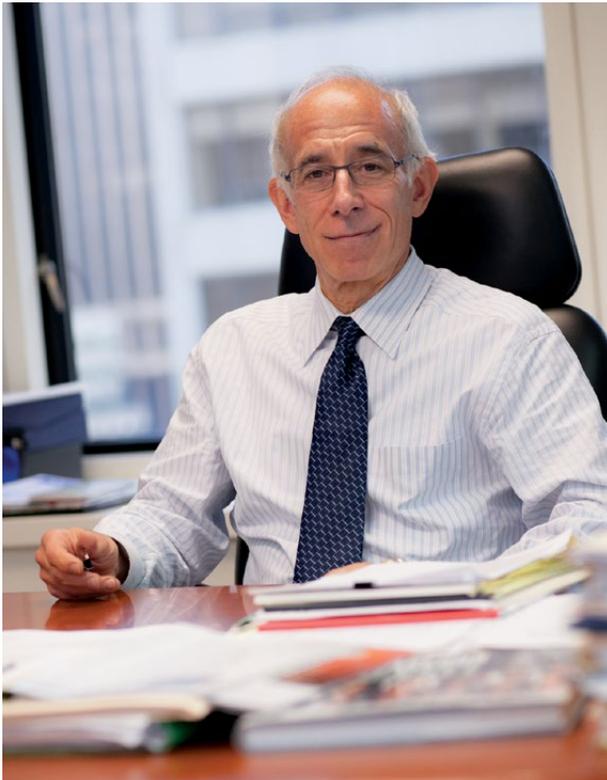


Q&A

Finding a Way to “Yes” A Conversation with Noah Hanft '76

President and CEO, International Institute for Conflict Prevention and Resolution



CAN'T WE ALL JUST GET ALONG? If Noah Hanft has anything to do with it, the answer is: YES. Hanft has devoted much of his career to finding the most effective and efficient resolutions for business disputes and was just appointed President and CEO of the International Institute for Conflict Prevention and Resolution (CPR), an international nonprofit coalition of corporate counsel, top law firms, judiciary and academics, dedicated to providing resources and information in commercial conflict prevention and dispute management. Simply put, he's paid to help people make up nicely.

Hanft started his career as a trial lawyer with The Legal Aid Society, chasing a passion for the law nurtured as a young boy who worshiped President Abraham Lincoln. "I read everything I could about Abe Lincoln and his career, not only as President but as a lawyer before that." Hanft attended the American University School of Government, and went straight to BLS where he found professors who fueled his interest in advocacy. "I loved Dick Farrell's New York Practice and Dean Prince's Evidence. I found every minute of Dean Prince's class both captivating and fascinating," he said. "That's kind of what led me towards litigation, and trial work."

Hanft spent five years at Legal Aid working on the front lines of criminal defense, but he was also nursing an interest in intellectual property; he completed an LL.M. in Trade Regulation from NYU at night. He recalled his demanding schedule: "We'd just had our first daughter, I'd be on trial during the day, at school at night, and then typing motions for a mistrial at 3am." After five years at Legal Aid, Hanft joined the firm of Ladas and Parry, doing trademark and copyright litigation and counseling. A couple of years later, he was ready for a new challenge. "It was a valuable experience, but I thought it would be really cool to actually be in a situation where I could shape business decisions; not to just clean up the pieces, but actually prevent them from falling apart."

In 1984, he joined MasterCard as Counsel and remained there, other than a three-year stint to launch AT&T's credit card business in 1990, for 27 years. Over those two decades, he held positions of increasing responsibility within MasterCard, including that of Senior Vice President and U.S. Counsel and Assistant General Counsel, ultimately becoming General Counsel and Chief Franchise Officer in 2001, where he was responsible for overseeing legal and regulatory affairs, public policy and compliance. Hanft also had responsibility for Franchise Development and Integrity, Global Diversity, Corporate Security and Information Security. In addition, he was a member of the company's Executive and Operating Committee.

BLS LawNotes Managing Editor Andrea Strong '94 chatted with Hanft recently about the benefits of alternative dispute resolution, the complexities of modern business transactions, and how to get a three-year old to say yes, instead of no.

You were trained as a trial lawyer. How did you develop an interest in ADR?

I came to MasterCard with a traditional litigation mindset, but over time I came to realize two things: first, the best resolution to conflicts are often through a negotiated process facilitated by a third party mediator, and second, the early consideration of mediation almost invariably led to a better result. This was, not only in terms of reducing the financial and disruptive impact on a company, but also in terms of lessening the rupture of ongoing business relationships.

We live in a fairly litigious society. Are you fighting an uphill battle advocating for ADR?

