

FOCUS ON HIGH-PROFILE LITIGATION

JULY 5, 2002

# Verdicts

& Settlements

Michael D. Seplow recovered \$3.75 million for a wrongfully imprisoned mentally ill man whom police had mistaken for a fugitive.



**ID Tragedy**

# Between the Cracks

Los Angeles attorney Michael D. Seplow blames a case of mistaken identity on a criminal justice system that 'runs on auto pilot.'

BY ERON BEN-YEHUDA

**A** mentally ill man from Los Angeles languished in a New York prison for two years because he was mistaken for an escaped convict.

His attorney, Michael D. Seplow, blames the tragic mix-up on a criminal justice system made up of people who are more interested in getting through the workday than finding out the truth.

"The system runs on auto pilot," Seplow of Los Angeles' Schonbrun DeSimone Seplow Harris & Hoffman says. "Nobody wants to take responsibility."

The victim, Kerry Sanders, had the misfortune of sharing the same last name, birthday and general physical features of the fugitive, Robert Sanders.

To make matters worse, the victim's psychological illness made him susceptible to suggestion from authorities, and, as a result, he claimed to be the wanted man, according to Seplow.

But that's no excuse for locking up Kerry Sanders from 1993 to 1995, he says.

Authorities should have compared both Sanders' fingerprints, photographs or criminal histories, Seplow says. Taking any



With the help of Wilmer J. Harris, left, and Benjamin Schonbrun, middle, Michael D. Seplow represented a mentally ill man wrongfully imprisoned for two years.

## SIDEBAR

**Cite:** *Sanders Lee v. County of Los Angeles*, CV96-7268 (C.D. Cal. May 17, 2002)

**Type:** Civil rights

**Result:** Settlements totaling about \$3.75 million. City of Los Angeles, \$225,000; county of Los Angeles, \$290,000; state of New York, \$3.25 million

**Attorneys:** Plaintiffs — Michael D. Seplow of Los Angeles' Schonbrun DeSimone Seplow Harris & Hoffman Defendants — Los Angeles Deputy City Attorney Cory M. Brente; Los Angeles County outside counsel Richard S. Kemalyan of Los Angeles' Dwyer Daly Brotzen & Bruno; New York Assistant Attorney General Paul F. Cagino.

**Judge:** William M. Byrne Jr.

one of these simple steps would have cleared his client, he says.

Only after the federal Drug Enforcement Agency busted the real Robert Sanders in Ohio in 1995 did Kerry Sanders regain his freedom.

A lawsuit followed against Los Angeles County, the city of Los Angeles and the New York Department of Correctional Services, all of which Seplow accused of violating his client's rights.

After close to six years of litigation, Seplow recently settled with the last remaining defendant, the city of Los Angeles, for \$225,000. *Sanders Lee v. County of Los Angeles*, CV96-7268 (C.D. Cal. May 17, 2002).

The city agreed to pay less than the \$3.25 million that New York state settled for in October or the \$290,000 that Los Angeles County paid in January 2000.

Deputy City Attorney Cory M. Brente says his side's settlement is not an admission of misconduct.

"We had reasonable information that he was wanted in another state," Brente says.

And he denies that this incident suggests something inherently flawed with the way suspected criminals are processed.

"I don't think you can ascribe that to a lazy, callous, tuning-out system," he says.

### 'He Scared Me'

In the late 1980s, Kerry Sanders' mother noticed a bizarre change in his behavior. He began hallucinating about family members who had passed away.

"He kept hearing the voices and seeing those people," Mary Sanders Lee said, according to her deposition.

His illness worsened over the years.

“He was beginning to see some more people,” Lee said. “He scared me.”

So, in 1993, Lee had him admitted to the psychiatric ward of Los Angeles’ USC Medical Center.

The hospital released him after 90 days. But, with his mother out of town and his sister’s telephone disconnected, no one came to pick him up.

At about 7:30 a.m. on Oct. 5, 1993, Los Angeles County Safety Officer Richard Bentley spotted the 27-year-old lying unconscious on a park bench near the medical center. As Bentley approached, Kerry Sanders got up. When questioned, he said the hospital had let him go, but he didn’t mention his mental problems, according to Bentley’s deposition. Kerry Sanders allegedly added that he had nowhere else to stay. At that point, Bentley arrested him for trespassing on county property.

After looking at Kerry Sanders’ hospital identification bracelet, Bentley radioed in for a criminal background check and gave the man’s first and last name, date of birth and general physical makeup.

A report came back that Kerry Sanders had an outstanding warrant for jaywalking. According to Bentley, he also received information about a New York warrant for escaped convict Robert Sanders.

Because people under arrest often lie about their true identity, the results of background checks include information about lawbreakers with similar descriptions.

