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LONGEST AND LARGEST—JUDGE SANDERS AND THE TASBY CASE

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PERHAPS the longest lawsuit ever to take place in Dallas, Texas was the suit involving the desegregation of the Dallas public schools. The suit was filed in October, 1970 by Plaintiff Sam Tasby and other minority parents to force the Dallas Independent School District to desegregate the Dallas public schools in compliance with the United States Supreme Court decision in *Brown v. Board of Education* out of Topeka, Kansas which was handed down in 1954. The *Tasby* case began in October, 1970 and ended in June, 2003. I had the opportunity of being involved with Judge Barefoot Sanders for the final twenty-two years.

BACKGROUND EXPERIENCE

When the *Tasby* case was assigned to him in 1981, Judge Sanders was not a long-time experienced judge; but his prior background made him uniquely qualified to handle this most difficult lawsuit. First, he was a native Dallasite, and a graduate of North Dallas High School. He had participated in public service as a member of the Texas Legislature, and on the staff of President Lyndon Johnson in Washington, D.C. He had been a civil lawyer practicing in a prominent Dallas law firm, and had been Chairman of the Board of the Dallas Bar Association, thereby having the experience of knowing and working with a majority of the lawyers of Dallas. Judge Sanders was selected by lot as the judge of the *Tasby* case. The names of six federal judges were written on small pieces of paper, and put into a hat. Someone reached in and pulled out one scrap of paper. On it was written "Barefoot Sanders" and thus begins our story.

THE LONG ROAD

The Dallas public schools had been subject to litigation for many years, and when Judge Sanders became presiding judge of the *Tasby* case, a desegregation plan was already in effect, but the appellate courts had ruled that the plan was imperfect, and had remanded the case back to district court for improvement to a Constitutional and practical plan.

It is axiomatic that a Constitutional plan may not be practical, and a practical plan may not be Constitutional. A Constitutional plan may not be acceptable to the community, and a plan which is acceptable to the

community may fail the test of being Constitutional. It fell to Barefoot Sanders to resolve these conflicts. Along with attorney Edward Cloutman, who represented the Plaintiff, I worked as attorney for Defendant Dallas Public Schools in helping Judge Sanders devise a solution to these enormous problems.

Dallas County was undergoing a tremendous change in demographics in the last two decades of the twentieth century. Although the boundary lines of the city and the school district did not change, people were moving north to the suburbs at a rapid pace. Some of this was due to the increased wealth of the city, some was due to the natural growth of the northern portion of the Dallas area, and much was due to the increased number of Latinos moving into the Dallas community. The school district's population changed from Anglo & Black to a tri-racial community with the huge influx of Latinos. During these last two decades the district changed from 90% Anglo to 10% Anglo. At the same time the school district changed from less than 10% Latino to 60% Latino. The African American population remained approximately steady, but the school district clearly changed from predominantly Anglo to predominantly minority. Similar changes occurred on the Board of Trustees of the Dallas School District. It fell to Judge Sanders and the attorneys to devise systems to meet these monumental changes, and Barefoot Sanders led the way.

CREATIVITY

Because of the changes outlined above, creative measures were necessary. In the 1980's, we discovered that the remedies employed elsewhere in the United States, including cross-town busing, would not work in Dallas. African American students from south Dallas were bused to east Dallas, and the east Dallas Anglo students were to be bused to the south, but the Anglo children in east Dallas never got on the bus. They moved out of the school district or went to private schools. A similar pattern occurred in north Dallas – the Anglo students in north Dallas never got on the bus to go to west Dallas, although west Dallas students were being bused to north Dallas. Judge Sanders and the rest of us learned that something else must be created to desegregate the schools.

