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

CORRECTED REPLY BRIEF OF PETITIONER

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SUMMARY OF ARGUMENT

As outlined by Respondent, the practical reasons for having two jury districts in Palm Beach County are permanent and continuing in nature. In truth, they indicate that Respondent's annual re-assignments to circuit duty are intended to be permanent and continuing, to meet needs that are.

As argued by Respondent, the constitutional viability of the specially created jury district referred to in the certified question is misplaced. It is not constitutionally viable, for several reasons.

The enabling statue does not create jury districts, but delegates to local circuit courts authority to enact jury districts county by county and circuit by circuit. This violates **Art. V, Sec. 11, Fla. Const.**, which prohibits use of special law or general law of local application to affect venue of courts, or to affect jurisdiction or duties of any state officers, as well as **Art. V, Sec. 1**, which mandates use of general law to set out trial court jurisdiction. The statute seeks to delegate authority the legislature has no constitutional power to exercise. It violates **Art. V, Sect 6**, requiring county court jurisdiction to be uniform throughout the state, and **Art. V, Sec. 1**, which mandates circuit court jurisdiction follow county lines. Finally, use of two jury districts violates the **Sixth Amendment** fair-cross-representation requirement in the jury selection process.

ARGUMENT

A COUNTY JUDGE MAY NOT BE INDEFINITELY ASSIGNED CIRCUIT COURT DUTIES IN A "SPECIALLY CREATED JURY DISTRICT" OF THE 15TH JUDICIAL CIRCUIT.

In his brief the Respondent adopts, by reference, arguments made in a brief **amicus curiae**, filed by the State Attorney. That brief notes that the certified question seriously impacts the viability of the "specially created jury district" referred to, and then defends it's viability by arguing in support of the constitutional and statutory propriety of the special jury district. The brief also points out that the State Attorney himself was a moving force in creation of the special jury district, then outlines the reasons for having divided Palm Beach County into two separate jury districts, which relate primarily to the large size of the county: reasons such as long distances, bad roads, inconveniences, exceptional costs. It also cites to the political desire of towns inside the special district for a permanent jury district in their area, as reflected by a municipal resolution passed on the subject.

When viewed in terms of "legislative intent," the continuing and permanent nature of all the factors cited by the State Attorney, as grounds for having created the special jury district in the first place, are further proof the respondent county judge's annual re-assignments to the circuit bench are not temporary in nature. They reflect that the assignments are intended to be

continuing and permanent, because they are done to meet needs for a special jury district that are continuing and permanent -- as described by a party instrumental in creation of the district.

All those practical necessities argued by the State Attorney do more to prove the need for assignment of a "circuit" judge to sit in the Glades Jury District full time, than they do to justify perpetually re-assigning a "county" judge to "temporarily" preside over circuit court there.

Where the the State Attorney and Respondent deal with the statutory and constitutional validity of the special jury district, they deal with the more significant issue.

A separate challenge to the constitutional validity of the specially created jury district was raised by Petitioner Payret, in the trial court by a pre-trial motion. (See Appendix "A") Petitioner did not include that motion and issue in the present pre-trial appellate proceeding; but the respondent trial judge and the prosecutor apparently agree to it being heard and affirmatively intend to litigate it now, since they now assert the special jury district's legal viability as a significant part of their argument on the certified question.

When Petitioner challenged, by pre-trial motion, the validity of having jury districts in Palm Beach County, he made demand for a jury pool drawn from the whole of Palm Beach County, and

objected to drawing one from any "jury district" of less than the entire county. His challenge and his request were denied.

As pointed out in the **amicus** brief, the case now has been transferred out of the special jury district in Belle Glade to the main courthouse in West Palm Beach for trial. This in no manner moots the question of validity of the respective jury districts, because the question remains of from where the jurors must be drawn, i.e., from the jury district in which the case is to be tried, or from the county as a whole.

