

APPENDIX

A TRIBUTE TO JUSTICE RICHARD B. SANDERS

By Evan Gutman CPA, JD (2013)

I tend to like the Underdog in almost any given context. This is probably a product of the fact that within the context of litigation, I have almost always personally been the Underdog myself. And since I know that I have almost always been right, that must mean that the other Underdogs tend to be right. Concededly, that logic suffers from an infirmity or two.

Unlike the preceding sections of this Supplement, which were completed in 2008, I started writing this essay in December, 2010. One of the main premises of this essay, is that every type of economic or political environment has an Underdog. An individual who does not agree with the powers that presently control that particular environment. This concept does not end when a person becomes wealthy or powerful. In fact, it probably exists to a greater degree at the upper echelons of society. Just like a Pro Se litigant is an Underdog when going up against an attorney in Small Claims Court, a Dissenting State Supreme Court Justice is an Underdog, going up against peers who are more powerful, simply due to their sheer numbers.

Justice Richard B. Sanders was a Washington State Supreme Court Justice. I've never met, seen or spoken to him in my entire life. Nevertheless, I did contribute approximately \$1,000 to his re-election campaign in 2010. I contributed to his re-election campaign based upon my reading of his Dissenting judicial opinions over the years. He lost his re-election bid due to an act of betrayal, which was without justification, by the Seattle Times newspaper. More specifically, a key player in the newspaper's betrayal of Justice Sanders appears to have been Ryan Blethen, who in 2010 was the Seattle Times editorial page editor.

Justice Sanders' (a Libertarian) judicial opinions adopted a markedly circumspect view towards State Bar disciplinary actions. In addition, his opinions adopted a critical view of prosecutorial conduct with respect to the constitutional rights of criminal defendants. For several years, I knew that this combination placed him in personal political jeopardy with respect to his own judicial career. Put simply, he was a brave and courageous Justice who was willing to put his career on the line and "buck the system." Predictably, as a result, he paid the political price in terms of losing his judicial office.

Ideally, years ago, I had hoped that the chapter of this book titled "CURRENT DISSENTING STATE SUPREME COURT JUSTICES WILL SOON LEAD THE MAJORITY" would ultimately be a commentary upon Justice Sanders' future on the Washington State Supreme Court. However, that does not currently seem to be the case, since he has lost his seat on that Court. Nevertheless, it is concededly not impossible that he will regain it one day.

With the foregoing in mind, here is the story of how Justice Sanders, an admittedly controversial Justice with a rather astounding judicial record of writing opinions against the State Bar, and in favor of protecting the constitutional rights of criminal defendants, lost his seat on the State Supreme Court. This story is important for the following reason. It is a case in point about how the Justices who fight the hardest for the individual constitutional rights of the general public, may ultimately lose their judicial career due to the deception and trickery of their opponents' supporters. When that occurs, the public is left mostly (although not entirely) with Justices who simply write opinions in favor of those in power (namely the State Bars) without sufficient due regard for the law.

On August 4, 2010, approximately three months before the election, the Seattle Times passionately endorsed Justice Sanders in an article that read in part as follows:

**"THE TIMES RECOMMENDS RE-ELECTION OF RICHARD SANDERS
TO THE STATE SUPREME COURT**

JUSTICE Richard Sanders should be re-elected to the Washington Supreme Court. The court's most fundamental job is to push back against the other two branches of government - the executive and the legislative - when they step on the rights of the people. No member of the court does that more consistently, and with greater gusto, than Sanders.

...

We are staying with Sanders because we so often relish his strong and well-reasoned opinions. Begin with open government - the scope of the state's public-disclosure laws. Access to documents for everything is something we in the newspaper business champion. In protecting that right, Sanders is as solid as a mountain - and many of his colleagues are not.

On freedom of the press and of speech, Sanders is equally solid. On religious freedom, the same. On the rights of property owners, the same. Gun rights, the same. The rights of the accused, the same. The people's right of initiative and referendum, the same.

... of the nine justices, Sanders is more often the one standing up and yelling "No" at some rotten thing a political agency is doing to someone."

The election was to be held during the first week of November, 2010. It seemed like Justice Sanders would be re-elected, even though the race was a hotly contested one. However, shortly before the election, Justice Sanders made a public statement according to the Seattle Times that was as follows:

"African Americans are overrepresented in the state prison system because they commit more crimes."

Based on this statement, the Seattle Times pulled their endorsement of Justice Sanders at a critical juncture and in a highly publicized manner. In doing so, they single-handedly crippled his re-election bid, just days before the election. In an article published on October 24, 2010, the Seattle Times wrote, in part, as follows (emphasis added):

"DON'T RE-ELECT JUSTICE RICHARD SANDERS FOR STATE SUPREME COURT

STATE Supreme Court justices Richard Sanders and James Johnson inflamed racial tensions with their remarks that African Americans are overrepresented in the state prison system because they commit more crimes.

