

Frank E. A. Sander, Bussey Professor of Law, *Emeritus* at Harvard Law School¹

The Father of Modern Dispute Resolution

By Mary Walker

'It is a rare person who through his own thoughts and efforts can truly be said to have changed this country, and the world, for the better. Fewer still do it with humility and grace. Frank E. A. Sander is one such transformative figure, a man who for nearly 40 years nurtured the field of dispute resolution that today is credited as being one of the most significant shifts in American law'.²



Credit: Tami Sakakini (photo supplied by Harvard University).

It is also rare that a person has a special edition of a professional magazine dedicated to them; American Bar Association, *Dispute Resolution Magazine*, Volume 19, Number 1, Fall 2012, 'Appreciating Frank Sander', which illustrates the extraordinary contribution that he has made to dispute resolution. A graduate of Harvard, Professor Sander was conferred degrees in mathematics and law. He became an Associate to Justice Felix Frankfurter in 1953 when the US Supreme Court decided *Brown v Board of Education of Topeka*³ which influenced Professor Sanders' interest and work in community welfare and equality.⁴ Sander worked as a tax lawyer, in family law and made his greatest contribution in negotiation, mediation and dispute resolution.

Professor Sander raised the idea of a 'Multi-door Courthouse'⁵ in a speech to the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, commonly known as the 'Pound Revisited Conference' in 1976 held in commemoration of the original lecture presented by Roscoe Pound in 1906.⁶ The original Roscoe Pound lecture was a call to improve court administration and a preview of Roscoe Pound's theory of law and has remained a classic statement on the need for efficient and equitable judicial administration.⁷ The 1976 Conference was conceived by Chief Justice Warren Burger and implemented by leaders of the American Bar Association and the Conference of Chief Justices. The goal of the conference was to explore fundamental issues and map out a reform agenda.⁸ In his presentation entitled, 'Varieties of Dispute Processing', Professor Sander suggested transforming the courts from offering a single form of dispute resolution (decided by a judge or jury) into one which provided an array of dispute resolution mechanisms.⁹ The Multi-door Courthouse contains the notion that disputes can be solved by a range of different approaches—adjudication through the courts, as well as mediation, arbitration or other dispute resolution mechanisms. The responses ranged from those who thought ADR was appropriate and useful and 'should be brought within the courts to those who considered ADR inferior to the traditional judicial model and proposed curing "popular dissatisfaction" with more judges and larger judicial budgets...'¹⁰ Not unfamiliar sentiments in the Australian arena. The rationale for

the Multi-door Courthouse was four-fold: to reduce the caseloads in courts, to reduce the transaction costs for litigants, to increase access to justice for low-income complainants, and to provide mechanisms for the resolution of disputes too minor for the courts to manage economically.¹¹

The idea that implementing varieties of dispute resolution processes would impinge upon the rule of law was an anathema to Professor Sander; his seminal idea was developed to assist in the administration of justice. Professor Sander co-authored a text with Stephen B. Goldberg, Nancy H. Rogers and Sarah Rudolph Cole on *Dispute Resolution: Negotiation, Mediation, and Other Processes* which is still used in law schools throughout the United States. The implementation of Sander's ideas expressed at the 1976 conference commenced with the introduction of neighbourhood justice centres and later with dispute resolution pilot programs, particularly mediation, in both common law and civil law systems around the globe. The additional dispute resolution mechanisms described by Sander have been augmented by hybrids and jurisdictionally specific mechanisms adopted by superior courts through tribunals and are now the bailiwick of many practising in our civil jurisdiction.

