

# JEFFREY KRIVIS

IN CONVERSATION WITH  
PROFESSOR SUKHSIMRANJIT SINGH

STRAUS INSTITUTE FOR  
DISPUTE RESOLUTION

PEPPERDINE | CARUSO  
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# ABOUT THE SPEAKERS



Jeff Krivis began his mediation practice in 1989 breaking open a niche in the Southern California dispute resolution landscape. He crafted a process that sets the stage for successful resolution. Through improvising, harmonizing, and always closing, he has resolved thousands of disputes including wage and hour and consumer class actions, entertainment, mass tort, employment, business, complex insurance, product liability and wrongful death matters. Krivis practices primarily in Southern California, San Francisco and Monterey, California.

Sukhsimranjit Singh is the Judge Danny Weinstein Managing Director of the Straus Institute for Dispute Resolution at Pepperdine University Caruso School of Law, where he also serves as Associate Professor of Law and Practice and directs the LL.M programs. Dr. Singh oversees the Institute's global outreach efforts, world-class professional training programs, and rigorous academic curriculum. His practice, teaching, and scholarship focus on cross-cultural dispute resolution, faith-based mediation, and utilizing modern theories, science, and technology to devise creative solutions for global disputes.



# THE CONVERSATION

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**Professor Singh:** It is a privilege to have you here with us, Mr. Krivis. You are one of the best mediators in Southern California, and perhaps in the United States. Please tell us about your background and what kinds of cases you handle.

**Jeff Krivis:** Thanks, I'm delighted to be here. I have been a lawyer for 40 years. When I started in 1980, the first 10 years of my practice were courtroom battles. In 1989 I had a big corporate client that wanted me to settle some cases and they asked me to mediate. Back then we didn't have a field of mediators to choose from, so the client sent out a trained and certified mediator from Texas, and he did a really good job. After the case, I asked him, "Do you get paid to do this kind of thing?"

He said, "Yeah this is a business in Texas. Come join us and get trained to do mediation."

That summer, right in the middle of my litigation practice, I joined this group in Dallas and studied how to become a mediator. I came back and told my law partner, "I'm going to do this." I looked around and saw that there were only a handful of people interested in the field. And one happened to be Randy Lowry at Pepperdine. Randy was doing the first ever Southern California Mediation Association conference at Pepperdine that year. The timing seemed to be right and there was interest, and so I plugged into that and was really inspired by the idea of building something new.

Fortunately, over the years, my cases have been varied. I didn't start in one area of law. I started out as a pure neutral, and ended up getting all kinds of cases ranging from garden-variety tort cases, to working in L.A. in the areas of life, health and disability insurance and insurance bad faith in the 90s — and many celebrity entertainment cases. In the last 15-20 years, I've done quite a few wage and hour class actions, and recently concluded some major sexual abuse cases; there's been a lot of sexual abuse and harassment cases in the last few years. That's reflective of the change in society that's going on, the correction in society. I've been there to handle the cases as society moves in different directions and it's been pretty exciting.

**PS:** I know you recently mediated a complex sexual abuse case. Perhaps one of the largest settlements in a sexual abuse case. Share how you approach emotionally sensitive cases differently from purely commercial cases.

**JK:** I've been fortunate enough to be selected for some of the largest sexual abuse cases in the U.S., and this case was one of those challenges that comes across your desk every 20 years. It presented emotional challenges and commercial challenges. I can tell you for a fact that every case has both — even if you are dealing with a routine car crash and you just expect some insurance company to pay some money. There is an emotional component all the way around, whether it's the person who was hurt or the insurance decision maker who has constituents above him and you're putting him in an awkward position by asking to stretch their limits.

There's a component, particularly from the decision-making side, that categorizes the emotional side. They have to because if you're going to be investing money in a settlement — whether you're a corporation, an insurance company, or whatever entity that's going to be investing — you have to be able to objectively assess it. So they categorize these victims, and then they quantify it. And that's the right way to do it; that's the way it's done actuarially and in a risk-taking environment. The problem is, victims don't want to be categorized because each has a unique story to tell. Somebody's experience with the bad actor may look modest on paper — maybe they had just a minor touching — but that person may have had prior abuse as a child that has been exacerbated, and just the thought of having contact with the bad actor creates a more complex dynamic.

