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BEGINNINGS

I came to Dallas in 1970 from my native South Louisiana to work for Dallas Legal Services and practice civil rights and poverty law. Legal Aid or Legal Services was funded by the federal Office of Economic Opportunity as one of the weapons developed by President Johnson in the late 1960s in his War on Poverty. Dallas was my second stop after LSU law school, having practiced for a year as a lawyer with Central Louisiana Legal Aid (CENLA). At Legal Services, I was using my newly acquired legal skills to help poor folks, mostly minority folks, take on "the system." At CENLA, we were successful enough that within one year the governor had vetoed further funding for the entire Legal Services office in which I was housed. So, I came to Texas. I had no idea who Barefoot Sanders was.

THE SCHOOL DESEGREGATION CASE

Arriving in Dallas with my trailer in tow, I was assigned to the task of mining the target-rich environment that Dallas offered for civil rights litigation. I was stationed in West Dallas, next to the lead smelter, close by the cement plant, and directly across from the then largest public housing project in Dallas. It was here that I first heard of Barefoot Sanders.

It seems that Judge Sanders had the temerity to run for the United States Senate that year, challenging John Tower, whom I quickly learned was not our friend. I became enamored with the fact that someone with progressive credentials like Barefoot Sanders was challenging the forces of the Establishment. Several friends and I decided that this was a race we could all get behind and attended several campaign functions for Judge Sanders in the Dallas area. I started to hear a good deal about Barefoot Sanders.

Of course, we all know now that despite a valiant effort, Judge Sanders was not elected to the Senate that year. In the course of the campaign, his illustrious background was given some publicity. I learned that Judge Sanders had served in the late Camelot days of the JFK presidency; had, as United States Attorney, assisted Judge Sarah Hughes in swearing in President Johnson; and that Judge Sanders had served the Johnson administration in its civil rights legislative efforts, especially with respect to the passage of the Voting Rights Act of 1965. This fact alone was ex-

traordinary to me. I had not expected to encounter someone in public life in Texas with that kind of background and I remember being impressed. But I knew little else about Barefoot Sanders.

One of the first legal matters I got involved in while at the West Dallas office was one concerning equal access to education. Mr. Sam Tasby came to the office on one fateful morning to inquire just why his school age children, who were African American, could not attend schools near his home, but rather had to attend schools which required them to take the Dallas Transit buses to their schools and for which he had to pay. It turned out that the schools nearest their home were overwhelmingly white in student population. After a little futile back-and-forth with the Dallas school district, it became clear that Mr. Tasby and other parents and children would have to sue to achieve an equal education in Dallas. The rest, as they say, is history. But this was well before Barefoot Sanders became a United States District Judge, and our paths had yet to cross more than informally.

The case was assigned to Judge William "Mac" Taylor in 1970, a fine man and a good judge, but soon to be vilified by his neighbors and community. Judge Taylor, like Judge Sanders, was a product of Dallas, its public schools and a former member of a prestigious Dallas law firm. As trial neared in the summer of 1971, he was the target of much hate mail and scurrilous behavior from the general public. I am certain that a number of Establishment law firm members and business leaders sought private audience with him to shape his views for the coming trial. He alluded to as much in chambers conferences on more than one occasion. He was the subject of angry picket lines every morning and afternoon outside the federal courthouse during the trial. Before trial had begun, some half a dozen citizen groups were allowed to intervene to oppose school desegregation. The trial was a three ring circus. We did, however, prevail on most claims for relief (other than opposing elementary desegregation via television) and off the case went to the court of appeals. Judge Sanders was still not on my screen.

After wandering about in the legal wilderness for several more years, including two major trials, two huge appeals, one Supreme Court review and argument, the case came back to Dallas in 1980. Another long trial loomed. A series of changes in some of the parties occurred. The Dallas NAACP had also intervened in 1976. A lawyer for that esteemed organization came to town from Boston as its lead counsel. In what seemed like a blinding flash, he filed a motion to recuse or disqualify Judge Taylor because of his former membership in a firm now representing the school district. Before any hearing was scheduled, Judge Taylor voluntarily stepped down and the case went into the clerk's "Hat" for reassignment. Somebody's karma was right that day, for the name (actually letter) of the judge drawn was Judge Barefoot Sanders, a brand-spanking new federal judge appointed by President Jimmy Carter in the waning days of his

administration. Now I was going to get to know Judge Sanders. This was to be one of the best days this lawyer ever had at the courthouse.

