Thank you for inviting me to speak tonight. Permit me a couple of personal comments before I begin. I've always believed that the measure of a man, and by extension, a community, is not whether they've ever been knocked down, but how they handle it afterward. The whole world followed your response to the horrible events of this year and you've you've really made us proud. Thank you. I'm deeply honored to be in Boston.

I also bring congratulations – grudging congratulations - from Detroit on your World Series victory. I know I sound like my mother though, when I say that the Boston guys looked like hell. I really don't like the beards.

But we CAN agree on one thing – thank God we didn't have to watch the Yankees.

Thank you for coming tonight to this important event for this important organization. Organizations like MITSS and the organization on whose board I sit, the National Patient Safety Foundation, are more important than we realize and they deserve our strong support. This year's theme is BRIDGING THE GAPS – they bridge the gaps. I want to talk about what we've learned along those lines in the 12 years of our Michigan Model.

But first I want to digress a bit to make a point.

In early December of 2008, Iraq's government approved a Status of Forces Agreement between the United States and their country. It provided for America's gradual withdrawal of forces. President George Bush hailed it as proof of victory and validation of the controversial surge - and yet, tens of thousands of Iraqis burned his image in effigy as they protested what they saw as a fraudulent invasion and humiliating occupation.

On December 14, 2008 at a self-congratulatory press conference in Baghdad Iraqi journalist Muntadhar al-Zaidi threw his shoes at President Bush. In the Arab culture apparently, showing someone the soles of your shoes is a sign of contempt. Mr. al-Zaidi threw the first shoe, shouting, "This is a goodbye kiss from the Iraqi people, you dog!" As he threw the second shoe, he shouted, "This is for the widows and orphans and all those killed in Iraq." He was wrestled to the

ground, beaten severely and hauled away, sentenced to three years in prison and reportedly tortured.

Later the same day at another press conference with characteristic, self-indulgent swagger, President Bush quipped, "If you want the facts, it's a size ten shoe."

I have played that incident in my mind over and over for the past five years.

I think to myself, what if? What if, in the chaos that followed the incident, as that man was being wrestled to the floor and beaten, the United States President had stepped down from the dais, parted the crowd . . . and helped him up? And what if, recognizing the depth of emotion that compelled that journalist to do something so risky, so dangerous, so desperate - the same emotion that was driving thousands of Iraqis to protest in the streets - what if our President had invited him to meet privately to talk about how he, and his fellow Iraqis viewed the United States' occupation of their country? To explain how their lives had been so profoundly changed by a mistaken war?

What a stunning scene that might have been, don't you think?

It takes more guts to understand, than it does to make light of a man's desperation. It's a lot easier to label someone than to meet them. It's not a sign of weakness; it's a sign of strength and compassion and moral conviction and respect. This was an opportunity to demonstrate on a very basic level, that though we shared sacrifices profound and intimate and dear with the people of Iraq, we also acknowledged the greater impact that war and ensuing occupation had on the Iraqi people. What a statement that might have been to the people of Iraq, to the people of the Middle East, to the world.

What are we afraid of? What prevents us from making such basic human connections?

At the University of Michigan in 2001, we embarked on a simple idea: reach out to those harmed, be honest, disclose our mistakes and learn from our experiences. Much has been made of apologies and the impact apologies have on malpractice numbers, but most reporters completely overlook the larger

significance of the FIRST disclosure: the first disclosure is NOT to the patient who might have been harmed by a medical mistake. **The first disclosure is always to ourselves.** So even as I applaud Steve Kraman who pioneered the idea of proactive and principled claims management at the VA and people like Tim McDonald and others like Ken Sands and Alan Woodward and Melinda Van Niel here in Boston as they push the ball forward, progress is still too slow – too slow because too many have trouble with that first disclosure.

I received my license to practice law thirty three years ago. My wife Karen will readily tell you that I was and remain, especially well-suited to ARGUMENT and the legal profession proved to be a good fit – it IS true that I've not walked away from many fights and I STILL struggle knowing how to pick the worthwhile ones.

But regardless of my personal orientation, I've been humbled by the privilege and awed by the magnitude of what I've seen in my career - and I'm mystified why progress has been so slow.