Along with having the same last name and birthday, both of the Sanders are African-American. Each has black hair and brown eyes.

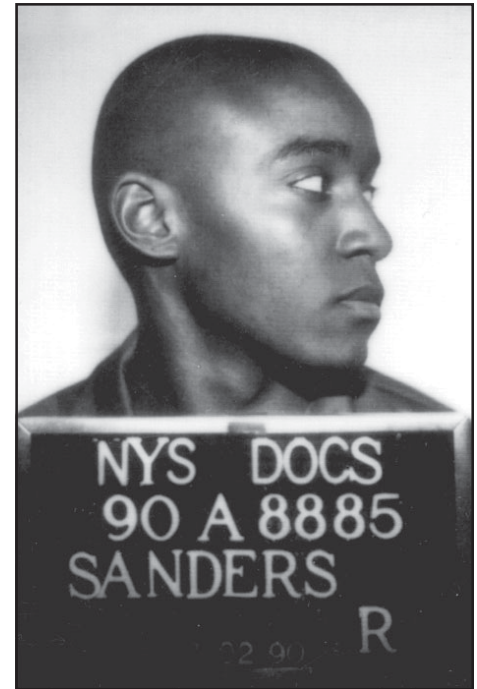
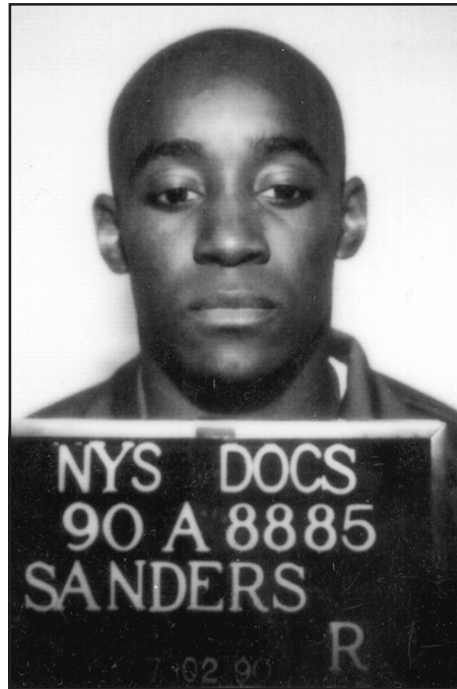
On the other hand, court records state that, at the time, Robert Sanders weighed 20 pounds more and stood 2 inches taller than Kerry Sanders. Also, unlike Kerry Sanders, Robert Sanders had multiple tattoos.

Bentley alleged that Kerry Sanders admitted to using the name Robert and to spending time in New York.

But Seplow suspects that Bentley planted those ideas in Kerry Sanders’ impressionable mind. Seplow says that his client never went by a pseudonym nor ever set foot on the East Coast.

Bentley handcuffed Kerry Sanders and drove him to a county police station, where two officers from the Los Angeles Police Department picked him up on the fugitive warrant.

Their subsequent arrest report reads, in



**Only after the real Robert Sanders, above, was busted on drug charges in Ohio did authorities realize that they had imprisoned the wrong man for allegedly escaping confinement.**

pertinent part, “We verified partial descriptors on defendant and defendant spontaneously stated that he recently arrived from New York.”

Once again, Seplow doubts that his client would blurt out that false information without some prompting from the police.

In their report, the officers refer to the man as Robert Sanders “aka” Kerry Sanders.

#### **‘Independently Verify’**

At his deposition, Los Angeles police Officer Art Haddock described Kerry Sanders as a “somewhat intelligent, eccentric, average person.”

Haddock said he observed no signs of mental disorder.

But in police booking records, under the section “Special Medical Problem,” is typed the word “amnesia.”

To Seplow, that indicates the police at least had a clue that Kerry Sanders may not have his full wits about him. Therefore, no one should have taken what he may have said at face value, Seplow contends.

Brente says that the officers had enough other evidence to justify their belief that they had the right man.

“It’s not gonna change a thing,” he says.

The law, Penal Code Section 1551.1, requires officers to have only “reasonable information” to arrest someone as a fugitive from another state.

“We’re not trying to prove it beyond a reasonable doubt,” he says.

Seplow argues that the officers should have done more.

“They just said, ‘Ah well, he said he was the guy,’” Seplow explains. “That’s not good enough. You independently verify who he is.”

What makes that especially critical is the fact that so many mentally ill people are caught up in the criminal justice system, Seplow says.

In court papers, he referred to a 1997 U.S. Department of Justice study that found more than 10 percent of individuals in the custody of Los Angeles County jails suffered from psychological problems.

Comparing the “rap sheets” showed that in 1992 police had arrested Kerry Sanders in California for possession of a controlled substance. In July 1993, he committed a jaywalking violation, also in California.