In accord with the administrative order creating the two jury districts, this felony case is scheduled for trial in the main Courthouse at West Palm Beach before a petit jury panel to be drawn only from the Eastern Jury District, not from Palm Beach County at large. Excluded from the jury pool will be all persons living in the jury district in which this crime is alleged to have occurred, i.e., the Glades Jury District.

The issue becomes whether the Florida Supreme Court should answer the certified question in the negative because the "specially created jury district" is itself unconstitutional.

The power of any court is derived from the government which created it, and is limited to or by the instruments conferring such power. **Varn v. Alderman**, 42 Fla. 378, 29 So. 323 (Fla. 1900). In Florida, the ultimate source of all judicial power is the constitution, with statutory allocation of jurisdiction being

limited to such as the constitution authorizes. **Re Cox**, 44 Fla. 537, 33 So. 509 (Fla. 1902); **Summer Lbr. Co. v. Mills**, 64 Fla. 513, 60 So. 757 (Fla. 1913); and, **Dunedin v. Bense**, 90 So.2d 300 (Fla. 1956).

There are several grounds for finding the statute authorizing local creation of jury districts, and the administrative order creating them pursuant to that statute, unconstitutional.

Article III, Section 11(a)(6), Florida Constitution, mandates that there shall be no special law or general law of local application pertaining to change of civil or criminal venue. Any statute authorizing local creation of "jury districts," and any local administrative order which sets out trial jurisdiction of the county and circuit courts based on the jury district in which the cause of action arises, or in which an offense is alleged to have occurred, would have direct impact on both civil and criminal venue, and violate this provision.

The Florida Constitution also says that the legislature may not pass special or local laws regulating the jurisdiction or duties of any class of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies. **Article III, Section 11, Florida Constitution.**

If the statute in question automatically created "jury districts" in all counties that met certain criteria, created them based on uniform criteria uniformly applied in all such counties,

then perhaps the statute might at least be classified as a general law of local application. Cf., **City of Miami Beach v. Frankel**, 363 So.2d 555 (Fla. 1978); and, **Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.**, 434 So.2d 879 (Fla. 1983). Instead, the statute authorizes **local** creation of jury districts. The actual creation of such jury districts is neither automatic nor uniform among the various counties. The statute fails to meet the criterion for being a general law, or even a general law of local application.

Article V, Section 1, Florida Constitution, mandates that judicial power shall be vested in a supreme court, district courts of appeal, and circuit and county courts. It then mandates the legislature shall, "by general law,", divide the state into appellate court districts and judicial circuits following county lines.

The statute in question does not constitute a general law. The statute would be clearly invalid if the legislature enacted special acts for each county, using different criteria for drawing out different lines for "jury districts" among the various counties. Such legislation would be "special" rather than "general." Yet that is precisely the result of the statute in question. It seeks to accomplish indirectly that which, constitutionally, the legislature could not accomplish directly. The statute does not create jury districts. Instead, it delegates

the authority to do so -- the authority to write special acts of local application -- to the judiciary of the respective circuits. Since that is a power the legislature has no constitutional authority to exercise itself, it is one they have no authority to delegate.

Article V, Section 6(b), Florida Constitution, mandates that the county courts shall exercise the jurisdiction prescribed by general law, and also that "[s]uch jurisdiction shall be uniform throughout the state." The statutory provision in question here, and the local administrative orders enacted pursuant to it, would appear to violate the requirement that county court jurisdiction shall be uniform throughout the state. Based on this statute, and diverse local administrative orders enacted pursuant to it, some county courts in the state may have geographical jurisdiction that runs county wide, yet others may have jurisdiction that runs only throughout their "jury districts," an area less than the full county, as in the case of the Glades Jury District. It would not be uniform throughout the state.

Palm Beach County's jury district system also violates an accused's right to a jury drawn from the entire county, as guaranteed by the **Florida Constitution** (1968 Revision), **Article I, Sections 16** and **22.**

Section 16 specifically provides that "in all criminal prosecutions" the accused shall have the right to a speedy and

public trial "by **impartial jury in the county** where the crime was committed." (emphasis added) Trial by a petit jury drawn from less than the entire county -- by a petit jury that specifically and totally excludes approximately one-half the geographical area of Palm Beach County -- fails to comply with this provision of the constitution.

