

# VERDICTS & SETTLEMENTS

FRIDAY, SEPTEMBER 29, 2023

## Demonstrating Concern

*Neutral Ben Davidian uses life experience to show disputing parties he cares.*

By Shane Nelson

Special to the Daily Journal

Retired judge Benjamin G. Davidian is known as a terrific storyteller, which is an area of expertise he applies often in his work as a JAMS private neutral.

“Stories are everything in this business,” Davidian said. “When you have somebody and they’re so damn mad they’re gritting their teeth and there’s blood dripping from their fangs, you tell them a story. You tell them something that disarms them a bit. Make them laugh. That’s one of the most valuable things you can do.”

Davidian graduated from UC Hastings College of the Law – now UC Law San Francisco – in 1980. He represented doctors and hospitals in medical malpractice cases early in his 30-year career before widening his practice into corporate litigation. He also held several state government positions, including chairman of the California Agricultural Labor Relations Board, the California Fair Political Practices Commission and the California Alcoholic Beverage Control Appeals Board in the late 1980s and 1990s.

Davidian was appointed to the Sacramento County Superior Court in 2009 and was the supervising judge for the court’s civil settlement center for six years before he retired in 2021.

“I personally handled thousands of settlement conferences – both voluntary and mandatory,” he recalled. “Then I oversaw another several thousand that were done by pro tems under my supervision. ... And I just enjoyed it so much that when I decided to retire, I couldn’t imagine doing anything else. I definitely didn’t want to just go play golf.”



Malcolm Maclachlan / Special to the Daily Journal

Davidian joined the JAMS roster of private neutrals in August 2021, and he’s been busy since mediating and arbitrating disputes including: personal injury, elder abuse, professional malpractice and construction defects.

“I love the variety,” Davidian said. “I thought I had the best job when I was on the bench, but now, this is the best job I’ve ever had. Every day is a holiday when you enjoy your work, and that’s what this is. I love this.”

He noted that fairness is of the utmost importance in his work as an arbitrator.

“You have to instill [in attorneys] the absolute confidence that you’re going to be fair,” Davidian said. “If they don’t have the confidence

you’re going to be fair, you can’t do the job for them. ... You have to put them at ease, and if you can’t put them at ease, you’re probably the wrong arbitrator.”

Before mediations, meanwhile, Davidian likes to receive briefs and speak over the phone with attorneys about the dispute. And on the day of mediation, he said he tries to make use of his extensive breadth of experience to build rapport and trust early on with litigants.

“The mediation – it may be one of the worst experiences of their lives because they’ve been in an accident, or they’ve lost a loved one in a wrongful death,” Davidian explained. “They, generally speaking, do not want to be here. They would rather be doing pretty much

### Benjamin G. Davidian

JAMS

**Areas of Specialty:**

Employment

Business

Personal Injury

Construction Defect

Professional Liability

anything else, and you have to make them comfortable. You have to make them believe and understand that you care. And you better care about them, about their problem. ... If they don't know that you care, if they can't feel that, I don't think you can be very effective in this job."

Telling relatable stories about his own life experience is a strategy Davidian often employs to build trust in mediations and to let litigants know he understands and cares. He said some of those stories include experiences from the work he did flipping burgers in college at his family's drive-in restaurant or the time he spent as a brakeman on the Southern Pacific Railroad or his combat tour during the Vietnam War as a navigator and weapons officer in the Air Force.

"The stories are things you can meld into the experience they are having and say, 'I feel a little bit of your pain because I used to do this,'" Davidian said. "You can establish a rapport with them because you have a common experience. Because I know a little

bit about the pain they're feeling, that gives me an opportunity to connect with them. Those connections are critical in this business."

Sacramento plaintiffs' attorney John N. Demas has used Davidian to mediate five personal injury cases, and he said the neutral did a wonderful job of building rapport with his clients.

"He's very personable, and he tells stories in a good way," Demas said. "He can relate with a broad range of people, and he has the temperament and the background to really understand and connect with people."

Sacramento defense attorney Lindsay A. Goulding has used Davidian to resolve nearly a dozen personal injury cases, and she said her clients love him.

"He's very entertaining, and that makes the process more enjoyable," Goulding said, adding that Davidian makes especially effective use of humor in his mediations. "You don't feel like you're being beat up when he's joking about zombies or something else silly."

Sacramento defense attorney

Matthew C. Jaime has used Davidian to resolve half a dozen cases – frequently involving property disputes or personal injury – and he said the neutral's personable approach helps to bring entrenched parties to a place of compromise.

"I think he also has the ability to drop the hammer if he needs to with one side or the other," Jaime said. "And that causes people to refocus on their case – either on the plaintiffs' or the defense side. Sometimes we get blinders on, and I think Judge Davidian helps us remove the blinders when necessary."

Goulding agreed that Davidian isn't afraid to point out a case's weak points, and she said his read on juries remains especially valuable.

"He is particularly effective, in no small measure because he has a very strong pulse on what juries in California – particularly in Northern California – are currently doing," Goulding explained. "That gives him a solid base to tell either side, 'You should be prepared for a jury to do this or react this way,' or 'You're crazy if you think you're going to ever get a settlement at

that amount or this amount,' which is really helpful in guiding parties toward where the right outcome is."

Davidian mentioned the satisfaction he takes from helping disputing parties come to a resolution.

"When I settle a case – and 90% plus settle – I sleep like a baby," he said. "But when they don't, it's a little harder. I end up asking, 'What did I do wrong? What could I have done better?' You second guess yourself a little. Of course, many of them do settle shortly thereafter. They just have to think about it for a while. ... And I love those words, 'We have an agreement.' You can just see the ton of weight lifted off of people's shoulders when that happens."

*Here are some attorneys who have used Davidian's services:* Mathew C. Jaime, Matheny Sears Linkert & Jaime LLP; John N. Demas, Demas Law Group PC; Lindsay A. Goulding, Porter Scott APC; Jeffrey E. Levine, Matheny Sears Linkert & Jaime LLP; Carol A. Wieckowski, Evans, Wieckowski, Ward & Scoffield LLP.