

the Max Factor IN MEDIATION

Bringing beauty to the
business of law

by JOE MULLICH

photography by LARRY MARCUS

Burbank attorney John Fagerholm was sure his case would go to trial. His client, an older man, put some real estate in his younger girlfriend's name—and then they broke up. "It was about real estate, but it was really about the emotions—like who got the dog," Fagerholm says.

On top of that, Fagerholm hated—absolutely hated—the opposing attorney. "He was one of these guys from the mid-'80s who are trained to get as much as they can, no matter what's fair or what the facts are," he says. "I hate those guys, and after meeting with him one-on-one, I wanted to go forward with the trial. There was no way I thought this would settle. No way."

Enter mediator Max Factor III. He calmed emotions by even-handedly pointing out flaws in the case that gave both sides pause. "I started taking notes," Fagerholm says. "It was good stuff." To everyone's surprise, the case was quickly settled in mediation.

Every time he looked at Factor, Fagerholm was reminded of Wallace Shawn's character from *The Princess Bride*—wise and quirky Vizzini. "Max struck me as a fictional character," he says. "Everything played out like it was written."

If you Google the address of Max Factor III's mediation office in Malibu, you'll find it listed on a "celebrity addresses" Web site as the former home of television star Robert Conrad, who once pugnaciously challenged people to knock an Eveready battery off his shoulder.

That seems ironic for two reasons: Max Factor's name conjures images of the many nearby movie stars who live along Pacific Coast Highway and wore his grandfather's makeup in films. And, as a longtime mediator, Factor spends much of his time seeking alternatives for people who ache for a fight.

'All the time in mediation, people say they want to

bankrupt the other person," Factor says. "I always tell them, 'Do you really want to do that? How would you feel if this person was the sole support of a disabled nephew?' And they say, 'Maybe I should find that out.' And I say, 'If all you want to do is hurt them, what's that matter?' And often they say, 'Maybe I shouldn't try to bankrupt them. Maybe I should just try to solve my problem.'"

Factor, the former president of the Southern California Mediation Association, didn't know that his name was an international cosmetics brand until he was 7 or so, when older kids started calling him "Panstick" and "Cream Puff" Like most of his relatives, Factor put some time into "the family business," working summers in a warehouse or in the computer room. The idea of following his father and grandfather's footsteps was never appealing, though. For one thing, his father, who ran the international division of the business, was the youngest of six siblings who survived to adulthood. Factor had two dozen cousins, most older, many already in the cosmetic company, ahead of him. That didn't seem to leave him many opportunities, and flew in the face of his father's relentless decree that "you have to make your own way."

Factor remembers, as a seventh-grader, writing a classroom essay in which he declared that he "wanted to help people who couldn't help themselves"—and so wanted to become a rabbi or a lawyer. When the paper was returned, his teacher scrawled on it, "Nice idea—I hope life doesn't disappoint you."

After class, he approached the teacher about the comment, and she explained: "Sometimes you hope to get something and when you do, you find out it's not quite what you thought."

"I don't think it would be that way if I were a rabbi or lawyer," young Max replied.

"Well, you do realize they're different?"

"Not to me," he replied, firmly.

When Factor applied to college, he scanned a checklist of occupations, and saw lawyer under the broad category of "helping professions."

"I don't think you would see lawyers listed that way today," he says. "But for most lawyers, in our hearts and souls, it really is a helping profession. We help people articulate their feelings, thoughts and ideas in a more effective and persuasive way than they can do themselves."

Given all this, it's ironic that Factor considers himself "tricked" into becoming a lawyer. As he was growing up, dinner table conversation with his parents would often include positive words about the legal profession. And on Factor's 12th birthday party, a fortuneteller told him he was going to become a successful lawyer. That sealed the deal: After graduating from Harvard with a degree in economics in 1966, he continued on to Yale Law School for his J.D.

Years later, his father casually remarked, "You really thought that fortune-teller was just an accident? We told her to tell you that."

With a laugh, Factor says, "My father wanted me to be secure in my life and have a profession. I didn't know I was being programmed."

After graduating from law school, he became managing attorney of the California Law Center, a nonprofit public-interest center that engaged in litigation and educational programs on a wide range of consumer protection, credit reform and employment discrimination issues. One case involved a group of women who were denied the opportunity to work in swanky restaurants because they didn't have "the proper maturity" for continental dining, although they were allowed to work in the bar of those restaurants in push-up bras.

After one of his first cases, he put in for his fees—he asked \$25 an hour—and received three times that amount. He called up the clerk

of the judge who had awarded him the sum to alert him of the mistake. The clerk said, "The attorneys for O'Melveny & Meyers were being paid \$25 an hour, so the judge decided you deserved at least half that and was going to pay you \$75 an hour no matter what you asked for." That gave him a sense there "was fairness in the world." But the glow didn't last long. The final straw at the law center came after he handled the penalty

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Max Factor wanted to become either a rabbi or a lawyer. Now he's managed to combine the goals of both; being a lawyer who counsels and uplifts his clients (and wins them big rewards).

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phase in a case in which a real estate developer was being sued by a business associate amid allegations of fraud. He figured the partner was just as shady as his client, so he started asking the associate hard questions about assets. His exam was so revealing that the judge read the partner his rights and had him arrested.

"I asked my client why he didn't tell me all this stuff about his partner," Factor says. "He replied, 'If I told you, you wouldn't have taken the case.' At that point, I realized I could use my skills for better things."

Factor began taking courses in mediation and conflict resolution, transitioning his entire business within three years.

"Everything in life improves when you're a negotiator," Factor says. "All negotiation is just improved communication in which you are respecting the other people's interests. When you are in conflict, you don't have time for that. That's where the mediator has the advantage because we have all the time in the world and everyone sets aside the day just to focus on the matter."

His daughter, Jenny Factor, is an award-winning poet. Check the Amazon page for her collection, *Unraveling at the Name*, and the sample poem that comes up is "Conciliation." That seems appropriate, since "conciliation" is Factor's philosophy as a mediator.

He labels one kind of mediator "the D group"—they focus on disaster, divorce, death and disease, and every negative consequence of failed medications. "They hammer each side with the risk, hoping they will be saddened and settle," Factor says. "I assume both sides are adults. I spend almost no time

taking the risk and costs of litigation into consideration." His model is Monty Hall of *Let's Make a Deal*.

'A lot of mediators view their client as the deal,' notes Long Beach attorney Henry J. Josefsberg, meaning that they simply want to get some settlement. "Max views his clients as the attorneys, and wants everyone to walk out with something they can live with."

Factor asks to read every document associated with the case. "I want every insight they can give me about the case and the other side," he says. "One of the challenges with the legal system is that judges have so much work, with 20 or 30 motions in the morning. Not every word can be read in a thoughtful way. The advantage I have as a mediator is that I have the time to be thoroughly prepared."

For that reason, he focuses on areas where he can bring not just negotiation skill but substantive knowledge about the area of the dispute.

Factor often uses a tactic taught to him by a fellow mediator: connect the money to something in their lives. In one case, a person was dismissing a \$30,000 settlement offer in an employment case as "nothing." Factor got to know the person, and learned he had two children in school. At one point, he said, "Something just occurred to me. If you have two children in public school in California, \$30,000 [invested today] would be the college tuition for both of them." Suddenly, Factor says, "everything in the room changed. He realized the people across from him had terminated him, but they were offering something. The case was soon settled with a 148,000 payment.

And, as Factor likes it, both sides left satisfied. *Q*