Every large city school in the nation was wrestling with this problem and each came up with a somewhat different remedy. Almost all included forced busing. But these remedies in other cities did not work in Dallas. It required courage on the part of a district judge to decline to follow these precedents, and then hope the appellate courts would approve. Another remedy employed in most school districts was the magnet school, to attract imaginative and adventuresome students to leave their home school and go elsewhere in the greater Dallas system for a specialized program. Experience proved that the most successful magnet schools were in the central city, at Booker T. Washington, at Crozier Tech, and other central locations. From the success of these examples,

Judge Sanders directed the school district to build a central magnet school. The result was the school now known as Townview Magnet School, which has received national acclaim for its academic achievement. That school was ordered by Judge Sanders, and it has worked magnificently.

INNOVATIVE

In addition to the minority students bearing the burden of forced busing from their neighborhoods, time was wasted on the buses, and the minority neighborhoods declined. In 1984 Judge Sanders authorized the creation of three Learning Centers in south Dallas. Two years later four were established in west Dallas. By the end of the court order in 2003, there were sixteen Learning Centers, bringing additional funding and superior educational programs to minority neighborhoods. These programs, while not mixing children from different neighborhoods, served to greatly improve the quality of education of minority students. After all, reasoned Judge Sanders, academic achievement was a primary goal of desegregation.

OPPOSITION

Perhaps from his experience in Washington, D.C., Judge Sanders learned the role of The Opposition. Some members of the Board of Education opposed remedies because they cost too much. Some members of the Board of Education opposed remedies because they were not punitive enough. I can remember several board members on each side. Judge Sanders observed that same pattern which emerged. One Board member called the \$30,000,000 Townview expansion the "Taj Mahal". Other Board members called it "token compliance" with the plan to build the Central Magnet High School.

On one occasion I told the school board that its members should be careful about speaking to the newspapers about the case, about Judge Sanders' rulings, and about various other matters. I reminded them that Judge Sanders reads the Dallas newspapers also. One school board member told me I should direct Judge Sanders not to read the Dallas Morning News. I told that school board member I had no authority to enjoin Judge Sanders from reading the newspaper.

LEADERSHIP

The Dallas business community approved the leadership style of Barefoot Sanders. When money was needed, the community leadership encouraged the school district to call a bond election. Of all the bond elections held during the period of Judge Sanders' service, not one ever failed. In 2002 the Dallas community passed a \$1,370,000,000 bond issue, approved by a 70% vote. This was the largest school bond issue in DISD's and in Texas' history, and is among the largest ever to pass in the

nation. This was a tribute to the leadership of Judge Sanders in moving the *Tasby* case forward at exactly the right pace, not too fast and not too slow.

HUMOR

Judge Sanders frequently exhibited a dry but effective sense of humor. Once when a lawyer was ten minutes late to the hearing in his courtroom, Judge Sanders simply sat at the bench waiting and not proceeding. The other attorneys sat quietly at their respective counsel tables. When the tardy lawyer arrived Judge Sanders said "We have been waiting for you." The lawyer made the mistake of looking up at the clock on the wall and said "Judge, your clock is wrong." Judge Sanders replied "Counsel, it is my clock, and it is never wrong."

As I approached the time for my scheduled retirement from my law firm at the end of 1999, I called Judge Sanders in October to tell him I was going to have to withdraw as I was retiring. "No," he said "you are *not retiring*. I do not plan to allow a new lawyer to come in and try to learn all that you have learned over the years." I replied to Judge Sanders that my law firm partnership agreement required me to retire as the year 2000 began. Judge Sanders reply was "I am a United States Federal Judge. I have authority to strike down state law which I find to be unconstitutional. I certainly have the right to strike down the terms of your law firm partnership agreement and I hereby do so. You are staying in this case until its completion."

What a favor he did for me! I had the honor of completing my twenty-three and a half years in the *Tasby* case, and seeing it to the final conclusion with Judge Sanders. In his Final Order of Dismissal, our Judge complimented the Dallas Independent School District for its handling of desegregation. In the final paragraph of his opinion the following language appears: "During this litigation the Court and the parties have been fortunate to have the services of experienced and capable lawyers—Mr. Cloutman for the plaintiffs, and Mr. Thomas for the school district."

That is quite an honor, your Honor. Thank you.