REMARKS OF THE HON. SIDNEY H. STEIN

PRESENTATION OF ASSOCIATION MEDAL TO THE HON. LEONARD B. SAND

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

APRIL 3, 2014

The Association Medal is given "from time to time to a member of the New York Bar who has made exceptional contributions to the honor and standing of the bar in this community." This award—the Association Medal—remains a rare and profound expression of gratitude. Since 1952, when the City Bar awarded the first Association Medal to Judge Robert Patterson, Sr., only twenty-three people have received this signal honor. Among the twenty-three giants of our bar that have received the award are Cyrus Vance, John McCloy, Harrison Tweed, Robert Morgenthau, and Francis T.P. Plimpton, in addition to Justice Ginsburg.

Tonight, Leonard Sand takes his well-deserved place in that assembly of legal icons. He has modeled the values of this bar association throughout his life and has devoted his career to public service.

Upon being graduated from Harvard Law School as Note Editor of the *Harvard Law Review*, Judge Sand became an ensign in the U.S. Naval Reserve and was assigned to sea duty; returning, he clerked for Judge Irving Kaufman in our District Court, and then became an Assistant U.S. Attorney and ultimately an Assistant to the Solicitor General of the United States, arguing a full 13 cases before the United States Supreme Court.

Judge Sand left the Solicitor General's office in 1959 to practice in the litigation firm that became Robinson, Silverman, Pierce, Arohnsohn, Sand & Berman, returning to the Supreme Court lectern a mere four years later. By 1963, the battle for civil rights was roiling the country and the principle of "one man, one vote" was high on the Court's agenda. At the time, many state legislatures, including New York's, were apportioned in

such a way that rural voters had considerably more voting power than urban residents. The Supreme Court scheduled a full week of arguments in several reapportionment cases, and Leonard was the first advocate to address the Court. He argued that his clients, New York City voters, were victims of discrimination under the New York State Constitution. Leonard's brief summoned the Court to action with the dramatic and resolute voice of a disenfranchised people: "We are at the end of the line," he wrote. "Only this Court can restore majority rule to the 17,000,000 inhabitants of New York State." That voice persuaded a six-justice majority of the Court to hold that New York's apportionment scheme violated the Fourteenth Amendment's Equal Protection Clause.

After winning that historic victory by challenging the New York State Constitution, Judge Sand was called upon to reform it as a delegate to the New York State Constitutional Convention in 1967 and as Chairman of that Convention's Sub-Committee on Apportionment.

When Judge Sand moved from the bar to the bench in 1978 by appointment of President Carter, he went from being a well-known, sought-after, and tenacious champion for his clients and fellow of the American College of Trial Lawyers to becoming an unyielding personification of an independent judiciary and a dispassionate and courageous jurist. Over the past 36 years, he has presided over landmark cases in corporate law, allowing Federated Department Stores to use a "poison pill" to protect shareholders from a tender offer;[1] in First Amendment law, insisting that the courts had the power to invalidate press restrictions promulgated by the Department of Defense, even during wartime;[2] in white collar criminal law, in what was called "one of the

[1] *See CRTF Corp. v. Federated Dep't Stores*, No. 88 Civ. 487, 1988 WL 75226, at *8 (S.D.N.Y. Mar. 18, 1988).

[2] *See Nation Magazine v. Department of Defense*, 762 F. Supp. 1558, 1568 (S.D.N.Y. 1991).

largest frauds in corporate history";[3] and very recently at the intersection of environmental and intellectual property law, holding that an engineer and architect lacked standing under the Lanham Act to sue the organization that issues LEED Certifications for environmentally-friendly buildings.[4]

However, the test of an effective and just court is found not only in well known cases, but probably more importantly in the disputes little noted by the public at large: the stories that history books will never retell but that the parties and lawyers remember always. The humdrum contract dispute adjudicated wisely. The *pro se* litigant given an earnest and respectful forum for her legal grievances. The accused drug dealer who received a fair and speedy trial. The competing textile manufacturers seeking injunctions against each other, each receiving extensive process and a federal judge's careful consideration. Judge Sand has handled thousands—almost certainly tens of thousands—of civil and criminal cases over the past 36 years and has written more than 500 opinions. The fair and effective disposition of these largely anonymous disputes constitutes a deep and lasting legacy.

In addition, there are two extraordinary cases that demonstrate how Judge Sand became an enduring symbol of physical and intellectual courage.

The first came under his aegis shortly after he took the bench. In 1980 the U.S. Department of Justice sued the City of Yonkers for intentionally segregating both its housing and its public schools. The complaint alleged that for more than four decades the City's public and subsidized housing projects had been purposefully concentrated in a

---

[3] Dean Starkman, "Rigases Given Prison Terms," *The Washington Post*, June 21, 2005 (quoting Judge Sand).

[4] *See Gifford v. U.S. Green Bldg. Council*, No. 10 Civ. 7747, 2011 WL 434815, at *2-3 (S.D.N.Y. Aug. 15, 2011).

single quadrant of Yonkers, forcing the city's black and Hispanic populations into one small area. The resulting bench trial spanned 90 days over the course of 14 months in 1983 and 1984 and included testimony from 122 witnesses and extensive documentary evidence.

Traditionally a man of few words, Judge Sand's opinion was nearly 700 pages long. He found Yonkers liable for housing and school segregation and ordered its government to adopt a comprehensive desegregation plan. He supervised the implementation of that plan until the case was finally resolved 27 years later. The Second Circuit called his opinion "exhaustive and well documented."[5] But during the extended life of the case, Judge Sand was vehemently excoriated by various politicians and elements of the public and the press. His home was picketed, and he and his family were repeatedly the subjects of what were determined to be credible threats to their safety and, indeed, lives, requiring protection by the marshals.