It was common when I started – I'm sure it still is – that lawyers representing doctors and hospitals treated patients - and the lawyers who represented them - as though there was something slimy and opportunistic about their claims. I was good at understanding the medicine and good at understanding the caregivers I represented – not bad for an English major - but I could not avoid seeing us and how we delivered care, through the eyes of the patients who experienced staggering losses in their lives. I have ***never*** understood the ease with which we label patients and their lawyers.

As trial lawyer I knew how important open access to the courtroom is to a free society, but I realized pretty quickly that there was something fundamentally harmful about litigation to everyone involved – everyone of course, except to those of us who made our living working in the system.

- But we abandon our patients and rationalize that there was something wrong with THEM for complaining.
- We leave them no alternative but the courtroom – and then brand them as LITIGIOUS for standing up for themselves.

- We forced patients to sue and then use the damage litigation caused to our ***caregivers*** as an excuse never to reach out to those we hurt.

So in 2001 at the University of Michigan we behaved counter-intuitive to the wisdom prevailing at the time. We made the difficult disclosure to ourselves when we hurt patients in preventable ways - and we discovered that it wasn't so bad. In fact, we opened the door to some interesting experiences . . .

I am not a good role model for rolling this approach out. I never asked for permission and in the early going, it flew under the radar for a while. But shortly after we started, I met with a female patient and her boyfriend who were not pleased with her cosmetic breast surgery - the entire legal office passed the conference room door as she sat defiantly topless in my office for nearly two hours.

And one time, after writing to a patient who claimed he sustained nerve injury from hip surgery and explaining that I had concluded his was NOT a claim deserving of compensation because there was good preexisting evidence that the nerve problem stemmed from a preexisting spine problem, that man burst into my office unannounced, so angry he was almost incoherent. It was one of the only times I worried about being hurt, and he suddenly dropped his pants and underwear to his ankles to show me how the muscles of one buttock had atrophied after hip replacement. He accused me of making him half-assed.

And as I investigated another hip case, this one involving a hip prosthesis fracture 18 months after a flawless operation, I squirmed uncomfortably as a couple, without a trace of embarrassment, shared the most vivid descriptions of their acrobatic intimacies. I haven't been able to shake ***those*** mental images yet.

But I've also seen the most hardened and seemingly arrogant cardiac surgeon sob uncontrollably when confronted by a family, not with a medical mistake, but with his lack of compassion for the family whose father died slowly while awaiting surgery for aortic dissection.

I've seen a patient break down in the presence of his own lawyer and ***hug*** his surgeon, apologizing for all the bad things he believed about his doctor before he understood all the facts.

The husband of a woman who died at our hospital once got angry with me for suggesting that he ***was*** entitled to compensation. Three nurses made serious mistakes that caused the death of his wife and yet he admonished me not to be punitive toward those nurses who worked hard and meant well. Everyone makes mistakes, he reminded me.

I've had to explain to a large family that their loved one died for one of the worst reasons I can think of: the arrogance of a trauma surgeon who refused to heed a nurse who was sure the breathing tube was misplaced in the esophagus. She sternly told the nurse to remember his place as the patient struggled for oxygen and then died.

I met a few weeks ago with a couple, intending to explain to them that their 18 year old son's death was not the result of a medical error. Instead I watched a Dad's heart break as he described being at bedside with his son, fresh from what they thought was miraculous cardiac surgery, when the sutures placed in a cardiac graft pulled through abnormal tissue, and in seconds the miracle surgery turned to his worst nightmare as he stood helplessly watching the life leave his son's eyes.

It's not about saving malpractice money.

I cannot claim we've got it fixed. I cannot tell you we've got it right. But we've seen enough - and we're clearly not going back.

Back in September, Tom Gallagher and Tim McDonald arranged for a group of us to talk with some folks from the US Senate. Many of us were anxious to give them the details and numbers from our experience with the Michigan Model, but Alan Woodward made a simple statement that really got me thinking. He told the folks from the Senate that not a single hospital that's tried this has ever gone back. No one who has had the courage to do this, has ever gone back. What a

profound observation. And it got me to thinking about when I realized we were not going back.

I knew we weren't going back when I received the first email of many, from residents telling me that they chose the UM because it matters to them that we're principled and honest with our patients and ourselves.

