



## Q&A WITH Hon. John H. Sugiyama (Ret.)

### **Please provide a snapshot of your legal career prior to joining JAMS.**

In August 1975, I began my legal career as a deputy attorney general in the Criminal Division of the California Department of Justice (DOJ). Over the next 10 years, I successfully briefed and argued over 300 cases in the California Courts of Appeal and the Supreme Court of California. I also prosecuted criminal defendants in many of the municipal and superior courts throughout the state. I was later appointed as a senior assistant attorney general to lead the Criminal Division in the San Francisco office of the DOJ. With a change in administration, I later transferred to the Civil Division of the DOJ.

In January 2000, I accepted an appointment from the governor to serve as the chief counsel and deputy director of the Legal Affairs Division of the California Department of Corrections. With that responsibility, I directed the work of over 50 attorneys who handled the legal duties for the department.

In November 2002, I began serving as a judge of the Superior Court for the County of Contra Costa. Among my various judicial assignments, I served as the supervising judge of the Probate Division from 2011 to my retirement in 2020. I also served as the chair of the Judicial Council's Probate and Mental Health Advisory Committee from 2014 to 2019.

### **How did you become interested in alternative dispute resolution (ADR)?**

Of the thousands of cases filed annually in California, only a small percentage go to trial. The civil, family and probate components of the judicial system are dependent upon vibrant, creative ADR systems. With this in mind, I plan to devote the remainder of my career to working with a team of dedicated professionals at the forefront of ADR innovation.

### **What are some of the highlights of your career to date, whether in ADR or litigation?**

I argued a case before the Supreme Court of California within the first year of my admission to the California State Bar. I lost that case, but since then, I have learned much about the nobility of failure.

### **How would you describe your mediation style?**

Miyamoto Musashi wrote: "With water as the basis, the spirit becomes like water. Water adopts the shape of its receptacle; it is sometimes a trickle and sometimes a wild sea." More recently, Bruce Lee observed: "Now you put water in a cup, it becomes the cup. You put water into a bottle, it becomes the bottle . . . Now water can flow or it can crash." I have no set mediation style. My style varies from mediation to mediation, depending upon the attorneys' needs and concerns, as well as the parties involved in each matter.

### **What do you enjoy the most about mediating?**

Trial litigation is adversarial, with winners and losers. In contrast, mediation allows the participants to avoid being viewed, either among the parties or by others, as losers. I enjoy this facet of mediation. Mediation further allows the participants to shape the outcome, and be creative in doing so, and bring closure to their dispute on terms that are acceptable to all. I also enjoy these facets of mediation.

### **Are there any practice areas that you are particularly interested in developing at JAMS?**

I am interested in developing a probate practice at JAMS. My principal interest is to oversee mediations involving estates, trusts and conservatorships. Other areas of litigation generally concern the past, in which a prior event becomes the focus of attention. Attorneys in civil and criminal practice must often attempt to reconstruct,

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interpret and/or obscure what happened. However, probate litigation frequently has an added temporal dimension, in which the future must be considered as well. Attorneys in probate practice must regularly attempt to assess the effect of current decisions on future generations. I like this latter process of working with attorneys and parties to resolve disputes so that the legacy of an earlier generation may be preserved for the benefit of future generations.

### **Why is diversity and inclusion in the ADR field so important to you?**

Our willingness to abide by the rule of law flows in part from several interrelated perceptions. One is that those who are drawn into the legal system will be treated without bias or prejudice. Another is that people dependent upon the legal system will be treated fairly and given an opportunity to be heard. For these perceptions to be based on fact, judicial officers must be made aware of sources of bias and prejudice, both explicit and implicit, that could cause them to render unfair, inequitable decisions. An effective means of eliminating such bias and prejudice is to ensure that judicial officers are drawn from diverse racial, ethnic and socioeconomic backgrounds without regard for their sexual or gender orientation.

I view the ADR field as a vital, essential part of the legal system. I thus perceive that the reasons that may enable people to have faith in the legal system's underlying integrity are the same as those that would lead them to choose ADR for the resolution of their disputes. Those turning to ADR must believe that neutrals will treat them without bias or prejudice, and that they will have the opportunity to express their side of the dispute. Without such assurances, they will avoid ADR. Accordingly, in order for them to feel comfortable and have faith in ADR, they must see a field of neutrals and support personnel who reflect the diversity of their communities and are inclusive of all interests and perspectives.

### **If anything, what would you say is the most pivotal development or change needed to improve diversity and inclusion in ADR?**

I believe the pivotal developments are underway and will continue as the population served by ADR continues to become ever more diverse. I believe that, although the effort to become more diverse has

begun, it must never end. The start occurred when those working in the ADR community made a conscious decision to employ neutrals, case managers and administrative staff who reflected diverse ethnic, racial and socioeconomic backgrounds. The absence of an end should be evident from the fact that our population continues to diversify and will never cease to do so.

As one minor development to improve diversity and inclusion, however, thought should be given to finding ways to have more interpreters available for those who wish to avail themselves of ADR services but do not speak English. In the past, the opportunity for foreign-language-speaking parties to participate in ADR was dependent upon the availability of neutrals or attorneys who were at least reasonably proficient in their languages. The option of having interpreters present during any lengthy mediation or other ADR process was simply too costly for many parties. Now, as an alternative, emerging technologies such as Zoom could allow interpreters to provide services remotely at a reduced cost to the parties.

### **What is the best piece of advice you have received?**

Accept, appreciate and anticipate that change will occur over time in response to problems of increasing complexity that themselves are changing over time.

### **If you could time travel, where would you go?**

I would travel to Gettysburg, Pennsylvania, on November 19, 1863. That is where and when President Abraham Lincoln delivered the Gettysburg Address. That 272-word speech reaffirmed the power of words, adding a second pillar to the foundation of our political thought. The first pillar, stated in the Declaration of Independence, sets forth the principle that people have the right to life, liberty and the pursuit of happiness. This second pillar expresses the principle that all people are created equal, with that right to be protected by a government of the people, by the people and for the people.

*Judge Sugiyama is available to conduct virtual/remote mediations, arbitrations and other ADR proceedings on a variety of online platforms, including Zoom. To schedule a case, visit [jamsadr.com/sugiyama](https://jamsadr.com/sugiyama) or call 925.975.5795.*