

# Neutral Globalizes Complex Dispute Resolution

By Craig Anderson  
Daily Journal Staff Writer

**S**AN JOSE — M. Scott Donahey has spent two decades traveling the globe as an arbitrator and mediator, but he describes his most unique dispute-resolution experience as representing an American contractor in a case involving Iranian assets frozen by the U.S. government during the 1979-81 hostage crisis.

Donahey had worked on arbitrations for five years as an associate at the firm now known as Thelen Reid

## ADR Profile

Brown Raysman & Steiner, when in 1983 he got an opportunity that changed his career.

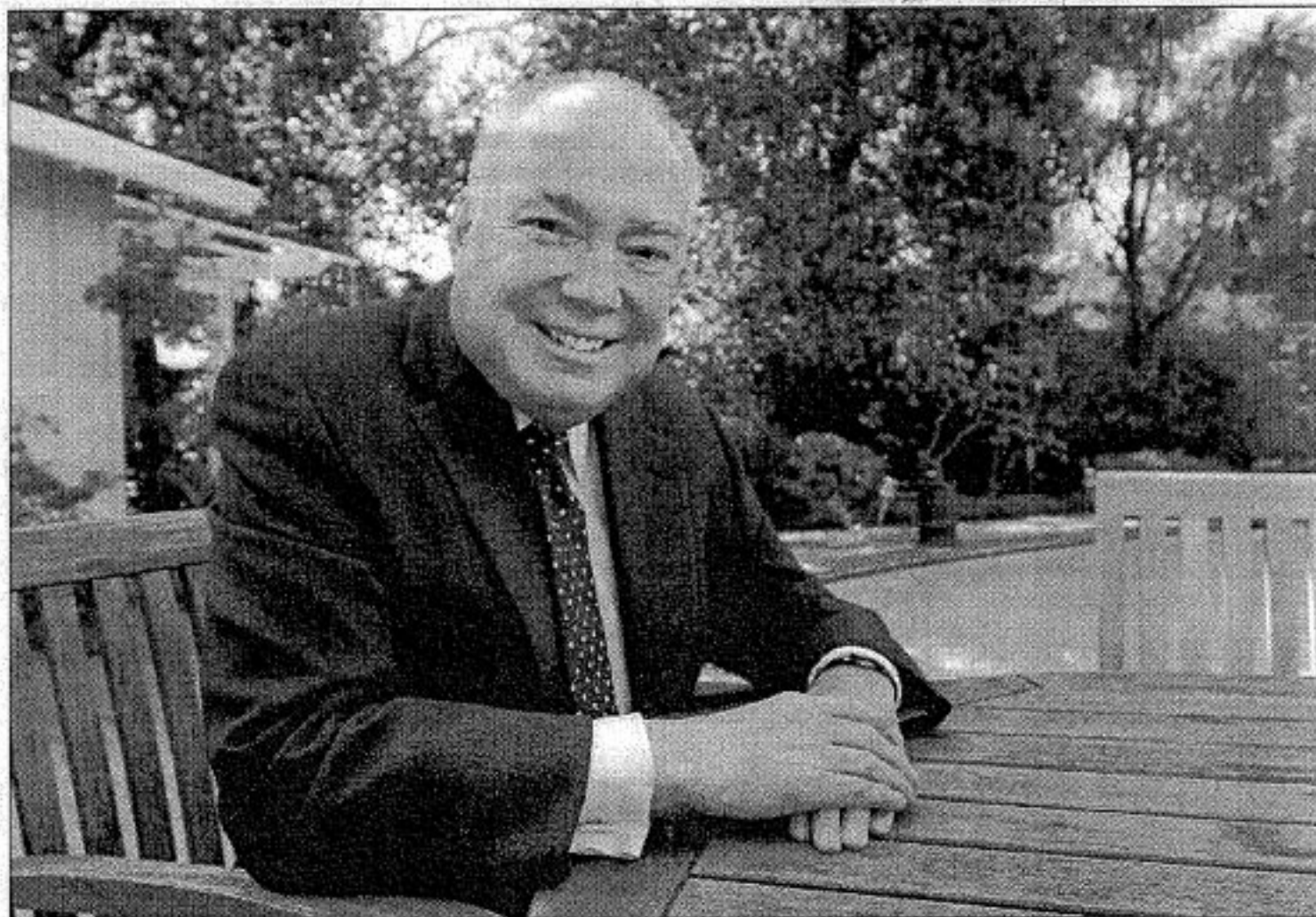
The atmosphere at the U.S.-Iran Claims Tribunal at The Hague in the Netherlands was "politically charged" and even dangerous for the arbitrators, Donahey said.

Iranians physically assaulted one arbitrator who ruled against them after the hearing, he recalled.

"The Iranians loved to be arbitrators, because they got to be out of Iran," he said. "They came in unshaven, with a Don Johnson, 'Miami Vice' kind of look. They would make big speeches. It was kind of a staged sort of environment."

Donahey was not the lead counsel in the arbitration case and spent much of his time drafting motions and arguing evidentiary points, but his performance apparently impressed Howard Holtzmann, the U.S.-appointed arbitrator on the panel.

Holtzmann asked him to join the Palo Alto office of his firm, Holtzmann, Wise & Shepard. Donahey accepted and remained at the Holtzmann firm for 13 years, before leaving in 1997 to join Tomlinson Zisko in Palo Alto. While working



S. TODD ROGERS / Daily Journal

"It sounds a lot more glamorous than it really is. You could be anywhere because you're just in a hotel room," neutral M. Scott Donahey said of his globe-trotting work over the past two decades.

as an attorney, he got more involved in arbitration and mediation matters, which he continued doing as he changed firms. He went out on his own in 2005.

