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PERSPECTIVE

Neutrals help turn the wheels of justice

By Hon. John K. Trotter (Ret.)

When Judge H. Warren Knight (Ret.) started in private ADR 35 years ago, I knew he was onto something incredible and I wanted to be a part of it. Looking back, it's clear to see that the industry has changed significantly since Knight opened his original space in a small office in Santa Ana. It's interesting to reflect now on what I knew would be a game-changer in the legal industry.

When we first started, we had to educate the users and explain the distinction between mediation and arbitration. We also had to respond to the question, "Why would we pay for this when we get it for free?" So we spent a lot of time explaining how ADR can provide value and support the court. We gave the attorneys talking points on how to convince their clients that it was beneficial to their case. We understood the court had certain limitations, most especially, its time. But after having served in that role, Knight and I knew we could be the release valve and take pressure off the sitting judges. Because of the role and the support of ADR providers over the years, our relationship with the courts is better and stronger than it's ever been.

And over the years, ADR providers have gotten better at their role. The cases now are much larger and far more complex than when we started. There are so many more class actions and mass torts than before, from



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massive automobile recalls to medical device recalls as well as pharmaceutical cases. For example, after the San Diego fires in 2007, more than 1,500 parties filed lawsuits. How is a court supposed to resolve all those cases in a prompt and efficient manner? How can the parties move on from this devastation in a timely manner? The attorneys knew the court couldn't handle such a massive case so they approached us to design a way to settle those cases outside the court system. With the cooperation of the attorneys and approval from the court, ADR providers have been able to resolve nearly 100 percent of those cases in a relatively short time. It would have taken several years before a court could have even set a trial date. These are the types of cases that cry out for some type of ADR process. Dealing with something like a natural disaster, fire or flood, where peo-

ple have lost personal effects and valuables, it's important that their voices are heard.

ADR providers understand that the vast majority of cases are not mass torts or class actions, but rather business disputes, injury claims, employment disagreements and other inter-personal disputes. ADR has proven to be a necessary and effective method of resolution for these types of disputes, especially when the costs of litigation and the timeliness of resolution are critical. ADR providers deliver the service, working in conjunction with the lawyers, to resolve cases and help people move on with their lives.

ADR also supports the courts by doing a lot of court-reference work, including overseeing motions or discovery to alleviate the court's work and time. A neutral can oversee all aspects of a case, from pre-trial rulings to full

bench trials. They can also act as liaisons between the parties and the court and apply their expertise to a wide range of discrete issues. The courts unfortunately are overwhelmed and under-funded and we can help ease their case-loads and burden.

It's clear that the efforts of all the ADR providers have had a profound impact on the legal profession. ADR has been accepted into the legal culture and it's a part of the everyday vernacular. Attorneys have embraced it and they have showed it to work. Every lawyer's toolbox now includes mediation and arbitration, and since they're taught in law school, lawyers come into practice with the awareness and the ability to be active participants. We even see many young lawyers now want a career in ADR.

ADR has enhanced the practice of law and Knight and I are proud to have played such a significant role.

Hon. John K. Trotter (Ret.) was one of the first neutrals to join JAMS 35 years ago. He has reputation as one of the nation's leading experts in ADR and has a thorough knowl-

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