

MAY A COUNTY JUDGE BE INDEFINITELY  
ASSIGNED CIRCUIT COURT DUTIES IN A  
SPECIALLY CREATED JURY DISTRICT OF  
THE 15TH JUDICIAL CIRCUIT?

*Payret v. Adams*, supra, at p. 1 (Appendix A)

Petitioner Manuel Esteban Payret now brings that certified question before the Supreme Court for final resolution on its merits.

## SUMMARY OF ARGUMENT

The question is whether a county judge may be indefinitely assigned circuit court duties in a specially created jury district of the fifteenth judicial circuit. The answer is no. In summary, the answer must be no for the following reasons.

There are three administrative orders involved here. One designates a branch or annex courthouse in the Glades area of Palm Beach County and empowers it to handle all county and circuit court matters, both civil and criminal, including jury trials; the other creates a separate jury district for that area; and the third, by blanket authorization for a full one-year period, assigns all county judges to hear and decide circuit court cases, and is renewed year by year. Here there also is an admission by the trial judge that, practically speaking, he is and for a number of years has been **the county and circuit judge** for the Glades area, for which a separate jury district exists.

A county judge's assignment to sit as a circuit judge is not temporary if it is "indefinite," or if it is for a one-year period and is renewed year by year. It is not temporary as required by **Florida Rule of Judicial Administration 2.050(b)(4)**, which authorizes chief judges of circuit courts to make such assignments, but only on a limited and "temporary" basis. The county judge here is an "acting" circuit judge, by such assign-

ment, but the authorization given, and the circuit court jurisdiction actually exercised are neither limited nor temporary.

The recent decision in **Crusoe v. Rowls**, 472 So.2d 1163 (Fla. 1985), is the primary authority for answering the certified question with a no. "Temporary" was found in **Crusoe** to be for a limited time, the court suggesting no more than six months.

What constitutes a "limited" assignment? In **Crusoe** it was found to mean that the assignment,

\* \* \* cannot usurp, supplant, or effectively deprive circuit court jurisdiction of a particular type case on a permanent basis \* \* \* that we do have a two-tier trial system and \* \* \* [c]ross-assignments are to be used to aid and assist and are not to be used to redesignate jurisdiction of the respective courts.

Id., at 1165.

An indefinite assignment of a county judge to hear circuit court cases in a separate jury district in which he is the only "circuit judge" regularly sitting, violates the temporal features of a "temporary" assignment as defined in **Crusoe**. And the scope of such an assignment, when for a separate jury district where only a county judge regularly sits, constitutes a breach of the two-tier trial system, is an effective and very real redesignation of jurisdiction, because, for the area of that jury district, it effectively supplants circuit court jurisdiction.

**CERTIFIED QUESTION PRESENTED**

**MAY A COUNTY JUDGE BE INDEFINITELY ASSIGNED  
CIRCUIT COURT DUTIES IN A SPECIALLY CREATED  
JURY DISTRICT OF THE 15TH JUDICIAL CIRCUIT?**

## ARGUMENT

### A COUNTY JUDGE MAY NOT BE INDEFINITELY ASSIGN- ED CIRCUIT COURT DUTIES IN A SPECIALLY CREATED JURY DISTRICT OF THE 15TH JUDICIAL CIRCUIT.

In this appeal the Florida Supreme Court has for review *Payret v. Adams*, (Fla. 4th DCA, September 18, 1985) (Case No. 85-1563), because the District Court certified a question of great public importance. Jurisdiction lies by virtue of **Article V, Section 3(b)(4), Florida Constitution**. The issue involved is a recurring one, that is, the proper extent, duration, and purposes of assigning a county judge to perform circuit court jurisdiction work.

The question presented is whether a county judge may be indefinitely assigned circuit court duties in a specially created jury district of the fifteenth judicial circuit.

The question presented must be answered in the negative.