How disappointing these two legal minds were unable to offer more thoughtful, nuanced views about racial disparities in the criminal-justice system.

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This page takes the unusual step of withdrawing its endorsement of Sanders. The Seattle Times now supports lawyer Charlie Wiggins. . . ."

Justice Sanders stood by his statement, asserting that it was truthful and refused to retract what he said. Subsequently, an additional article dated October 29, 2010 was published by the Seattle Times. It was written by, Ryan Blethen, the editorial page editor for the Seattle Times. Mr. Blethen wrote, in part, as follows (emphasis added):

"Sanders' ignorance was only reinforced by stubbornly backing his comments, which were made at a meeting about fairness in the courts. Think about that for minute. At a meeting about judicial equality, **two of our state Supreme Court justices claimed that African Americans are overrepresented in prison because of their skin color. That is not just shocking. It is a tragedy** and an example of how far we have yet to travel."

Now, here's the basic problem with the stance adopted by the Seattle Times at the expense of Justice Sanders' judicial career. The problem is that as a point of fact, blacks are overrepresented in prison, precisely because of their skin color. That's exactly what prejudice is. That's the problem.

There are only two logistical possibilities regarding Justice Sanders' assertion that blacks commit more crimes. The first logistical possibility is that what he said constitutes the truth. If so, then he certainly should not have been penalized for making a truthful statement. The second logistical possibility is that what Justice Sanders said, does not constitute the truth. However, if this is the case, then it inescapably means that there are massive numbers of black criminal defendants who are in prison for crimes they did not commit. If massive numbers of blacks are in prison for crimes they did not commit, the Judiciary branch of government taken as a whole, has failed miserably in performing its duties.

Notably, while Mr. Blethen aggressively and unjustifiably challenged Justice Sanders' assertion that more blacks are in prison because they commit more crimes, Mr. Blethen fell quite notably short of vigorously asserting that the failure of the Judiciary to perform its duties caused massive numbers of innocent black people to be sentenced to prison. The reason Mr. Blethen fell short of making such an assertion, was in all likelihood, because he did not believe such to be the case. However, that, in turn, brings the matter right back to the first logistical possibility, which is that Justice Sanders' spoke the truth.

Put simply, Justice Sanders either spoke the truth or he did not. If he spoke the truth, then he should not have been unjustifiably betrayed by the Seattle Times for doing so. The bottom line is, that virtually everyone in power in Washington State, including the Seattle Times and Ryan

Blethen knew for a fact, that Justice Sanders' opinions conclusively demonstrated that he fought harder to protect the constitutional rights of criminal defendants than any other Justice. That alone is strong evidence in favor of concluding that he was actually, the least racist Justice on the Court.

So now we come to the real reason why the Seattle Times withdrew its endorsement of Justice Sanders. By doing so, they eliminated from the Court the most vigorous defender of the constitutional rights of criminal defendants. Put simply, the Seattle Times fostered the unfair treatment of black criminal defendants, by securing the removal of their biggest defender, who was Justice Sanders. The Seattle Times unjustifiably branded as a racist, the one Justice who was the greatest defender of constitutional rights for all criminal defendants including blacks. By doing so, the Seattle Times knowingly and intentionally increased the probability that blacks would be treated unfairly in Washington State Courts.

Decades ago, Elvis Presley sang a hit song titled "In the Ghetto." The song is about how a black baby born in the ghetto turns to crime when he grows up, and as a result, ultimately dies while stealing a car. The basic message conveyed by the song is that by being born in the ghetto, one is virtually destined to a life of crime. No one would ever dare brand the song as racist in nature. It is the exact opposite. The song is an emotional plea and cry to society to help those who are born into ghettos, so they don't turn to crime. Poverty leads to criminal conduct. Due to existing prejudices in society, more blacks are unjustifiably subjected to poverty. As a result of this poverty, born from prejudice, many do turn to crime. It's totally unfair. But, it's a fact.

From a basic perspective of morality, a newspaper shouldn't swing a judicial election, by betraying a Justice for stating the Cold, Hard, Statistical, Truth. Particularly, considering the fact that by doing so, the newspaper actually promotes continuation of the exact type of prejudice that it disingenuously purports to be fighting against.

Justice Sanders was a great, brave Justice. He continuously bucked the system and fought hard on behalf of the Underdog. He knew that by doing so, he was placing his own judicial career at risk. And that's the reason he lost his seat on the bench. Justice Sanders did more to help black criminal defendants in Washington than any other State Supreme Court Justice. That's an absolute Truth that the Seattle Times can not possibly escape. And the Seattle Times editorial board was fully well aware of it. They knew precisely and exactly what they were doing. By withdrawing their support from Justice Sanders and betraying him, the Seattle Times knowingly and intentionally did immense harm to the plight of black criminal defendants in the State of Washington.