I knew we weren't going back when a neurosurgery resident responsible for delivering a ten-fold overdose of heparin to a woman, figured it out, immediately self-reported, and then as she lay dying, asked to explain and apologize to the family.

> I knew we weren't going back when the patient's sister walked out with that sobbing resident, hugged him and said, "We've watched you for days taking care of my sister. It's clear you care. You will help a lot of people in your life. Remember my sister, but don't you dare quit."

I knew we weren't going back when I presented a graph of the cases and costs to leadership and instead of usual comments about overhead and the cost of doing business, I heard a member of our C-suite utter, "God help us for the people we've harmed."

What have we learned?

We've learned that we're not as good as we want to believe – and that doesn't feel very good.

We've learned that the stereotypes we've spent decades building are untrue: our patients are far more forgiving than anyone ever thought – and the lawyers who represent them are largely honorable and in it for the right reasons. We just need to give them a chance to understand instead of giving them a one-way ticket to the courthouse – that feels good and fuels a sense of optimism.

We've learned that when you act ethically, you tend to pull everyone up too.

More importantly, we've learned what accountability feels like – and though that doesn't always feel very good either, that discomfort drives us and leaves us confident that we WILL improve our care, not just our excuses.

We've learned that patients and caregivers almost always start from the same place – a sacred place in which they're joined around a common purpose – the patient's well-being - and we've learned that the relationship is key and the mission is precious and we should not abandon it so easily when things do not go as planned.

And we're learning – we don't have this fixed by any means - that instead of honing our defenses, we should be working on the quality of that sacred relationship. We learned the hard way what organizations like MITTS and the National Patient Safety Foundation, and people like Patty Skolnick and Linda Kenney and Helen Haskell, know only too well. WE ARE FAR FROM BEING PATIENT-CENTERED. The gap is great.

We're not patient-centered when patients' options for care are governed more by referral patterns or reimbursement incentives or the need to get returns on expensive medical investments and not by our patients' needs, individualized to them.

We're not patient-centered when informed consent still means too often just getting a patient to sign a form. And when the only time we get an intelligent conversation is when we're having a procedure or surgery.

We're not patient and family centered when our entire government shuts down because one political party in this country hates the idea that every American should have the means to pay for basic health care.

If I've learned anything at all, it's that we need to recognize that we're all in this together – not just the caregivers and patients, but all of us who support them, families, friends, vendors – yes, even lawyers who need to learn that they do their clients no favors by defending care that shouldn't be defended, or by prosecuting dishonest claims, or by advocating draconian tort reforms, or by protecting challenged caregivers and challenging practices.

We need to work harder to create and preserve that sacred relationship because we're all in this together.

Yes, we've learned a lot and we've made progress through the courage and enthusiasm of some, but we cannot stop fighting because we still have a very long way to go.

So, back to President Bush and the journalist: Think about the visual alone – You Tube replaying millions of times an American President demonstrating strength through decency and kindness and compassion - we experience that video every month on a smaller scale. That video would have been stunning, but it's more than just the visual that matters here – the quality of our actions depends on our level of understanding. Had President Bush actually done that with genuine interest in the Iraqis' reality, it would not only have been seen as remarkably kind and respectful, BUT HAD HE LISTENED – had WE LISTENED – it might have changed how we behaved, how we planned for the future, and how we handle similar situations elsewhere.

Maybe I'm guilty of just a little grandiosity. But fundamentally I know we won't improve till we step off that dais and reach down to help the people we've hurt and see the world through their eyes.

To all the naysayers and fear mongers I say this: ***Nothing bad can ever happen when you step down, part the crowd, help someone up, and listen with compassion and respect.***

AND THE TRUTH IS, WE stand to benefit more from acts of understanding and kindness and respect than the individual to whom we've shown respect in a single moment.

We are changed by it.

And if we embrace the change, if we value it and if we heed it - that change enriches everything else we do. That's why Alan's observation was so right.

Linda Kenny knew that and her generosity of spirit is an inspiration to us all. Thank you to MITTS for your work. If I have any closing advice it's this: Let's all

find the courage to push for more, to expect more from our government, expect more from our health care system, to expect more from ourselves. Thank you for listening.