Within days of the case assignment to Judge Sanders, he had all the lawyers down for a conference. My memory tells me this was in open court, but we all met in chambers frequently during that time. He quickly dispatched with a threat of another motion to disqualify, this time for something he did, or did not do, while serving in the Texas House of Representatives in the 1950s. I hasten to add that it was not the Tasby plaintiffs' motion. Judge Sanders set the lawyers off on a rather detailed schedule and advised the lawyers that we would be trying the case, remanded to him from the Supreme Court via the court of appeals, by spring of that year. And did we ever go to trial. Judge Sanders seemed to think that after ten years, there needed to be more emphasis on the "speed" part of the "all deliberate speed" mandate from the Supreme Court. After another six weeks of hearing and a several day evidentiary supplement in the summer, he handed down his decision in August of 1981. Speed on we did. And yet, not one time during this process did Judge Sanders show impatience or ire with the lawyers or their right to be heard (which is not to say that he did not urge that we avoid repetition or redundancy). At the end of the day he wrote a masterpiece of an opinion, which for the first time in eleven years plaintiffs did not appeal. Now I was getting to know a little more about Judge Sanders.

But the best came as years rolled by, with countless hearings on compliance issues, modifications to the remedial plan for desegregation, and dust-ups between the parties. In every instance he heard the parties out, treated all with courtesy and respect, and caused us, the principal lawyers, to really begin to talk substance to one another and reach agreement on matters great and small. He appointed a truly wonderful person as his new external auditor, a former teacher and administrator with the school district, Sandra Malone. With her tireless efforts, the Judge and the parties were far better off than operating alone. She would report to Judge Sanders and often to the lawyers at the Judge's request to solve problems. We met so often at his suggestion (frequently in his chambers) that I cannot recount the number of these conferences. No one had an advantage before Judge Sanders, and even on those occasions when he ruled against my position, I knew that he was probably right and that my clients were given a fair shake, even on some of my wild-hair theories, such as the one calling for an *ad valorem* tax increase over the district's objection to build the Townview school. Because of how he ruled, which was against us, and because of what he intimated for the future, Townview was built and is today one of the district's centerpieces. Over these years and times, I really came to know Judge Sanders—as a judge and as a human being.

After presiding over the school desegregation case for twenty-three years, Judge Sanders conducted what was to be the final hearing in the case—on the school district's Motion to be Declared Unitary. This last hurrah, so to speak, centered on the school district's compliance with the

remaining parts of the remedy order in the case. Once again, the parties were well received by Judge Sanders. He listened with great patience and wisdom to our arguments. He even allowed me to associate the invaluable help of my wife, lawyer Betsy Julian, to assist in these hearings (this ran counter to prior rulings forbidding additional counsel to the case), as he wanted the hearing to address any and all uncertainties remaining in the litigation without cutting any corners. His opinion granting unitary status was extremely thoughtful, and thus concluded some thirty-three years of litigation, twenty-three of them on his watch. By the end of the hearing, I truly felt and believed that the community understood that they had their day in court and that Judge Sanders fully appreciated their positions and concerns. While some members of the community didn't want Judge Sanders to end his oversight of the school district, they had enough respect for the Judge and his commitment to the underlying principles of the case that no one urged an appeal. And, of course, I didn't recommend one either. It was over.

In the ensuing months and now years of post-mortem regarding *Tasby*, Judge Sanders' fair, firm and steady hand has been praised by all involved. This is as it should be. School desegregation cases are among the most important litigation brought under the Constitution, embodying the fundamental principles of our society. These cases affect the lives of countless individuals and institutions forming the bed rock of our democracy; these cases protect an equal access to public education for all citizens. Presiding over such a case requires a special kind of judge. Having Judge Sanders drawn out of a hat so many years ago makes one believe in Divine Order.

But this is not the only way I got to know Judge Sanders.

THE STATE HOSPITAL CASE

In 1990, Judge Sanders was presiding over another long-running piece of litigation, the *RAJ v. Jones* case. The litigation addressed practices and policies of the Texas Department of Mental Health and Mental Retardation regarding the Texas mental hospital system. The litigation had been pending for quite some time (since 1974, I believe) and had been assigned him shortly after assuming the federal bench. The litigation had been the subject of a settlement agreement between the parties in 1981, but the implementation of that Consent Decree had been problematic for some time. Neither side to the litigation was satisfied with the agreement's terms or at least what the terms meant. Judge Sanders had been dealing with the wrangling of the parties for some time by 1990. I received a call from the Judge asking whether I would be willing to accept appointment as plaintiff's class counsel in the case. I knew literally nothing about the litigation's details or its status. The Judge explained that all would be furnished to me. Now I was going to learn about a different part of Judge Sanders.