The pertinent facts are that County Judge Don T. Adams is the only county judge assigned to the Glades Jury District, a special jury district created by local administrative order. That jury district consists of the western half of Palm Beach County or that portion of the county known as "the Glades." Judge Adams is the only **county** judge there, but he also happens to be the only **circuit** judge regularly assigned to that jury

district. Even though he is an "acting" circuit court judge, pursuant to local administrative order "temporarily" appointing him for a one year period, which order is renewed year after year, nevertheless, no other circuit court judge, acting or otherwise, is regularly assigned to sit in the Glades Jury District. (Transcript of 7/5/85 at p. 11) (Appendix D)

In other words, the "temporary" and "acting" circuit judge is the "only" circuit judge. Judge Adams is not assisting or substituting for some other circuit judge. As Judge Adams himself put it, he is **the** judge in the Glades -- and he was concerned about the propriety of it.

Even though the Fourth District Court did deny the writ of prohibition, the District Court also expressed its concern with the extent to which a county judge may assume duties of a circuit judge, particularly with the issue presented here where the county judge in question conceded that for all intents and purposes he is **the** circuit judge for the entire western half of Palm Beach County, for which a separate jury district has been created. The district court explained it was denying the petition because the court felt the decisions in **Crusoe v. Rowls**, supra, and **State ex rel. Treadwell v. Hall**, supra, especially the latter, foreclosed it from acting. In light of what the district



court did and said, it is appropriate to take a very close look at those decisions and at the reasoning behind them.

In *Crusoe v. Rowls*, supra, writ of prohibition was sought to prevent a county judge, acting as circuit judge pursuant to assignment, from proceeding in a child support enforcement action. The First District Court of Appeal granted the writ, but certified the question. The Supreme Court, Judge McDonald writing the decision, held that an administrative order directing that certain child support enforcement proceedings be brought before specifically named County Judges was a valid assignment of county judges to the Circuit Court bench, and was not an improper abdication of Circuit Court jurisdiction over such proceedings.

The Supreme Court, in *Crusoe*, acknowledged that it was the temporal nature of the assignments under review that concerned the district court, for the orders were successive and repetitive assignments of county judges to hear all enforcement petitions. *Id.*, at p. 1165. The assignments were for six-month periods -- unlike in the present case in which the assignments are for a full one-year period. *Id.*, at 1164. However, the Supreme Court upheld the validity of the assignments in *Crusoe*, on the basis the assignments were not permanent, and because the county judges were not assigned to hear **all** support orders, but only those falling in a specified class. *Id.*, at p. 1165.

The Court also noted that "temporary" is an antonym for "permanent:" it is a comparative term; then the Court said, if a county judge is assigned to perform solely circuit court work, the assignment must be for a relatively short time for it to be temporary -- and in a footnote the Court suggested no more than sixty days. *Id.*, at p. 1165. And if a county judge is assigned to spend only a portion of his time performing circuit work, the assignment can be longer -- which, in another footnote, the Court suggested be no more than six months. *Id.*, at p. 1165.

Under the Supreme Court's views on "temporary" versus "permanent" as expressed in *Crusoe v. Rowls*, *supra*, the one-year assignments which are successive and repetitive in the present case are permanent, not temporary; consequently, they are invalid.

But the Supreme Court in *Crusoe* also dealt with the allowable scope of such assignments, and what the court said in that regard even further establishes the invalidity of the assignments under attack in the present appeal. When the Supreme Court noted that a county judge could be assigned to spend a portion of his time performing circuit work for a longer time, suggesting no more than six months, the Court qualified it by saying,

\* \* \* but the assignment cannot usurp, supplant, or effectively deprive circuit court jurisdiction of a particular type of case on a

permanent basis. Flexibility must be given the chief judges to utilize effectively judicial manpower in the mutual assistance of each trial court. Nevertheless, the chief judge should be mindful that we do have a two-tier trial system and that generally we should not trespass on the other's jurisdiction. Cross-assignments are to be used to aid and assist and are not to be used to redesignate jurisdiction of the respective courts.