An expert in Internet domain name disputes, Donahey has handled trademark disputes involving Hebrew University's claim to the right to the name of Albert Einstein online as well as the assertion by Warner Brothers that it owned 100 domain names with variations on the name of popular literary figure Harry Potter. Hebrew University lost its claim on AlbertEinstein.com, but Donahey ruled in favor of Warner Bros.

Donahey also handles a wide variety of intellectual property and

complex commercial litigation disputes as an arbitrator and mediator.

Attorneys who have used his services say his knowledge and preparedness make him effective in both roles.

Mike Lynn, a partner with Lynn Tillotson & Pinker in Dallas, Texas, said Donahey mediated a patent and trade secret dispute in January. Opposing counsel had recommended Donahey, and Lynn came away impressed after the daylong mediation ended in a settlement.

"He was very well-prepared and thoughtful, and his temperament was superb in bringing people together," Lynn said. "He made sure we had a deal at the end of the day."

Some mediators are like Mr. Rog-

ers, urging parties to settle simply to avoid the cost of litigation, Lynn said. Others are "bullheaded," lecturing attorneys about the cases they have tried.

Donahey, he said, fell into a third category of mediators, who study the facts and are able to give an informed perspective.

His opinions, Lynn said, "were unvarnished about what the risks were, and he knew how to read a patent. I thought [Donahey's work] was very helpful."

Campbell Killefer, a Washington, D.C.-based partner with Venable, worked with Donahey for three years on an arbitration panel that resolved a complex dispute between

See Page 2 — NEUTRAL



# Neutral Globalizes Complex Commercial Dispute Resolution

Continued from page 1

BellSouth and Supra Telecommunications.

"It was total warfare," Killefer said of the dispute, which lasted three years, until 2005.

He said the panel, with Donahey as its chairman, spent at least 50 days in hearings together in Atlanta.

"He's very, very talented," Killefer said. "He's extremely practical, writes very well and has a way of conducting things in a very cordial way. The panel was able to operate by consensus, and he set the tone."

Donahey said the disputes he handles as a mediator or arbitrator are usually complex commercial matters that involve technology and intellectual property.

"Those are the kinds of cases people come to me for," he said.

Joel Zeldin, a San Francisco-based attorney with Shartsis Friese, describes Donahey as an "excellent listener."

He presided over an early neutral evaluation, a required presentation following the filing of a federal lawsuit that functions as a sort of minitrial in which questions are asked by opposing counsel and by the evaluator to determine the strengths and weaknesses of a case. In that case, a trademark dispute between Levi Strauss and a jeans manufacturer, Zeldin said Donahey was able to guide the parties toward a settlement conference that led to a negotiated resolution.



## M. Scott Donahey

**Affiliation:** Independent

**Location:** Palo Alto

**Age:** 62

**Rates:** \$4,500 a day, plus \$450 per hour extra for a mediation, \$400 to \$450 per hour for an arbitration

"He was an evaluator and mediator with great subtlety," Zeldin said. "He is very effective at not alienating anybody and keeping everybody at the bargaining table."

Stanley Young, a Menlo Park-based attorney with Heller Ehrman, said that Donahey is not shy about voicing his point of view but that attorneys respect his opinion because of his expertise.

"He's very knowledgeable about intellectual property law," Young said. "When he says, 'This is how a court or a jury would likely resolve an issue,' there is some credibility behind it."

Donahey handles more mediations but spends more time on arbitration work, because of its time-consuming nature.

"I like arbitration because I like

to write," Donahey said. "But I enjoy mediation and trying to get parties where they are both happy with the result."

Donahey's disputes tend to be more national and international than local, which means he has traveled all over the world, often to London and Paris.

"It sounds a lot more glamorous than it really is," Donahey said. "You could be anywhere because you're just in a hotel room."

A soccer fan whose four children all played the sport, Donahey, 62, does try to catch professional games in the countries he visits on business. His wife, Mary O'Byrne, is associate general counsel with Varian Medical Systems Inc. in Palo Alto. One of his adult sons works as an attorney with Sidley Austin in San Francisco.

A graduate of Santa Clara University School of Law, Donahey teaches both there and at Golden Gate University School of Law.

He grew up in El Monte, a suburb of Los Angeles, and got interested in a legal career from reading Perry Mason books as a boy and because of an experience during a high-school career day, when he got to spend a day sitting on the bench with a Los Angeles County Superior Court judge.

Donahey does not remember the judge's name but does recall that the jurist asked him his opinion and ruled the way he recommended.

*Here is a list of attorneys who have used Donahey's services:*

Joel Zeldin, Shartsis Friese, San Francisco; Stanley Young, Heller Ehrman, Menlo Park; Mike Lynn, Lynn Tillotson & Pinker, Dallas, Texas; Campbell Killefer, Venable, Washington, D.C.; Richard Rochford, Nixon Peabody, Rochester, N.Y.; Eugene Gelernter, Patterson Belknap Webb & Tyler, New York; J. Matthew Gowdy, Franklin Templeton Investments, San Mateo; Vicki Veenker, Shearman & Sterling, Menlo Park; Michael Sacksteder, Fenwick & West, San Francisco; J. Michael Jakes, Finnegan, Henderson, Farabow, Garrett & Dunner, Washington, D.C.