

## LITIGATION FILES

ADR PROFILE

## Mediator Handles Disputes in an Even-Handed Way

By Geneva Whitmarsh

Jeffrey Krivis calls a story he penned about a man who sued his employer for wrongful termination "Independence Day."

The man's plight, on the surface, was simple. After 20 years with a Fortune 100 company, he was laid off. He'd never worked another job and was having a difficult time letting go.

"I learned by talking to him that he'd never experienced Thanksgiving Day with a family — all of his holidays had been spent with friends from work," says Krivis, an independent mediator in Los Angeles.

Krivis dug deeper and found out the man had lost his parents as a child and had gone to work for the company after college.

"To him, leaving the job was almost like leaving his family," Krivis says. "So, I talked to the people at the company. They liked him, but were downsizing. So, they told him, We want you to consult for us, and well be your first clients.' This guy was getting married at the time, so it was a way to start a new family and a life.

"If I hadn't gotten a better understanding of where he was coming from and what was driving him, I never would have gotten to the bottom of it."

And that, in a nutshell, sums up Krivis' philosophy on mediation, a career path the 49-year-old embarked on 15 years ago.

Today, Krivis runs First Mediation Corp., and pulls in \$6,500 a day to help clients settle disputes outside the courtroom. He is currently booked three months in advance.

Wayne Flick, an attorney at Latham & Watkins' Los Angeles office, worked with Krivis on a controversial case involving a Jewish student at Newbury Park High School, about 50 miles northwest of Los Angeles, who claimed his coach harassed and discriminated against him.

"Jeff saw the story in the Daily Journal, was fascinated by it and offered his services pro bono," Flick says.

Flick says the negotiations started at 1 p.m., with Krivis sitting down with the student and his parents and "connecting with them by talking about his own background and experiences as a child who was Jewish."

"Everyone involved in this wanted their day in court, but they engaged in mediation to give it a try," Flick says. "By 5 p.m., it was settled."

Paul Kiesel, a partner at the litigation firm of Kiesel, Boucher & Larson, calls Krivis "the most outstanding mediator in America."

"I can say that without hesitation," Kiesel says. "Jeff Krivis has done what most neutrals find impossible to do — he's maintained credibility on both sides. Both sides have an enormous respect for what he can do."

Krivis originally thought his path was in litigation. In 1985, five years after graduating



Photo by Hugh Williams

"The approach has changed dramatically in the last 15 years," Encino mediator Jeffrey Krivis says. "Lawyers are less dogmatic and more principled in their approach. They no longer seek out a joint session to hammer their opponent, but instead, seek out better opportunities to create goodwill, which they understand will likely get them a better outcome."

from Southwestern University School of Law, Krivis helped found litigation firm Krivis & Passovoy in Los Angeles.

"I could tell from the beginning what my strengths and weaknesses were," he says.

Eventually, one of the firm's clients asked that mediation be used to settle a deal. But at the time, mediation was a rarity and the firm didn't have a mediator on staff.

"So, they sent someone from Dallas," Krivis says, "and I was mesmerized at what he was doing. It wasn't the typical judge in Superior Court where you're the nail and he's the hammer. This was different."

A short time later, Krivis traveled to Dallas to train, became a certified mediator and started First Mediation Corp. at age 34.

"It's like that line from the movie 'When Harry Met Sally' — when you realize what you want from your life, you want the rest of your life to start as quickly as possible," Krivis says.

"I went after the trial lawyers and people I knew from my law practice," for clients, Krivis says.

In the early 1990s, Krivis became involved with the Straus Institute for Dispute Resolution at Pepperdine University School of law, where he helped develop new laws that mandate mediation in the Los Angeles Superior Courts. He was also responsible for the initial training of the court's volunteer mediators.

"[The city] gave us three hours to train 100 people and we told them, 'Hey, this takes years. No wonder your success rate is so low,'" Krivis says. "So, the court agreed to let us do a six-day training."

Krivis now serves as an adjunct professor at the Straus Institute, where he also teaches the six-day program, dubbed "Mediating the

Litigated Case," to judges, volunteers and lawyers at least six times a year.

"The reason people like to hire me is because litigators don't talk to each other," he says. "I'm more of a mentor to my clients, and the lawyers see me as a guy looking out for their interests in an impartial, even-handed way."

Krivis says he expects the attorneys who appear before him to be respectful to their adversaries and keep an open mind. They should recognize, he says, that making the first move in negotiations is very powerful.

"The approach has changed dramatically in the last 15 years," he says. "Lawyers are less dogmatic and more principled in their approach. They no longer seek out a joint session to hammer their opponent, but instead, seek out better opportunities to create goodwill, which they understand will likely get them a better outcome."

Krivis likes to create a safe, inviting environment for his clients. His Encino office is decorated in warm colors and dotted with plush couches, food and an espresso machine.

"It reflects who I am," he says. "There's an electric guitar signed by Bob Dylan in one room, a crystal ball in another. I like to have props — things that put people at ease or make them laugh."

Krivis even went as far as to take improvisational comedy classes at a local comedy club in Los Angeles as a way to hone the skill of thinking on his toes.

"Mediation is trusting your intuition," he says. "There's a certain formula to it, but what you're really doing in the end is improvising."

Being a mediator, Krivis says, means studying social psychology, powers of persuasion and "all the things lawyers learn in

college but forget when they become a lawyer. I don't think the study of law helps me much, it's more the study of people. I love people, hanging with people and getting to know people."

Listening and responding in a creative way are crucial, Krivis says.

"In every case there's a turning point where things change dramatically," he says, citing one such case that involved a man who was suing a large entertainment company, which he declines to name, for wrongful termination.

Discussions had gone on all day and nothing had been resolved, he says. Finally, in an attempt to simply make conversation, he asked the man and his wife about their children.

"Turns out," he says, "that one of the kids had cerebral palsy and gets therapy everyday."

They really needed to make money on the lawsuit because they didn't have any medical insurance. That's what was driving the lawsuit.

"So, I said, 'What if the company could pay the medical insurance for five years?' and they said, 'That would work.'"

In his spare time, Krivis is a self-described "Sunday golfer," and an avid iPod user. He says he has downloaded the entire catalogue of Bob Dylan, Frank Sinatra and the Beatles.

He's been married to his wife, Amy, for 24 years and has two daughters, ages 18 and 16.

"Amy has to be a very understanding woman," jokes Kiesel. "If I need Jeff, or the other side needs Jeff, and he has no time for the next two months, he'll do breakfast at 6:30 a.m. or meet with us at 9 p.m. I've even met with him on New Years Day!"

Andy Bryan, a partner at Bryman & Aplian in Calabasas, says Krivis is "the best mediator that there is."

"And I say that because of the results," he adds. "He's settled just about every case I've been involved in. It's amazing."