Section 22 mandates that the "qualifications" of jurors "shall be fixed by law." A jury selection process that excludes a designated geographical portion of the county, constitutes a "geographical qualification," one fixed by administrative order, rather than "fixed by law." It is not a qualification established by enactment of the legislature. It violates this mandate of **Article I, Section 22.**

The **United States Constitution, Sixth Amendment,** is violated for the same reason, that is, because the geographic qualification is not "previously ascertained by law," but rather is established merely by local administrative order.

Jury districts that fail to follow county lines violate another provision of the state constitution, one mandating that geographical jurisdiction of this state's circuit courts be determined along county lines. **Article V, Section 1, Florida Constitution,** mandates the existence of a supreme court, and lesser courts; then prohibits creation of any other courts by the state or any political subdivision or any municipality; and then

says, "The legislature shall, by general law, divide the state into appellate court districts and judicial circuits **following county lines." Article V, Section 1.**

The constitutional guarantee of a "representative jury" constitutes an independently sufficient, additional ground for finding the use of special jury districts unconstitutional, without having to reach the question of whether a jury drawn from one or the other of the jury districts, as opposed to being drawn from the entire county, is in some manner biased. This independent ground arises from the Sixth Amendment guarantee of a jury selection process that draws from a representative cross-section of the community. It arises from the fact that a violation of this constitutional requirement is prohibited even if the defendant himself is not a member of the "class" of citizens that is unlawfully excluded, and the fact that in order to invoke the right to a representative cross-section of the community, there is no obligation to show any prejudice as result of the exclusion of any class of citizens.

In **Jordan v. State,** 293 So.2d 131 (Fla.2nd DCA 1974), the court noted that, apart from the due process and equal protection guarantees of the Fifth and Fourteenth Amendments, the Sixth Amendment to the U.S. Constitution guarantees the accused a trial by an impartial jury, and held that this comprehends that in the selection process there will be "a fair possibility for obtaining

a representative cross-section of the community." The court then said, as a matter of constitutional law, that where a county is the political unit from which a jury is to be drawn, "the right to an impartial jury drawn from a fair cross-section of the community requires that the jury be drawn from the whole county and not from some political sub-units thereof to the exclusion of others." **Jordan v. State,** 293 So.2d 131 (Fla.2nd DCA 1974), lt 134.

Federal constitutional law holds that the right to a representative-cross section jury, one representative of the entire county, is an absolute right; and, when that right is violated, no prejudice or bias need be shown for the defendant to have standing to complain.

In **Peters v. Kiff,** 407 U.S. 493 (1972) the U.S. Supreme Court held that the exclusion of blacks constitutes denial of due process to any defendant, white or black, and standing to complain exists even if the defendant is not himself a member of the class excluded; and harm need not be shown.

> When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable * * *
>
> It is the nature of the practices here challenged that proof of actual harm, or lack of harm, is virtually impossible to adduce * * * In light of the great potential for harm latent in the unconstitutional jury-selection

> system, and the strong interest of the criminal defendant in avoiding that harm, any doubt should be resolved in favor of giving the opportunity for challenging the jury to too many defendants, rather than giving it to too few.
>
> **Peters v. Kiff**, 407 U.S. at 503-504 (footnote omitted)

In **Duncan v. Louisiana**, 391 U.S. 145 (1968), the court extended these Sixth Amendment rights to criminal trials in state courts. And in **Williams v. Florida**, 399 U.S. 78 (1970), the court upheld juries composed of only six rather than the traditional twelve, but reaffirmed that in criminal trials the system used to select the six must draw from a group of laypersons representative of a fair cross-section of the community, and that this latter right is part and parcel of the Sixth Amendment right of fair trial by jury. **Williams v. Florida**, 399 U.S. at 101.

