

VERDICTS & SETTLEMENTS

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Family First

*William J. Howatt Jr. sprinkles California history into his family law mediations.*By Mark Armao
Daily Journal Staff Writer

In 1846, Philip Crosthwaite was returning to San Diego from an otter hunting expedition when he learned of the outbreak of the Mexican-American War. Crosthwaite hurried back to San Diego, where, according to a historical account, he met a military officer who reaffirmed his intent to enlist.

"There can be no neutrals in this country," the officer said.

Luckily for William J. Howatt Jr., neutrals are now embraced in San Diego — by the legal community, at least.

A mediator and history buff, Howatt said he dreams of sequestering himself in a library to research California's bygone eras. The retired judge is particularly fascinated by seminal figures in early San Diego history, such as Crosthwaite, who was once the town's "prime supplier of pork, beef, chicken and eggs," Howatt said.

When he isn't researching state history, Howatt mediates family law disputes and other matters with JAMS.

The fifth-generation Californian began practicing law as a San Diego County deputy district attorney in January 1969. He was appointed as a municipal court judge in 1979 and was later elevated to the superior court, where he served as presiding judge in 1996 and 1997.

As supervising judge of family court in the early 2000s, Howatt led a coordinated effort to repair the icy relations that had developed between court administrators and the family law bar.

"Judge Howatt put the rudder back on the ship," said family law attorney Gordon D. Cruse. "He got everybody working together again. He did that all by himself."

Cruse added that Howatt, with his agreeable temperament and evenhanded approach, was among the best trial judges he has ever appeared before. Drawing on his 28 years of experience on the bench, Howatt now mends fences for a living.

Howatt's instructive style as a judge enabled him to transition seamlessly into the role of mediator, said James A. Testa, a civil litigation attorney with Testa & Associates LLP. Testa said that, while many ex-judges are "more interested in calling balls and strikes than getting the parties to settle things," Howatt's facilitative mindset makes him highly effective as a neutral.

"He's prepared, he's even-tempered, and he has a real desire to get the right result," Testa said.



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The lawyer recalled an arbitration with Howatt involving an emotionally charged dispute between a father and son over a family business. As an arbitrator, Howatt employed a "nice touch" in reining in the emotions in the contentious case, Testa said.

"He doesn't do things that put people unnecessarily on the defensive, and he's able to maintain control through his demeanor and his knowledge," Testa said.

Despite Howatt's ability to recite obscure facts about the Modoc War, his vast knowledge of California history may be bested by his grasp of the California Evidence Code.

"He is a walking encyclopedia of the evidence code," said Michele B. Brown, a partner at Procopio, Cory, Hargreaves & Savitch LLP.

Howatt said he brings a copy of the code to every mediation, so he can "show the clients — and sometimes the attorneys — what the law of evidence would require of them to get a piece of evidence legitimately before the court."

Sometimes Howatt's admonitions regarding the relevance, authentication or probative value of a key piece of evidence are enough to convince one side their position is not as strong as they originally thought, he said. And while a client's attorney may have issued a similar warning, Howatt said such advice often goes unheeded unless it comes from someone who's donned a black robe.

"The perception that the judge is there to hear and see everything that you can

present is erroneous, so that's why I intermix the law of evidence into our discussions when it's appropriate," Howatt said.

Prior to a mediation, Howatt often asks the attorneys on each side if the parties can meet in the same room to start the proceedings. His request is frequently denied, due in part to the "frustration, anger and onset of great emotion" a divorce or custody battle often induces, he said.

Leading off with a joint session, Howatt explained, allows him to gauge not only the legal underpinnings of a case, but also the emotional dynamic between parties.

"In all the years I've done trials and contested hearings, watching the people involved [can be critical] in understanding their position and understanding whether or not they are in any way capable of reaching a reasonable compromise," Howatt said.

The mediator doesn't just observe the parties; he listens to them as well.

Brown said Howatt allows parties in a family dispute to vent their frustrations to him privately before shifting the conversation to the children involved and other factors that may steer his recommendations for a resolution. The certified family law specialist said Howatt's pragmatic, family-focused approach is especially valuable in her line of work.

"When you're dealing with families, it's different than civil litigation — you have to look outside the box," Brown said. "Although you divide all assets equally, you are dealing with human beings, and

William J. Howatt Jr.JAMS
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you need to figure out what's best for the family."

Apart from Howatt's desire to attain a workable resolution, the father of two said his focus on the well-being of children derives from the strong familial bonds he enjoyed growing up in a tight-knit military family and, years later, raising his daughters alongside his wife, Charlotte.

"To me, family is the most important structure in our social system," Howatt said.

He and his wife raised their now-adult children, Jennifer and Kimberly, in a house that sits on 2.5 acres in a semi-rural area of eastern San Diego County. Living with extra space, he said, enabled the family to engage in more agrarian pursuits, such as animal husbandry.

The family once took in an aging donkey named Otis, and as part of his daughters' involvement in 4-H, Howatt used to serve as weighmaster in a local fair's annual swine show. His duties included thrusting a piece of plywood between hostile hogs and preparing the animals for judging.

"I can tell you from personal experience that shaving a pig is an interesting project," he said.

And while Howatt admitted to sometimes wishing he could use a sheet of plywood to separate belligerent parties in a legal dispute, the imperturbable mediator is content to employ his tried-and-true method of dispute resolution: listening.

"I try to get people to talk to me as honestly as they can about what the real issues are," he said. "It's easy to talk, but it's difficult to listen."

Here are some attorneys who have used Howatt's services: Julie R. Barnes, Jones Barnes LLP; Michele B. Brown, Procopio, Cory, Hargreaves & Savitch LLP; Gordon D. Cruse, Gordon D. Cruse, APLC; Sandra Mayberry, Henderson, Caverly & Pum LLP; James A. Testa, Testa & Associates, LLP