

Becoming a Restorative Lawyer

*How to Transform Your Legal Practice for
Self, Client, and Community Growth*

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Chapter 6

Rules of Engagement

10 WAYS TO GET STARTED IN THE RESTORATIVE PRACTICE OF LAW



Rules are not necessarily sacred, principles are.

— Franklin D. Roosevelt

1**RULE #1: THERE ARE NO RULES FOR RESTORATIVE
LAWYERING, ONLY GUIDEPOSTS THAT GIVE FORM
TO PRINCIPLES.**

LAWYERS LOVE RULES. Lawyers love identifying rules, informal and formal, figuring out the purpose of the rule and cultivating the nuances, and strategizing a way around them. Rules frame our expectations, serve as reminders, and provide a ceiling and a floor for our behaviors. While restorative justice looks less at consequences for breaking the rules than the harm sustained when wrongdoing occurs, I've drafted these rules to provide guidance to those seeking a more restorative legal practice.

These Rules of Engagement for the Restorative Lawyer remind me of the types of rules that direct our professional actions, such as the Rules of Civil Procedure, as well as the unwritten rules we often voluntarily follow. These rules include no sanctions and few exceptions. They articulate a way of being — a way to engage professionally with clients, counsel, courts, colleagues, and ourselves. I borrow the term: *Rules of Engagement* from the military, who use this term to describe the internal directives that define the limits of and authorization for the use of force — a fitting metaphor for guidelines to restrict lawyers from unnecessary use of adversarial processes.

These Rules of Engagement for the Restorative Lawyer may serve as a guide, as statements of consensus, and as articulated common understandings, without sanctions and coercion. In launching into a new practice guided by restorative principles, these parameters, guidelines, and informal policies provide a measure, a structure, and a framework for a new practice of law.

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RULE #2: LEARN TO SAY "NO" TO "NO."

"They," say lawyers, don't like change. Just look at how long we held onto Word Perfect! We are risk averse. We don't want to lose control. We don't like to be afraid. We are the first to list a myriad of reasons why "it will never work!"

During my first year of graduate school at Eastern Mennonite University's Center for Justice and Peacebuilding, Dr. Cheryl P. Talley introduced me to neuroscience in a guest lecture that provided insight into our approach to working with conflict. She introduced me to the evolutionary value of "no." As humans evolved, the presumption when deciding to do something new was to say "no" — food may be poisonous, a water source could be polluted, and a new animal may be vicious. Once safety can be determined, the "no" gives way to "yes." This impulse helped us to evolve, but it also created fear.

I am not the first observer to recognize that lawyers share a tendency to say "no" and to avoid the unknown. In *Structured Negotiations*, Layne Feingold describes how negotiation may be hampered by lawyers who fear outcomes and are quick to say "no." Feingold claims that lawyers are trained to fear the worst and worry about the "what ifs?"¹ John Lande, in *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money*, describes the paralyzing fear that many lawyers feel when engaging in negotiation, observing that the prison of fear prevents lawyers from wanting to negotiate in the first place. He says the keys to the prison door involve ways to deal with the fears.² An anonymous law professor cited by Michelle Leering in *Conceptualizing Reflective Practice for Legal Professionals* observes how detrimental fear is to the lawyer, noting that "fear and adrenaline hamper the ability of the inexperienced lawyer to practice effectively."³

After Dr. Talley's lecture at C.J.P., I wondered how many times I sat back in my chair during a C.L.E. or a class and crossed my arms, refusing to hear anything a speaker offered about a new idea that did not fit into my paradigm. I'd listen but shake my head, cherishing what I considered a healthy dose of skepticism. Was I afraid of something new? Would an unfamiliar, original idea make me feel like I had failed a client in the past? Maybe.

But I'm finding that giving up my fears creates endless opportunities. Relying on "no" as the "go-to" response stymies growth and steals away our professional chances to find new ways to work on legal problems. I am trying to embrace a measured but fearless approach that exchanges the "it'll never work" for healthy curiosity to explore innovative ideas.

As a drama major, I took an acting course that involved a lot of improvisation. One game, "Yes, And!" requires that the improv partner accept whatever is offered and incorporate it into the improv. For example, you come onto a scene. One character sits in a chair. You say, "Hello, what's up?" as you try to gauge what is happening. The character says, "I'm here waiting for a bus." You accept the statement and build on it, "Yes, and ... I heard drivers went on strike this morning, and we'd better get an Uber." You've accepted the statement but then redirected the action.

When opposing counsel claims, "I've seen no proof that your client's neck pain was not caused by the injuries sustained 10 years ago." I don't get fearful. I don't disagree, yell, or argue. I try to find a way to address their question. "Yes, and ... did I forget to send you the M.R.I. she had a year ago?"

It's a bit of a plot twist that when we become fearless, we become capable of approaching creative and non-adversarial ways to resolve legal conflicts. I work with a friend, Paul, as co-counsel in some cases. One of our clients fell on the ice and fractured her arm at a commercial property. When the two carriers refused to negotiate, we filed the lawsuit. We slogged through formal discovery for almost two years after filing. The attorney for the insurer of the

corporation that owned the building refused to negotiate. They needed more depositions, they needed more documents, and they needed more, more, more.

Fearless. Some lawyers would not have continued to try to engage opposing counsel in negotiation, early neutral case evaluation, or early mediation. They may have feared that the opposing counsel would think the plaintiff's case was weak. But we were confident in our case. During negotiations, we would show them our valuation. We may say, "yes, and ..."