**Crusoe v. Rowls**, id., at 1165 (footnotes omitted) (emphasis added)

In the present case the county judge is not only given blanket authorization for a one-year period to sit on any and all nature of civil and criminal cases falling in the circuit court's jurisdiction, but, as noted by the phrasing of the certified question put to this court by the Fourth District, he is given his own, entirely separate jury district in which to do it. Or, as noted by Judge Adams himself, as well as by the Fourth District in its decision, he is **the** circuit judge for that entire jury district. In light of what the Supreme Court said in **Crusoe**, it is evident that both temporally and in terms of scope, the assignments of Judge Adams to sit on trial of circuit court cases are constitutionally invalid. Clearly there is a trespass on the jurisdiction of the circuit court. Most clearly of all, there is a redesignation of jurisdiction. In light of what the Supreme Court said in **Crusoe**, the certified question must be answered in the negative.

In *State ex rel. Treadwell v. Hall*, supra, writ of prohibition was sought to prohibit a county judge, who had been assigned to act as circuit judge, from proceeding with administration of an estate being probated and administered in circuit court. The issue before the court was whether the Florida Constitution and applicable rules of court allowed for a chief judge of the circuit court to appoint a county judge to discharge judicial services described in the assignment order, i.e., judicial services constitutionally falling in the exclusive jurisdiction of the circuit court. The Supreme Court stated the issue being decided by it to be,

\* \* \* whether under the provisions of revised Art. V Sec. 2(b), Fla. Const., F.S.A., the chief judge of a judicial circuit is authorized to assign a county judge to assume jurisdiction of matters which, in the language of Section 20 of Article V (schedule) of the Constitution, are in the exclusive jurisdiction of the circuit court.

*State ex rel. Treadwell v. Hall*, id., at 274 So.2d 538.

The Supreme Court answered that question in the affirmative, and specifically held that county judges who otherwise meet the requirements for appointment or election to the circuit bench "are qualified to be assigned as temporary circuit judges for the performance of any judicial service a circuit judge can perform."

Id., at 539. The Court noted the constitutional provisions allowing for such assignments, and referred to the rule of civil procedure relating to court administration, adopted by order of the Supreme Court pursuant to that constitutional provision, delegating from the chief justice of the Supreme Court to the chief judge of each and all judicial circuits, authority to assign any judge to temporary service for which the judge is qualified. And in dictum the Supreme Court went on to observe that,

\* \* \* This Rule was designed, in part, to obviate the need for each incoming chief justice to specifically delegate to the twenty chief judges of the circuits the authority to make assignments; it also was designed to obviate the need for specific delegations when the chief judges within the circuits were re-elected or changed. Unless a chief justice indicates otherwise, his desire to continue delegation via the Rule is assumed.

**State ex rel. Treadwell v. Hall, id., at p. 539.**

It is possible in the present case that the District Court misread that last sentence, believing it authorized continuing, indefinite appointment by a chief judge of a circuit, of a county judge to preside over circuit court jurisdiction work. However, that sentence in fact refers to the chief "justice" of the Supreme Court, and to the indefinite and continuing nature of the

rule delegating assignment authority from the chief justice to the chief judges of the respective circuits.

That last observation is made simply because Petitioner Payret is somewhat at a loss to understand what the Fourth District intended when it said in the instant case that it was denying the petition for writ of prohibition because, in particular,

\* \* \* we believe the Supreme Court's reaffirmance of its prior decision in **State ex rel. Treadwell v. Hall**, 274 So.2d 537 (Fla. 1973) forecloses us from acting herein.