Elected officials set out to contemptuously, publicly, and repeatedly defy the Court's orders. Yonkers City Council members ran re-election campaigns opposing Judge Sand's orders and refusing to settle the case. Indeed, the Yonkers City Council in 1988 refused to adopt the zoning amendments that would have cleared the way for compliance with the Judge's orders. This extraordinary contempt of the court required a unique sanction. Judge Sand fined the City $100 with the proviso that the fine double every day until the City complied. The Governor announced that he would remove the defiant city councilors from office if their contempt continued. New York's Secretary of State threatened prosecution on the grounds that the fines were causing a financial emergency. As the City of Yonkers approached bankruptcy, the City Council agreed to adopt Judge Sand's plan for desegregating the schools and public housing.

---

[5] *United States v. Yonkers Bd. of Educ.*, 836 F.2d 1181, 1185 (2d Cir. 1987).

This story reveals more than the vulnerability of the law; it reveals how a courageous and independent judge stood up and safeguarded the law in the face of enormous public pressure. On one of the case's several appeals to the Supreme Court, Justice Brennan wrote: "We must all hope that no court will ever again face the open and sustained official defiance of established constitutional values and valid judicial orders that prompted Judge Sand's invocation of the contempt power."[6] It is extraordinary for a Supreme Court opinion to single out a district court judge by name in such a manner.

The Judge's courage and independence were tested again in the trial of four men accused of bombing the U.S. embassies in Kenya and Tanzania, resulting in the deaths of 224 people, and the wounding of thousands. By then a senior judge, Leonard could have simply declined the case, with its manifold challenges of case management, unwanted personal attention, and once again, the need for security for himself and his family. I am told by a friend of the family that the Judge sat down with his family to discuss the likely repercussions on their mobility and most certain intrusions on their privacy, and I am told he agreed to accept the assignment and its burdens after receiving the active encouragement of Ann and their children, who, after all, would have to bear largely the same intrusions on their lives. And this when no one would have blinked or even known had he asked that the case be reassigned to another judge.

Despite a number of provocations from the defendants, including a defendant jumping over the courtroom railing and lunging at him, the Judge kept his focus on protecting the defendants' constitutional rights, including holding that the Fifth Amendment applied to their interrogations outside of the United States. As he wrote, "the inherent coerciveness of that police technique is clearly no less troubling when

[6] *Spallone v. United States*, 493 U.S. 265, 281 (1990) (Brennan, J., dissenting).

carried out beyond our borders and under the aegis of a foreign stationhouse."[7]

Throughout the five-month trial, Judge Sand presided over the proceedings with firmness and fairness and without regard to the significant public pressures that surrounded that trial.

Our honoree is a quiet, modest man, uncomfortable in the spotlight. In an age marked by too much talking and too little listening, he remains soft-spoken in the extreme, scholarly, quiet, and restrained. In this era of vast passion he has always been serenely calm in the midst of the hurly burly of trials and litigation emergencies. In this era of facile reflection, he has a well-founded reputation for "calm and measured response."[8] That calm and measured response finds its voice in his direct, steady, constrained legal writings, where he sets forth the facts and the law with clarity and forcefulness.

His service to the profession and the public at large extends beyond his work on the bench. Each year for approximately three decades, he has taught a course at N.Y.U. Law School on Constitutional Litigation and has also been an active member of this Association, serving on committees from 1969 on, including service as Chair of the Honors Committee and as a Vice President of the Association. In addition, he led a City Bar mission of enquiry to Hong Kong in 1996 in anticipation of the transfer of power from the United Kingdom to China, wrote an influential report, and followed that up with a second mission and equally impactful report on the Protection of Fundamental Rights in Post-Handover Hong Kong four years later.

Few of us imprint truly lasting footprints in the landscape of justice. Leonard has accomplished that rare feat through his decisions and

---

[7] *See United States v. Bin Laden*, 132 F. Supp. 2d 168, 186 (S.D.N.Y. 2001).

[8] Daniel F. Cuff, "Federated Case Judge Takes Scholarly View," *N.Y. Times*, Mar. 24, 1988.

through a unique contribution to jurisprudence: I am, of course, speaking of the treatise universally referred to simply as *Sand*, the ten-volume treatise *Modern Federal Jury Instructions.* It is not too much to say that *Sand* is truly an indispensible tool of the attorneys and the court in any federal jury trial in the country. If a proposed charge is not in *Sand*, it faces a heavy burden indeed. As John Koeltl, who has been known to speak in biblical cadences, told me: "When I go into a charging conference, I am constantly comforted by knowing that *Sand* is with me." *Sand* has been used and relied upon in every jury trial I have had and I have every reason to believe that is true of every trial judge here tonight.

A man of enormous diligence and intellect, a son of the Bronx, a servant of the common good, a champion of New Yorkers' equal rights, a humble teacher, a dispassionate judge, Leonard Sand has dedicated his career to dispensing even-handed justice under the law. When the law's application was most vulnerable to popular passions and unthinking reflex, our honoree rose to protect it. The medal Judge Sand receives today is embossed with the following Aristotelian tenet: "Where the laws are not enforced there can be no free state, for it is essential that the law be supreme." It is no overstatement to say that Judge Sand's just and fair enforcement of the law in the face of sore trials, has most certainly upheld our free state.

Judge Leonard Burke Sand's career of public service and commitment to the rule of law has honored the bench, the bar, and our community in full. Tonight we take one small step toward repaying that honor.

Judge Sand: Carey Dunne and I are privileged indeed to present you now with the Association Medal.