Finally, in **Taylor v. Louisiana**, 419 U.S. 522 (1975), the U.S. Supreme Court held, point blank, that "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial." **Taylor v. Louisiana**, 419 U.S. at 528. "We accept the fair-cross-representation requirement as fundamental to the jury trial guaranteed by the Sixth Amendment and are convinced that the requirement has solid foundation." **Taylor v. Louisiana**, 419 U.S. at 530-531.

Even if bias need not be proved, this Court may wish to take judicial notice of the well recognized differences between the communities of the Glades and Eastern Jury Districts of Palm Beach County. The Glades district is composed of towns like Belle Glade, South Bay, and Pahokee, small towns oriented to farming and farm labor, and thus to minority populations such as black and hispanic. But the Eastern Jury District is composed of sea-side resorts like Palm Beach, Jupiter, and Boca Raton, towns that are urban, coastal, oriented to retirement living and tourism, to sun and surf, to fashion and money. Palm Beach receives national attention for Prince Charles and polo; Belle Glade for poverty and AIDS. The two jury districts are of very marked, significantly different character and makeup.

As a result, not only does the jury district system used in Palm Beach County discriminate geographically, it discriminates racially, economically, socially. See: **Jordan v. State**, 293 So.2d 131 (Fla.2nd DCA 1974).

The procedure used by defendants who are charged with crimes occurring inside the Glades Jury District, for invoking the jurisdiction of the Glades Jury District at their discretion (a procedure emphasized in the **amicus** brief), also serves to demonstrate the unconstitutionality of the administrative order creating those districts. Only defendants charged with committing felonies in the Glades Jury District have benefit of a procedure

for voluntary, unfettered selection of trial in either the Glades or the Eastern Jury District.

The citizens of the Glades Jury District are automatically discriminated against. They are automatically disqualified to serve on a jury trying a case for a crime committed in their district, unless the defendant himself desires trial in their jury district, and affirmatively requests it. Only if the defendant himself so elects, do members of the community where the crime occurred get any chance to sit on the jury. No grounds need be given for the defendant's election. **Administrative Order 1.006-1/80.**

Defendants in the Eastern Jury District also are discriminated against. Someone who commits a crime in the Eastern Jury District, say in West Palm Beach, has no choice but to stand trial at a courthouse in that district, before a jury drawn from that district, which automatically and necessarily includes in the selection process people from the community in which the crime is alleged to have taken place. If the same crime had been committed in the Glades Jury District, say in Belle Glade, the administrative order in question would automatically have set that person for trial in West Palm Beach, using a jury drawn from the Eastern Jury District, which automatically excludes and completely disqualifies all people living in the town or area of the county where the crime is alleged to have occurred.

Even if the Florida statute that authorizes jury districts to be created by the judges in the respective circuits is a constitutional statute, the particular administrative order enacted in the Fifteenth Circuit is still invalid, because it is in conflict with another statutory provision regulating jury selection processes.

The administrative order in question authorizes jury districts for use in selecting petit juries only. It specifically excludes their use in selecting the grand jury. So, in Palm Beach County, by administrative order of the judges of the circuit, one system is used from drawing petit jurors, from jury districts, another for drawing the grand jury, county wide. This is in direct conflict with **Section 905.01(1), Florida Statutes,** which mandates that the grand jury "shall" consist of not less than fifteen nor more than eighteen persons, and, "The provisions of law governing the qualifications, disqualifications, excusals, drawing, summoning, supplying and deficiencies, compensation, and procurement of petit juries shall apply to grand jurors." **Section 905.01(1), Florida Statutes**

CONCLUSION

The Florida Supreme Court should answer the certified question in the negative. The Court should hold that a county judge may not be indefinitely assigned circuit court duties in a

specially created jury district of the Fifteenth Judicial Circuit, because the statute authorizing, and administrative order creating that special jury district are unconstitutional.

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 State Attorney David Bludworth, **Attention, Assistant State Attorney Maureen H. Ackerman,** Room 430 Palm Beach County Courthouse, 300 North Dixie Highway, 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 13th day of the month of December, 1985.

Respectfully submitted,

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