**Payret v. Adams**, supra, at p. 1 (Appendix A)

In any event, the decision in **State ex rel. Treadwell v. Hall**, supra, in no manner whatever deals with the issue of "temporary" versus "permanent" in terms of the duration of an assignment order. The closest the **Treadwell** court gets to that question is where the court observes, in the dictum quoted earlier, that the rule is also designed to obviate the need for specific delegations when the chief judges of the respective circuits are re-elected or change. Whether a valid temporary order may carry over from one chief circuit judge's term to another is not at issue in the present case. What is at issue is the question of what constitutes an assignment that is "temporary," as well as "limited" in scope. Even though in the **Treadwell** case, as re-

flected by the assignment order which is set forth in the Supreme Court's decision, the chief circuit judge's assignment of the county judge in **Treadwell** was made effective "until further order," any question of its temporal validity on that basis was never raised, or at least never addressed by the Supreme Court's decision. The question of what is "temporary" versus "permanent" clearly was not within the scope of the issue presented in **Treadwell**, nor was it decided by the court.

The authority of a chief circuit judge to make assignments of county judges to the circuit bench for temporary service there, is not the question in the present case, as it was in **Treadwell**. Consequently, the decision in **State ex rel. Treadwell v. Hall**, supra, has no direct bearing on the question presented to this court now.

When all is said and done, it boils down to this. Judge Adams is qualified to be a circuit court judge, but he is not one, and administrative orders cannot properly make him one. He may, on temporary assignment, sit on the circuit court to assist that court. However, based only on administrative orders of the circuit court, he may not be made a circuit court judge with his own separate portion of the county -- his own jury district -- to preside over. For it to be done lawfully, he needs to be elected to that position by the voters, or appointed by the Governor.

Until he is, his service as the circuit judge for the Glades Jury District is invalid.

Certainly it has become fashionable to admire the efficient administration of justice. Setting up separate jury districts and allowing county judges to have blanket authority to handle circuit court cases, of any nature at any time, may be quite efficient. But it is necessary to recognize what, in truth, is being accomplished, which is an entirely restructured judicial system at the trial court level, without the bother of amending the Florida Constitution to accomplish it. In the guise of limited, temporary assignments by administrative order, something is accomplished that is fundamental to the structure of the trial court system and that is neither limited nor temporary.

It is respectfully suggested that fundamental elements of our constitutionally designed judicial system, and our commitment to constitutional structures and grants of authority, have been eroded in the name of judicial convenience and economy. It is suggested that this manipulation of our constitutionally established judicial system, by local administrative orders, brings discredit to our basic commitment to constitutional government.

The administrative orders in question go well beyond what the Supreme Court and the Florida Legislature intended when they established a system for local administrative orders providing



for jury districts and for assignments of county judges to the circuit court on a temporary, limited basis. In the case of Judge Adams' assignment as acting circuit judge presiding over his own separate jury district, those administrative orders are invalid.

One final observation would relate to the need for a reasonably prompt decision in this matter. The route taken by the Fourth District, of denying prohibition but expressing concern about Judge Adams' jurisdiction, and certifying the question to the Florida Supreme Court, accomplished no resolution of the issue at all. Nor did it provide any guidance for the trial judge as it affects his authority to continue to sit in this or any other circuit court case. Judge Adams himself had expressed concern for the cloud over his activities as acting circuit judge for the last few years. Instead of removing that cloud the district court's decision made it even darker -- and made the prompt resolution of the question of even more import, for everyone involved.

## CONCLUSION

The certified question must be answered in the negative. The answer must be that, no, a county judge may not be indefinitely assigned circuit court duties in a specially created jury district of the circuit court of the fifteenth judicial circuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this pleading was served, by mail delivery, upon Florida Attorney General Jim Smith, Attention, Assistant Attorney General Robert T. Teitler, 111 Georgia Avenue, West Palm Beach, Florida, 33401; and, upon the Honorable Don T. Adams, Acting Circuit Judge, Glades Office Building, 2976 State Road 15, Belle Glade, Florida 33440, on this date, the 24<sup>th</sup> day of the month of October, 1985.

Respectfully submitted,

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