SANDY LIKED TO START AT THE TOP

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Unlike other lawyers, Sandy D'Alemberte liked to start his cases in the Supreme Court of Florida. This was an unusual approach. Most lawyers start at the trial level, take an intermediate appeal, and then beg the Florida Supreme Court for review. If seeking on a rule change, lawyers typically make a request to relevant Bar committees, they then present their views to the Board of Governors, and then, if the proposal has survived years of debate, the Bar politely asks the Supreme Court to bless the result.

Sandy did not work like this. He knew from his work as a state legislator who had drafted Article V of the Florida Constitution in 1972 that the Supreme Court could exercise "original jurisdiction" over a direct request from an ordinary lawyer in certain unusual circumstances. He always kept this in mind and when the occasion arose, he had no reluctance to start at the top.

But Sandy wasn't just a super savvy, former legislator, who had built himself a backdoor to the Supreme Court. He was Florida royalty. Many people called him "Governor" when they saw him in the street, maybe because they thought he should have been Governor, or maybe because he just looked like he was Governor. When he walked into the Florida Supreme Court, clad in a Brooks Brothers suit and sporting the unusual gait of a motorcycle crash survivor, he was treated like family. Sid White, the longtime Clerk of the Court; Sara Gainey, Calendar Clerk from 1956 to 2003; and other Supreme Court staffers lighted up when they saw Sandy stroll in. It was almost as if their son had just come home for the holidays.

Sandy didn't brag about his lineage or his connections when I was around him during the first few years of my legal career. He occasionally joked that his father, Dan, was the only lawyer in Chattahoochee, and he couldn't make a living there until another lawyer moved to town to spawn disputes. I had heard somewhere that Sandy's grandfather, G. Talbot Whitfield, had been Clerk of the Florida Supreme Court. But Sandy never told me that his great-uncle, James Bryan Whitfield, had served as a Justice of the Florida Supreme Court from 1904 to 1943, had been elected Chief Justice for three terms, and had written 1,958 opinions, supposedly making him the most prolific of any Florida Supreme Court Justice. And, Sandy's lineage is even better than that. If you spend a little time on familysearch.org, as I did

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recently, you'll find Sandy's ancestors include some of the earliest English settlors in the American colonies, a number of British knights, members of Parliament, and the son of a Danish king. Maybe this explains why Sandy liked to start at the top. He belonged there.

The best example of Sandy's unique approach to law practice came on January 24, 1975, when he filed a petition directly in the Florida Supreme Court to modify Canon 3(A)(7) the Code of Judicial Conduct. This was no modest proposal. The rule had been adopted just three years earlier to make clear, with a few narrow exceptions, that "[a] judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions."

Sandy's petition asked the Court to junk this rule and allow the use of photographic and electronic devices in all Florida courts during judicial proceedings. Simply stated, Sandy wanted the courts put on TV. He sought to revolutionize transparency of the entire judicial system even though numerous judges and legislators around the country already had given the matter serious consideration and had concluded, almost universally, that cameras would do nothing other than wreak havoc on the fairness of trials.

The near-universal opposition to cameras in the courtroom was based largely on televised trials in the early 1960s that had had catastrophic results. One of the trials was of Billy Sol Estes in Reeves County, Texas, for mortgage fraud. The case attracted national media attention because Estes was close friends with Lyndon B. Johnson and prosecutors claimed Estes had bribed members of the Kennedy Administration in connection with the fraud. Estes' lawyers moved to exclude cameras from the proceedings, but the trial judge refused, and CBS, NBC, ABC, and KTLV took the opportunity to set up their cameras in a booth built in the courtroom for the trial. The trial proceeded under the glare of the camera lights and Estes was convicted. The U.S. Supreme Court unanimously reversed, holding "the television camera, like other technological innovations, is not entitled to pervade the lives of everyone in disregard of constitutionally protected rights."

One year later, the U.S. Supreme Court set aside the murder conviction of Sam Shepard "because of the trial judge's failure to protect Sheppard sufficiently from the massive, pervasive and prejudicial publicity" which included television coverage of his trial (although not from inside the courtroom). That case inspired the 1963 television series *The Fugitive* about a man wrongly convicted of murdering his wife. It also inspired the United States Judicial Conference to recommend that all federal district courts adopt a local rule prohibiting the taking of photographs in the courtroom or its environs, and most did. Federal Rule of Criminal Procedure 53 already

had provided since 1944 that a "court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom." And in 1962, the Judicial Conference adopted its Resolution G which resolved that the Conference "condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court." Tough stuff.

But not tough enough for Sandy.

I don't know exactly what moved Sandy to think he could overturn all of this by waltzing directly into his great-uncle's Supreme Court. I suspect Clarence Jones, an investigative news reporter for WPLG, a television station in Miami, had much to do with it. Norm Davis, vice president of the station, also was undoubtedly an influence. Clarence had done extensive reporting for WPLG in 1972 that led to the arrest and trial of several Dade County judges (but no convictions). Norm had been part of a three-year crusade at WJXT to rout out corruption in Jacksonville's city and county governments. In 1975, Clarence and Norm both were working together at WPLG and the station just happened to be a client of Steel Hector & Davis, the Miami law firm where Sandy had started his legal career in 1962.