Of course, with trepidation I agreed, and surely enough, he made the appointment, introduced me to a room full of files, and requested that I let him know when I was "up to speed" or words to that effect. To say that I felt like a fish out of water was an understatement. Judge Sanders let all the lawyers know of this change and that I should expect their cooperation. I met with all counsel shortly after that and found myself in the middle of a Tong war. Not only was I learning the case facts and law on the run, the lawsuit was truly stuck in the mire, with the parties maneuvering for position and primacy. However, within a few months, and after some conferences with the lawyers and prodding by Judge Sanders, a window seemed to open. His court-appointed monitor, the late David Pharis (the Judge really knew how to appoint and use good monitors in big cases), was really up to speed on the way the state hospitals were and were not subjected to oversight and what needed to be changed in his view. We (David Pharis and I) suggested to the parties no one, especially Judge Sanders, was really keen in continuing this fight without any point or end in sight. This suggestion was urged by the Judge frequently during those days. This urging, coupled with some really creative thought by the new head of the TXMHMR Don Gilbert, began to open new doors. When Judge Sanders would receive reports from the parties or from Mr. Pharis about how our efforts were proceeding, he would offer encouragement without regard to what the proposed settlement terms would be and let all know that he was counting on and expecting us to continue our negotiations in good faith. Judge Sanders wanted the operation of the state hospitals to be constitutional, effective, and humane. Needless to say, the parties reached a new Consent Decree for the eight state hospitals by 1992. Final judgment was entered on the Consent Decree in 1997—all because the Judge took the time and expended the energy to see that problems were alleviated at the state hospitals by agreement—a real "hands-on" approach during the midst of everything else his docket required—which was very effective. It was truly a masterful job in persuading parties in a very complicated and long-running acrimonious dispute to re-focus their thinking and design their own destiny. This would not have happened except for Judge Sanders' gentle but firm guiding hand. I learned much more about Judge Sanders through this experience.

ANOTHER SIDE OF THE JUDGE

And then there were the Judge's chambers: One was always made welcome by Judge Sanders and his truly magical assistant, Phyllis Macon. This is not to say one could just drop by and interrupt the business of the court, but that whether you had a conference with the judge or were on the fifteenth floor in another court trying some matter, you were welcome to drop in, have a cup of coffee, hide from hostile witnesses, or "just chill" while awaiting a jury to come back down the hall. It was what I referred to as a comfortable place, a safe haven. If Judge Sanders was not extremely busy, he would come out and greet you warmly or invite you into

his office just to chat—never about cases in his court, but rather about how your family was, what your children were doing, and the like. I knew about Judge Sanders' time in Washington as part of the Kennedy/Johnson administrations, but when my wife Betsy was appointed to a position at the Department of Housing and Urban Development during the Clinton administration, his knowledge of and interest in that aspect of things long in his past really showed. He loved hearing about what was going on in Washington and how Betsy was handling the challenges of that experience that he clearly related to! I also remember being very moved and frankly surprised at another gesture he made. During my youngest son's stint at Woodrow Wilson High School, he received an award in the Mock Trial competition. The local newspaper covered this and ran a nice story about Edward and the team with a really good photo of him. Judge Sanders took the time to stop what he was doing, cut the article out and write a congratulatory note on it, mailing it to Betsy and me, noting how proud we must be. When our son went to the University of Texas the next year, the Judge would frequently ask how he was doing.

This is not to say that Judge Sanders was overly sentimental. His wit and great sense of humor tended toward the dry side. Even when he might offer an arch comment, often within it was a bit of concealed humor. My favorite among many of these Judge sayings came after someone was acting particularly nasty during the school desegregation case. The Judge looked at me as though I were about to get angry about it and said dryly, "Never get in a pissing match with a piss-ant." And that was all there was to say.

Through these conversations and interactions with the Judge for a little more than twenty-three years, both in and out of the courthouse, I got to know him as a person and as a human being. To me, these last experiences set him apart from so many others on the bench. I would say that we had become friends. I miss that part of him most.

And, I never called him "Barefoot" to his face, or used his first name in his presence; to me, he was and always will be *Judge* Barefoot Sanders.