



Fun Facts about the Hon. Curtis E. von Kann (Ret.)

I play the guitar and had a folk singing trio in college.

I spent 1964 to 1966 patrolling the East-West border in Germany with an Army unit whose mission was to hold off as long as possible any invasion from East German or Soviet Union forces.

Every summer my son Harry and I swim in the one-mile race on Lake Memphremagog in Vermont.



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How did you get interested in ADR?

As a trial judge, I became increasingly aware that resolving civil disputes through litigation had significant drawbacks: It took 12 to 18 months to get even simple cases to trial, and complex cases took much longer. All cases had to be conducted via the same procedures, thus leaving little opportunity for customizing the process. And losing parties routinely appealed the judgment, adding two to four years to the time to disposition, and even more if the case was remanded for retrial. It seemed to me there must be a better way, and after reading a good deal about ADR, I realized that there was.

How would you describe your arbitration and mediation style?

Counsel inevitably know more about a case than an outside neutral ever will. I believe it is essential that counsel actively collaborate with the neutral in designing the procedures for each mediation or arbitration. That approach takes advantage of counsel's greater case knowledge and also ensures their commitment to the process established. Once the process is set, the neutral should enforce it but be willing to make modifications if changed circumstances truly warrant it.

How has arbitration changed over the past decade?

Over the past 10 to 20 years, there have been more complaints from parties that commercial arbitration is coming to resemble litigation, thus diminishing its advantages of being faster and more economical than litigation. There is some truth to this observation. However, those parties are overlooking the principal cause of this change; namely, that as bigger and bigger cases move from litigation to arbitration, the "litigators" they retain crave the same kind of discovery and motions practice they were accustomed to in court. The challenge for the arbitrator is to convince those attorneys—with assistance, if needed, from the clients who pay their bills—to accept less initial discovery and motions practice with the assurance that the arbitrator will allow more later on if fairness truly demands it. Counsel can then focus their discovery on the most important issues, and dispense with motions that accomplish little. When that is done, counsel seldom come back to the arbitrator seeking more discovery or more motions.

Another development is the greatly expanded use of videoconferencing in the wake of the coronavirus pandemic. I expect that as more people get comfortable with that way of conducting depositions, oral arguments, arbitration hearings and mediation sessions, videoconferencing will be used more frequently, even after the pandemic passes. Such a change offers the prospect of even faster and more economical resolution of disputes through ADR because parties will not have to bring all their representatives, attorneys and witnesses to a single location, thus avoiding large outlays for travel, lodging and meals.

What would clients say if I were to ask them why you are so successful at what you do?

It would be presumptuous of me to predict what clients would say. I hope they would say that I was well prepared, that I was attentive and responsive to their concerns, that I sought to manage the case collegially with counsel rather than dictatorially and that I conducted a fair and expeditious process that led to a reasonable result.

Can you tell us a little bit about your life before JAMS?

I was an Army brat and grew up in many different places. After Harvard College, two years of ROTC duty in the Army and then Harvard Law School, I was the 60th lawyer to join the Washington, D.C.,

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law firm Hogan & Hartson. (That firm is now known as Hogan Lovells and has 6,000 people working in 52 offices around the world!) I spent 13 years there as an associate and partner with a general civil litigation practice, handling a few criminal cases and representing quite a few disadvantaged clients (including the Black Panthers) in Hogan's very active pro bono department.

Next came two years in the litigation boutique firm headed by legendary trial lawyer Jake Stein, the only attorney whose client was acquitted in the Watergate trial. In 1985, President Ronald Reagan appointed me to the bench of the District of Columbia Superior Court, the general jurisdiction trial court for Washington, D.C., where I helped the court develop a civil delay-reduction program that included a big dose of ADR. In 1995, I became a senior judge and joined the law firm of Ross, Dixon & Masbach (now part of Troutman Sanders) as a partner and chair of its ADR department. During this time, I was appointed as independent counsel of the United States to investigate charges concerning Eli Siegel, chief of staff of Bill Clinton's presidential campaign. I was also chosen by the Congressional Accountability Office to hear cases charging members of Congress and others with violating the civil rights of congressional employees and was appointed a member of the United States Copyright Office's arbitration royalty panel that set the royalty rates for the streaming of copyrighted music.

In 1997, I joined JAMS, where I have been happily arbitrating and mediating cases ever since.

What are you most proud of when you think about your contributions to ADR?

As president of the College of Commercial Arbitrators, I convened the 2009 National Summit on Commercial Arbitration, at which experienced arbitrators, arbitration counsel and arbitration parties devoted a day to developing techniques for making arbitration more efficient. Those techniques were then published in the College's *Protocols for Expeditious, Cost-Effective Commercial Arbitration*, of which I was an editor; that publication won prizes from both CPR and the ABA. I also served as editor-in-chief of the first edition of the College's *Guide to Best Practices in Commercial Arbitration*. That guide, now in its fourth edition, provides sound, practical advice for handling the many complex issues that can arise in such arbitration.

Would you share a particularly interesting case or a creative settlement devised during one of your hearings?

One of my mediations involved a claim by the buyer of a software company that the seller had misrepresented the company's software

as ready to be marketed. The buyer claimed that it had to spend a lot of money to debug the software. Each side was convinced that the software engineers, previously employed by the seller and now employed by the buyer, would support its position, but each refused to allow the other any pre-litigation discovery about this. I suggested that the parties authorize me to go to the company's offices in Dallas, Texas; interview the engineers (but not disclose to the parties what they told me); and make a settlement proposal to the parties. They agreed. I did so. And the parties accepted my proposal and ended the dispute.

Fun Facts about von Kann

When you are not working at JAMS, what are you most likely doing?

Attending an opera or performing in local theater productions, which I love to do. In the years since law school, I have played many roles, including Senex in *A Funny Thing Happened on the Way to the Forum*, Hucklebee in *The Fantasticks*, Matthew Harrison Brady in *Inherit the Wind*, Henry Saunders in *Lend Me a Tenor* and Mitch McConnell in *Romp in the Swamp* (an original musical presented by Hexagon, a longtime Washington theater group that donates proceeds of its ticket sales to local charities). I also spend as much time as I can swimming, boating and hiking at our lakeside vacation home in Newport, Vermont (five miles south of the Canadian border).

What are some fun facts about you that most people would be surprised to learn?

I play the guitar and had a folk singing trio in college. I spent 1964 to 1966 patrolling the East-West border in Germany with an Army unit whose mission was to hold off as long as possible any invasion from East German or Soviet Union forces. Every summer my son Harry and I swim in the one-mile race held on our lake (Lake Memphremagog) in Vermont. (For some reason, Harry always beats me to the finish line. However, for several years, I have been the winner—and the only entrant—in the 70-years-and-older division!).

What is your favorite Netflix series that you binge-watched with your wife?

Mary and I occasionally watch movies (but not series) on Netflix. However, we are absolutely addicted to any British mystery series that appears on our local PBS station. Our favorites thus far are *Inspector Morse*, *Maigret*, *Vera*, *Midsomer Murders*, *Shetland* and *Hinterland*.

To set a case with Judge von Kann, visit jamsadr.com/vonkann or call 202-533-2019.