What I try to do in an emotional case like that with gigantic commercial overtones is elevate the victim from just a folder, just a name, just a number in an insurance directory or a corporate file, and humanize the person. It is a big challenge when you try to interact the emotional side with the commercial side because they have to at some point come together with some sense of urgency. In a case like this, it helped to map out a possible blueprint that I might follow, which, by the way, never works. But you still have to prepare by mapping it out and figuring out what the turning points might be, and that's what happened in that case.

**PS:** How do you prepare yourself for emotionally sensitive cases? Is there mental preparation that you engage in?

**JK:** There's a lot that goes on in preparation. The biggest thing intellectually is trying to identify the patterns of behavior that might impede progress. Having done so many of these cases, I'm looking for those tipping points. I'm planning it out so I can take the parties with me through the scenes of the play that we have to get through. In a large case, the best laid plans are not always a straight path because you really need an opportunity to have in-person communication; to build rapport, trust, goodwill — which is my stock-in-trade; and to socialize people to the process and one another. That was my plan on some of these big cases, but due to the pandemic we were never able to meet in person. Every time we tried to organize something, there was another outbreak of COVID, and so it completely shifted my existing plans, pushing me to move most, if not all, of my cases online.

The good news is that Zoom is a transportation system. It's really interrupted airplanes, trains and cars — people aren't driving on freeways anymore. It's forced us to be able to communicate in a completely different way — and in an efficient, quick way. I've been able to do quick and efficient Zoom calls on these big cases. Maybe they will last for 20 minutes or 45 minutes, but you get things done. They're not designed to just simply schmooze and tell war stories. Every call is transactional and designed to create movement in a case. That sense of urgency helped move the needle in these kinds of cases because you wouldn't have a conference on Zoom without a goal.

Finally, I did something I've never done before during this pandemic: I co-mediated, and I was fortunate enough to work with the former presiding judge of the Los Angeles County Superior Court. I'd never done that before, where the judge is overseeing a case that was so important. The judge was supportive of the process and our efforts and made himself available 24/7. The folks sitting on the bench are not sitting there by accident, they are the best of the best — particularly the Complex Department in L.A. This is their life's work and they excel at solving problems. I recognized that this is really an asset to the case because in the end a big case usually requires a recommendation from the mediator that everybody is supposed to start thinking about. Having a recommendation that is endorsed by a judge of this magnitude is gold and so valuable to a mediator.

**PS:** Just to clarify, you did the entire mediation remotely?

**JK:** The whole thing was done through Zoom and phone calls and emails; though that was not the intent. Many times we tried to set up in-person meetings, but we had quite a few people that didn't want to be exposed to the pandemic. There were depositions and there were summaries, everybody kind of knew the stories and instead of bringing in a dozen victims in person to tell the stories, we used other mechanisms to tell the stories. It worked, but it wasn't an ideal approach.

There were a couple of shifts that allowed us to really concentrate on finding a resolution. One, cases set for trial usually move the decision makers. It is hard to try cases during the pandemic, but they were going to set a bellwether case to get a sense of it, so there were lots of decisions to make in litigation. Two, I asked the lawyers to stop the litigation, and to do a pause on all of it for a couple of weeks so all their attention could be based on settlement efforts. We needed to take a deep breath and say "OK, we can hard-charge all the way, but if we ever want to solve the problem we need a moment to focus." And they did. They allowed us the time to do the socialization, to work with the various bureaucratic entities and constituents.

I'm proud of the people involved in this particular case. The passion these lawyers had on behalf of their victims, and the technical expertise that they brought to the table was profound. It's something I've rarely seen in my entire career.

**PS:** I love that the attorneys were helpful and collaborative. You have taught negotiation, which emphasizes flexibility and improvisation. Did you employ these techniques in this complex case?

**JK:** There's a protective order and I'm not going to talk about the substance of any negotiation. But I can share that it helps to be able to identify the leverage points and know what would be used by either side and recognize it and not deny it. In the concept of improvisation that I used to teach at Pepperdine, we would teach how improvisational actors would accept the information from either side, not necessarily agree on everything. We had a concept called "Yes, and?" where I would not deny the dialogue but keep the scene moving forward. I think that was very key. Don't attack the human being, attack the issue but try to understand the interests, which are so varied in a case like this. There are many different participants with many different goals and objectives and turfs that they're on, and they all have to be brought to a point of no return at the same time. It's almost like we have a bunch of ships coming into the harbor and they all have to park at the same time, and we have to create that timing so they don't collide. I think we were able to do so successfully in this case.

**PS:** On behalf of the Straus Institute, I am so appreciative of your time with us and grateful for the wisdom you shared. Thank you.