I don't think so. I don't pretend that overcoming that instinctive reaction to run to court is easy, but with mounting legal costs, overloaded court dockets and increasing dissatisfaction with litigation, more and more companies are seeing ADR as the future. Law firms supporting ADR may seem surprising,

but progressive-minded firms realize serving their clients requires embracing ADR, and of course corporations see the financial and business benefit and join CPR for that reason.

What exactly does CPR do?

CPR is a nonprofit organization whose mission, from the time it was formed over 30 years ago, is to find better and more effective ways to resolve disputes. It is a very unique organization in that it pursues its mission in multiple ways. It strives to encourage and educate legal systems around the world to understand and utilize ADR. At the same time CPR is an “all-in-one” provider to the business community of ADR services. This encompasses making available its extraordinary panels of both mediators and arbitrators. Perhaps most important, corporations and law firms can become members of CPR and receive a vast array of services and resources including the necessary tools and training to have a dynamic and effective ADR program. The goal is to help our members take preemptive steps to avoid conflicts, to promote preventative lawyering, and to really help companies find, create and develop the right end-to-end processes so that they are best equipped to avoid disputes, and when they do occur to manage them in a more effective way.

As the new President of CPR, what are your goals?

My personal goal is to do everything that I can to drive the business community to embrace alternative ways to resolve disputes that avoid the cost and the disruption of contentious litigation. As a former general counsel, I believe that in-house lawyers are in a position to lead the charge in finding the most effective and efficient ways to resolve inevitable business disputes. In so doing they will be doing a service to their company and collectively we will be encouraging the business community to put more dollars towards jobs, innovation and other productive initiatives, and fewer dollars towards legal fees. At MasterCard I built a team that prided itself on being solution oriented. Our goal was to recognize and address risks, but our priority was always enabling business—rather than seeing the concerns and impeding business—finding a way to get to yes. ADR is at bottom simply a better way of enabling business and fostering commerce.

Was there anything specific during your time at MasterCard where ADR was a help?

Until 2006, MasterCard was owned and governed by many hundreds of financial institutions around the world. The most challenging, grueling and ultimately gratifying experience in my career was formulating and executing the strategy that led to our successful IPO. The process was incredibly complicated and involved jumping over multiple hoops to get the transaction approved by regulators, all those financial institutions that were owners and licensees and ultimately the courts. It led to the success of MasterCard today, but as a result of our prior structure, we faced multiple litigations with the government and private plaintiffs, both before and after the IPO. Every one of those lawsuits was resolved through a mediation process, and it allowed me the opportunity to work with and become friends with some of the great mediators of our day including Ken Feinberg,

Professor Eric Green, and Judge Layn Phillips who helped resolve many of our cases.

Shortly before I left MasterCard, we resolved a class action case brought on behalf of merchants challenging the establishment of fees for payment card transactions. The defendants were MasterCard, Visa and almost every major financial institution in the U.S. that issued payment cards. The damages claimed were to the tune of many, many billions of dollars. At first the issues seemed intractable and a trial inevitable. But rather than waiting, we began a mediation process very early on in the process. It took several years of mediated negotiations, but we secured a resolution before most of the key motions were ruled upon. The business terms of the settlement illustrated the advantages of mediation and looking to a resolution that addresses the interests of the parties as opposed simply to a linear “legal rights” based outcome. Both sides secured terms, rights and protections that a judgment at trial could not have afforded.

ADR sounds like a no-brainer. Why is anyone still in court?

That's a good question. I think there is still a natural tendency for some companies and litigation counsel to think of the courtroom as the ultimate place to resolve disputes. People often say, 'I don't want to settle until after discovery when I know exactly what's on the table,' but by then both sides are spending money on legal fees, and the math doesn't work. An early settlement is almost always the best approach for all sides, and, as I mentioned, the beauty of mediation is that you can come up with a resolution that is much more creative and nuanced than a court judgment. There will always be, and should be, those cases that must proceed to trial. But today, some 98% of all civil cases get settled anyway, so the question becomes simply, earlier or later?

What advice do you have for law students thinking of a career in ADR?

First, consider working as an intern for CPR. Although we can only afford unpaid interns, it's a fun and interesting place to get exposure to the ADR world with a small but talented and dedicated staff.

As far as the selection of law schools, more and more have ADR programs from arbitration classes to mediation clinics. So prospective law students should look into which schools have the most advanced programs.

You have three daughters. I imagine that some ADR training might have come in handy when they were little?

Well, I'm not sure. They were out-negotiating me from a very young age. I really never had a prayer against them. Maybe today, after years of experience and training I would have been more adept, but it's not likely. One of my three daughters is getting a graduate degree in counseling and two are lawyers so the combination of psychology and legal skills simply continues the mismatch. But overall I do think that the skills one gets from mediation training are invaluable in terms of life experience, just not with three-year-olds, or family members. ■