Local engagement by Professor Sander was in 2009 when he presented by video to the Multi-door Courthouse Symposium convened by the Law Council of Australia which involved the gathering of the then Chief Justices of each Australian jurisdiction in a discourse involving concepts of dispute processing, case management and alternative dispute resolution (now often termed 'dispute resolution').¹² Recently in March 2016 to July 2017,¹³ a *Global Pound Conference* (GPC) was held which consisted of 28 conferences held in 24 countries with 4,000 attendees invoking a conversation extending the terms raised by Professor Sander. The project focussed on the needs of users of civil and commercial dispute resolution and documented data following global input about how conflict can be managed in the 21st century.¹⁴

In the many articles written about Professor Sander, authors expressed admiration, not only for his expertise and distinction as a legal scholar but also for his mentorship of the field of dispute resolution and of practitioners in this

arena.¹⁵ He was renowned for his candour and his precision as a hard task master. I was fortunate to receive sponsorship from Harvard University to teach with Professor Sander in 1995 and worked as his teaching assistant for a short time. He gave his time graciously. His primary focus was to educate in the law. I saw him again in his last period at Concord and treasure the opportunity to have known such a great contributor to the administration of justice and to legal education in modern times. **BN**

ENDNOTES

- 1 Born on 22 July 1927 in Stuttgart, Germany and died on 25 February 2018 in Concord Massachusetts, USA.
- 2 Richard C Reuben and Margaret L. Shaw, 'Teacher, Mentor, Friend, Leader', American Bar Association, *Dispute Resolution Magazine*, Volume 19, Number 1, Fall 2012, p.4.
- 3 *Brown v Board of Education of Topeka*, 347 U.S. 483 (1954), was a landmark decision of the US Supreme Court in which the Court ruled that US state laws establishing racial segregation in public schools were unconstitutional; <https://supreme.justia.com/cases/federal/us/347/483/>.
- 4 From 1961 to 1963 Professor Sander served as a member of the Committee on Civil and Political Rights of President Kennedy's Commission on the Status of Women, in 1970 was appointed by Governor Sargent to the Massachusetts Commission on Adoption and Foster Care and in 1975, Professor Sander was appointed by Governor Dukakis as chairman of the Massachusetts State Welfare Advisory Board; https://en.wikipedia.org/wiki/Frank_Sander.
- 5 Earl Johnson, 'The Pound Conference Remembered', American Bar Association, *Dispute Resolution Magazine*, Volume 19, Number 1, Fall 2012, p.7; 'Interestingly, his speech was entitled Varieties of Dispute Processing and never mentioned the term 'multi-door courthouse'; a magazine editor coined the phrase when he used it for a headline for an article about Sander's speech'.
- 6 <https://law.jrank.org/pages/11783/Causes-Popular-Dissatisfaction-with-Administration-Justice.html>; 'Roscoe Pound presented 'Causes of Popular Dissatisfaction with the Administration of Justice' at the annual convention of the American Bar Association in 1906. The lecture was a call to improve court administration and a preview of his theory of law. It has remained a classic statement on the need for efficient and equitable judicial administration'.
- 7 Ibid. Also see T. Shepard, 'Introduction: The Hundred-Year Run of Roscoe Pound', *Indiana Law Journal*, Vol. 82, Issue 5 Special Edition, 1153.
- 8 Earl Johnson, 'The Pound Conference Remembered', American Bar Association, *Dispute Resolution Magazine*, Volume 19, Number 1, Fall 2012, p.6.
- 9 https://en.wikipedia.org/wiki/Frank_Sander.
- 10 Earl Johnson, op cit., p.7.
- 11 Ibid. p.8.
- 12 Law Council of Australia Expert Standing Committee on Alternative Dispute Resolution, *Multi-door Courthouse Symposium*, 27 July 2009, Old Parliament House, Canberra.
- 13 <https://www.disputescentre.com.au/wp-content/uploads/2018/05/GPC-Series-Global-Data-Trends-and-Regional-Differences.pdf>.
- 14 Ibid.
- 15 D Hoffman and M Moffitt, 'Frank Sander: Mentor to the Field of Dispute Resolution', *Dispute Resolution Magazine*, Volume 19, Number 1, Fall 2012, p.14.