

LOS ANGELES

# Daily Journal

## What “The Practice” Could Learn From “ER”

### Lessons from the Harvard Medical School Keynote Address, June 2005

By Max Factor III

In seventh grade at El Rodeo Elementary School, I completed an English essay by writing: “Why do I want to be an attorney? I want to help other people who are less able to represent themselves.” The date was December 1956.

Mrs. Ritter, my English teacher, gave me an “A minus” and neatly wrote at the top of my essay, “Good Paper. I hope you are not disappointed with being a lawyer.” At the time, I did not understand what she meant, but I was pleased with the grade.

When I was a college freshman the students in our class were asked to select from a list of jobs and professions they were most likely to choose. I remember the pride I felt while selecting “law,” which along with medicine and teaching was classified as one of the three “helping professions.”

I still feel that pride. It came to mind in a very different context, while I was reading the remarks of Atul Gawande, this year’s keynote speaker at the Harvard Medical School commencement.

A former Rhodes Scholar, Dr. Gawande is a surgeon, a teacher at both Harvard’s Medical School and School of Public Health, and a prolific author of books and articles about medicine.

Dr. Gawande offered five rules for physicians-to-be, which he said should be their Rosetta stone to a meaningful career in medicine. The rules apply equally well to the practice of law and the profession of mediation.

**One: talk to “strangers.”** Make them “guests” in your professional home. Your clients, opposing counsel, court clerks and interns – yes, even judges – are people first, not the professional roles in which you encounter them. Be interested in who each person is. Ask questions to find out their interests, learn something about them and share something about yourself, if it seems appropriate.

**Two: do not whine.** Doctors often whine about their declining incomes, while attorneys complain about 60- to 70-hour work weeks. We mediators find plenty to whine about: attorneys who reschedule mediation dates at the last minute, leaving us with an open day; litigants with settlement authority who fail to show up; insurance carriers who play hardball; and the judicial system, which encourages us to offer hours of pro bono service on court-convened cases.

But whining is a useless self-indulgence that merely depresses the whiner while boring the listener.

**Three, count something relating to you and your profession.** How many times did you urge settlement because you were uncertain of your trial skills? How often were you surprised in discovery or at trial because your preparation was not sufficiently thorough? Do you note the types of situations or people that make you feel angry or defensive at mediation? These counted instances can hold the solutions to tomorrow’s problems and challenges.

**Four, write something, mentor someone, or teach others.** Contributing to the intellectual capital and framework of your profession builds relationships and establishes membership with your colleagues. By “keeping the conversation going,” you will become part of a larger and more collegial community.

**Gawande’s fifth and last rule is, Change.** “Be willing to recognize the inadequacies in what we do, and to seek solutions,” he concluded. “As successful as medicine is, it remains replete with uncertainties and failure. This is what makes it human, at times painful, and also worthwhile.”

Is it any different for an attorney or a mediator? Of course, not. “Adapt or Perish” has long been a sensible proverb. And by recognizing our humanity, its uncertainties and failures, we are able to go on to make our profession and ultimately our lives more worthwhile.

And, these five rules are downright useful advice with our personal and family life, too.

Max Factor III is a graduate of Harvard College, magna cum laude in Economics '66, and of Yale Law School '69. He is a Fellow in the International Academy of Mediators and works as a full time mediator in civil (and not so civil) business partnership, real estate and employment litigation.