Sandy also had witnessed judicial corruption right at the Florida Supreme Court. Justice Vassar B. Carlton had resigned on February 28, 1974, soon after a media exposé of a high-roller junket to Las Vegas. The resignation reportedly terminated a secret investigation by the Judicial Qualifications Commission. Justice Hal Dekle had become involved that year in a scandal involving a draft opinion written by a lawyer in the case. Impeachment proceedings had started before Dekle resigned on April 30, 1975. Sandy was then counsel to the Florida House of Representative Committee on Impeachment. That same Committee also would recommend impeachment of Justice David McCain in April 1975, finding McCain had "damaged and jeopardized the image, reputation, independence and integrity of the Supreme Court of Florida and the entire judicial system." McCain resigned on August 31, 1975, to avoid impeachment.

A further influence on Sandy's thinking probably was that reform-minded Gov. Reubin Askew had just appointed four new Florida Supreme Court justices—Ban F. Overton, Alan Sundberg, Arthur J. England, and Joseph W. Hatchett.

The timing was perfect for a petition on behalf of Post-Newsweek Stations, owner of WPLG and WJXT, to allow much needed public observation of the judiciary through cameras in the courtroom.

Sandy argued new technologies had made cameras so unobtrusive that they no longer would impact trials. He asked either for an immediate rule change or that he at least should be given the chance to prove by putting cameras into a few trials that televised trials could be fair. The Florida Bar, the Conference of Circuit Judges, the Trial Lawyers Section of The Florida Bar, and the Chairman of the Judicial Qualifications Commission all strongly opposed the petition. This would be a battle.

The newly-configured Florida Supreme Court opted on January 28, 1976, to conduct an experiment to be completed prior to April 1, 1977, in which one criminal trial and one civil trial would be televised, providing that all parties, jurors and witnesses consented. That plan "met with total failure." Not a single trial could be found in which all participants would agree to take the risks thought to be associated with cameras.

Sandy now had to work his magic with the Court and magic it was. Less than a week after the deadline for the original experiment came and went, the Florida Supreme Court entered a new order requiring an experiment that would not require consent of the participants. The order, written by Justice Sundberg, gave the parties 33 days to develop technology standards for the experiment and specified that the standards would be adopted by July 1, 1977, whether the petitioners and their opponents agreed to the standards or not. In other words, the Court was going to get this done.

Remarkably, considering there was no Internet, no electronic filing, and few computers anywhere, the Court adopted on June 14, 1977, two weeks before its deadline, the needed standards authorizing electronic media and still photographic coverage of judicial proceedings in Florida courts for a one-year period starting on July 1, 1977. The order also directed the parties, media participants in the program, and all participating judges to furnish, at the conclusion of the pilot program, a report of their experiences under the program. So, now Sandy had just one year to observe trials around the state, gather evidence of the impact cameras had on the trial participants, and provide the Supreme Court with evidence that it should alter the course of history.

More than 2,750 persons participated in this grand experiment as judges, attorneys, court staff, jurors or witnesses. As trials progressed in Miami, Jacksonville, Panama City, and elsewhere Donald M. Middlebrooks, who had served as Gov. Askew's general counsel, joined Steel Hector & Davis, and teamed with Sandy to prepare Post-Newsweek's report to the Florida Supreme Court. Together, Sandy and Don, with the help of Susan E. Wills, prepared and filed on June 15, 1978, a 107-page document, summarizing the history of the bans on cameras in the courtroom, the evolution of electronic technology, and the facts relating to how the experiment had worked.

The report included letters from judges in Washington, Louisiana, Georgia, Wisconsin, and Colorado who also had conducted experimental televised trials. They obtained statements from an academics, a priest, and a public broadcaster regarding their reactions to the Florida experiment, They marshalled surveys, law review articles, and behavioral studies. It was a classic Brandeis brief and it worked.

On April 12, 1979, the Florida Supreme Court delivered *Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764, 707 (Fla. 1979), striking Canon 3(A)(7) in its entirety and substituting this:

> Subject at all times to the authority of the presiding judge to (i) control the conduct of proceedings before the court, (ii) ensure decorum and prevent distractions, and (iii) ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed in accordance with standards of conduct and technology promulgated by the Supreme Court of Florida.

This was a monumental achievement, a first which quickly inspired rule changes across the country, and it did not sit well with the criminal defense bar. In case after case soon after the rule was adopted, lawyers challenged the new rule as violating their clients' fair trial rights. Joel Hirschhorn was the first lawyer to persuade the United State Supreme Court to consider whether the rule violated the Sixth Amendment. Sandy and Don filed an amicus brief explaining how the Florida rule had been changed and why it should be upheld. On January 26, 1981, Chief Justice Warren Burger delivered *Chandler v. Florida*, 449 U.S. 560 (1981), a unanimous decision upholding Sandy's cameras in the courtroom rule as constitutional. "Dangers lurk in this, as in most experiments," the Chief Justice wrote, "but unless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment. . . . We hold that the Constitution does not prohibit a state from experimenting with the program authorized by revised Canon 3A(7)."

Sandy liked to start at the top. He liked to finish there too. He belonged there.