Meanwhile, since 1990, Robert Sanders had spent his days incarcerated in New York. Not until August 1993 did he escape from a work release program in that state.

If the police had bothered to review that information, Kerry Sanders would have gotten off the hook, Seplow says.

“How can he be both in New York and L.A. at the same time?” Seplow asks.

Moreover, within a few days of Kerry Sanders’ arrest, New York authorities sent

Robert Sanders' fingerprints and photograph to the Los Angeles Police Department, Seplow says.

But by that time, the police already had turned over Kerry Sanders for extradition proceedings, Brente says. That's where the city's obligation ended, he says.

"All we did is deliver the guy into the system," Brente says. "It's up to the system to determine whether he is or isn't the right person."

### 'Nobody Saw This Guy as a Nut'

On the morning of Oct. 6, 1993, the day after his arrest, Kerry Sanders had a hearing to determine whether he would fight extradition to New York.

After consulting with a Los Angeles County public defender, Kerry Sanders signed a form giving up his right to contest his transfer out of state.

On the waiver form, he acknowledged in writing that "I am the identical Robert Sanders" charged with escaping confinement in New York.

But he signed the document as Kerry Sanders. And he scribbled some squiggly marks on the page.

His deputy public defender, Stan Efron, said he noticed the "doodles," but they didn't make him question his client's competence.

"I just thought he was fooling around," Efron said, according to his deposition.

When Los Angeles Municipal Court Judge Abraham A. Kahn questioned Kerry Sanders about the waiver at the Oct. 6 hearing, the following exchange took place:

**The Court:** Did you read it?

**Defendant Sanders:** No.

**The Court:** Was it read to you?

**Defendant Sanders:** No.

**The Court:** Did you sign it?

**Defendant Sanders:** Yeah.

**The Court:** Why did you sign it?

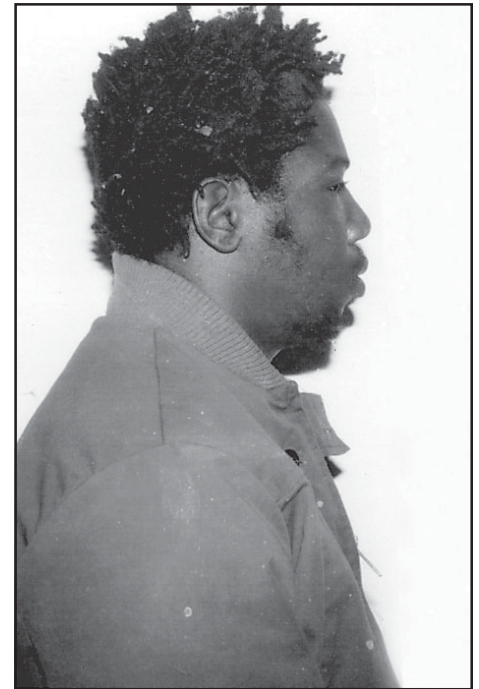
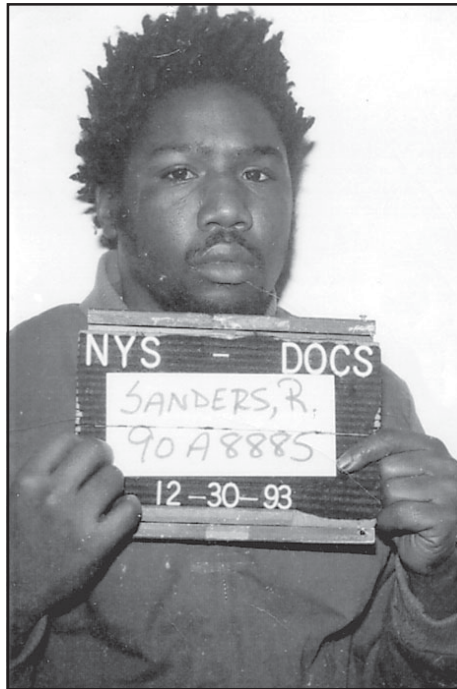
**Defendant Sanders:** Because they told me to.

**The Court:** Well, we're going to have to go through this all over again. We want to make sure you know what you're signing.

The second time around, Sanders said he understood what signing the form meant.

"The court is satisfied," Kahn said, according to a transcript.

For Brente, this episode in court shows



**Kerry Sanders, above, had a mental illness that allegedly made him susceptible to suggestions that he was Robert Sanders, the escaped convict pictured on the previous page.**

that the police had no good reason to doubt Kerry Sanders' identity because no one else down the line raised questions.

"Nobody saw this guy as a nut," he says. "The PD didn't see it. The DA didn't see it. The judge didn't see it."

### 'Horrible' Prison Experience

Kerry Sanders then spent two weeks in Los Angeles County Jail before authorities took him to New York, where he suffered through "two horrifying years in prison for another man's crime," Seplow wrote in court papers.

Seplow says that an inmate or prison guard may have sexually assaulted Kerry Sanders because he complained to a prison doctor about feeling pregnant.

"It felt like somethin' was in my stomach crawlin'," Kerry Sanders said, according to his deposition.

But his shaky mental state casts doubt on the rape allegation.

At one point during his deposition, when he was presented with a copy of the extradition waiver he had signed, he asked, "Do I have to go back to prison?"

To which the attorney questioning him replied, "No. No. No, this is all about the past."

During her son's incarceration, Lee searched for him.

She canvassed neighborhoods. She

contacted different branches of the Los Angeles Police Department, which allegedly informed her that they had no information on her son. Seplow says that she called the daytime talk show hosted by Sally Jesse Raphael during an episode on missing children. She even checked the morgue.

Kerry Sanders finally caught a break in October 1995 when the real Robert Sanders was arrested on drug charges.

On Oct. 27, 1995, New York authorities released Kerry Sanders and had him flown back home to Los Angeles.

In addition to settling for more than \$3 million, New York state also sent Kerry Sanders and his mother a letter apologizing for what happened and promising to improve its identification procedures.

The city of Los Angeles maintains that its officers followed the standard procedures. Nevertheless, Los Angeles is considering new guidelines for its officers.

"If there are unusual circumstances or someone is acting erratically, you may need to take an extra step and [finger]print somebody," Chief Deputy City Attorney Terree Bowers says.

To Seplow, that's long overdue.

"It's not that hard to compare the fingerprints of these people," he says. "It would probably take them five minutes."

# Getting 'Psyched'

**Los Angeles attorney Michael D. Seplow turned away from corporate law to find his true passion: representing the underdog.**

BY ERON BEN-YEHUDA

**U**nlike many parents, the mother of Michael D. Seplow didn't want an attorney for a son. "My mom would always make jokes that she hated lawyers," Seplow, 38, says.

She meant no offense; Seplow's father practiced law.

"She used to complain that he had to come home at 3 a.m.," Seplow of Los Angeles' Schonbrun DeSimone Seplow Harris & Hoffman says.

His father eventually quit after a few years, but that didn't deter Seplow.

As a student at the UCLA School of Law, Seplow found inspiration in representing the underprivileged while volunteering at Westside Legal Services, which is no longer in operation.

Yet, after graduating in 1990, he found himself practicing what he calls "mundane" business litigation at a Century City firm.

"I wasn't really psyched," he says.

So he ditched the corporate world in 1992 and took a big pay cut to resume his battle on behalf of the underdog.

He joined his current firm, where he fights for the rights of plaintiffs alleging employment discrimination and civil rights abuses.

As an added bonus to his career change, his office is on the second floor of a

## SNAPSHOT

### Michael D. Seplow

**Law school:** UCLA School of Law, 1990

**Case types:** Civil rights, employment discrimination

**Career highlights:** Partner and associate, Los Angeles' Schonbrun DeSimone Seplow Harris & Hoffman, 1992-present; associate, Century City's Blanc Williams Johnston & Kronstadt, 1990-92

building along the Venice Beach boardwalk.

"I'm staring at several palm trees right now," the New York native says.

He also prefers to dress casually, unless a court appearance beckons.

Even though he's surrounded by the trappings of a laid-back California lifestyle, Seplow can be difficult to deal with.

A few years ago, he represented a man who alleged that city of Los Angeles park rangers unlawfully beat him up.

"Mike came with a very aggressive, anti-police litigation approach," Deputy City

Attorney John A. Wright says. "That sort of rubbed the wrong way."

Wright compares their encounters in that case to a fencing match.

Eventually they laid down their arms and settled for about \$100,000, he says.

They get along better nowadays, he says.

Wright came away impressed with Seplow's zealous advocacy, calling him a "dedicated true believer."

"He's not daunted by the odds," Wright says.

Suing government entities requires overcoming special legal protections that shields them from liability, Seplow says.

He faced many roadblocks after taking on the case of a mentally ill man from Los Angeles who spent two years in a New York prison because authorities mixed him up with a fugitive who shared his last name and birth date.

The state of New York settled for \$3.25 million; Los Angeles County paid out \$290,000; and the city of Los Angeles agreed to hand over \$225,000. *Sanders Lee v. County of Los Angeles*, CV96-7268 (C.D. Cal., settled May 17, 2002).

Deputy City Attorney Cory M. Brente says he let Seplow sign joint status reports on his behalf during the *Sanders Lee* litigation.

"I trusted the guy," Brente says.