Two months before the trial, after exchanging hundreds of pages of documents and having a half-dozen depositions, the defense counsel still refused to schedule mediation. Our client was sick of it and did not want to incur expenses on experts. We had a scheduling order that required mediation. I aggressively pursued getting a date on the calendar, but my opposing counsel avoided us. I emailed. I called. And then I called and called and called again. I finally reached him one night, sitting in my car in Costco's parking lot the day before Thanksgiving. Still, he refused to set the date for mediation. I drafted a "Motion to Compel Mediation" to file with the court that outlined my efforts to schedule mediation. I sent it to the opposing counsel.

Mediation occurred three weeks later. We settled for twice the amount my client had authorized me to settle for before we filed. As a restorative lawyer, when I hear about a new approach, I try to be like Paul. I avoid rushing to negatively critique the new idea and shut it down. I try to keep the brainstorming going. "Yes, and..." creates new strategies for individual cases and creates new philosophical foundations to approach our work.

Imagine the advantages if we work to be open-minded as we consider new ways of advocating for clients. Even those lawyers who excel in making adversarial, rights-based arguments may benefit from expanding their skills and the way they approach their efforts. We can avoid shutting down a new idea with "that's not right. It can't happen that way. Our clients aren't like that. Our

opposing counsel isn't like that." We can give "Yes, and ..." a chance.

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RULE #3: IMAGINE WORKING "OUTCOME BLIND."

Driving home from a rough day filled with back-to-back mediations, I turned on the radio to hear an interview with Annie Duke. A champion-winning poker player, she described the secret to winning — making decisions "outcome-blind." To win, she focuses on the behaviors, the variables, and her choices. She claimed that otherwise, she would not win. Focusing on the process leads to a good outcome.

When I got home, I found an article interviewing Duke. In her two decades on the World Series of Poker Circuit, she met many players who "scaled the learning curve, then flattened out at mediocre." She says, "You'd see people making the same bad decisions for twenty years over and over." Duke describes the trap they fall into by judging their performance on outcomes. "If they win, it's because they made good decisions. If they lose, it's because they were unlucky."⁴ Is that mentality the kiss of death for any high-stakes decision-maker in poker, business, and all areas of our lives?

The alternative she describes is an "outcome-blind" approach to decision-making as a poker player. Duke insists that all great poker players think this way. In fact, she says she had a small peer group of elite players who regularly got together and talked shop. "When we told each other 'the story of a hand,' we wouldn't mention whether we won or lost. It was all about the behaviors, the variables, the decisions — not the outcome."⁵ We can learn something from these poker players. Being outcome-blind doesn't require abandoning goals or outcomes when representing clients. It demands attention to the process as we elicit a client's objectives and create a process to maximize the client's benefit. In *Legal*

Project Management, Stephen Levy brings a similar viewpoint to working on legal problems. Being process-driven, including excellent communication with clients and determining interests, creates a superior approach that increases client satisfaction.

Crime victims often come to my office when formal processes have not provided them with any resolution. The offender may have died, or the prosecuting authority refuses to file charges. We work to find a process that is healing, independent of outcome — in other words, outcome-blind. Cathleen Piper was one of those crime victims.

Between her intake notes, several interviews and the police report, I was able to piece together the tragedy that changed her life. One evening, Cathleen's ex-husband, Jamie, brought their daughter, Hanna, home after his custodial time and left Hanna, buckled in the back seat of his full-sized F-450 truck. Jamie went inside the house to find Cathleen and argued about daycare. Cathleen went outside to get Hanna. As Cathleen went to open the door to the truck, Jamie jumped into the driver's seat and peeled off quickly, dragging Cathleen fifteen feet before she fell off the sideboard onto the pavement, unconscious. She woke up in the I.C.U. a week later. She remained hospitalized for four weeks.

My strategy involved work in three spheres: filing an application with the Crime Victim's Fund to seek payment of her medical expenses, pursuing insurance claims, and determining the basis for the failure of the district attorney's office to file charges against Jamie. Much of my work occurred behind the scenes and involved paperwork. Eventually, insurance paid a significant portion of Cathleen's outstanding bills and provided compensation designed to ease her pain and suffering.

However, the Crime Victim's Fund denied the claim, and we requested a hearing. At the hearing, some of the officers who responded to the initial scene testified. Three local male police officers responded to the scene that night when Jamie dragged Cathleen down the road. One reported that the offender was "cradling"

Cathleen's head when he arrived. Another police captain decided not to charge Jamie with a crime but charged Cathleen with joyriding. Eventually, they dismissed the charges against Cathleen but never filed charges against Jamie.

Since the Crime Victim's Fund denied her claim, our appeal included a hearing, which provided me with an opportunity to cross-examine the police officers, who had a very difficult time justifying their actions. Cathleen testified about the events, her injuries, and her bills. We needed the Fund to pay future medical bills related to the incident since she was an "innocent victim of crime." The judge believed her, and she was awarded the payments.

Only one part of the case remained — Cathleen wanted to understand why Jamie was never prosecuted. We arranged a meeting with Mattie Sams, an assistant district attorney with whom I had a solid professional relationship.



ON THE DAY of our appointment, we meet outside and ride up the elevator to Mattie's office. She sits behind her desk, piled high with brown accordion files, listening carefully to Cathleen's story. I am relieved to hear Cathleen articulate a much more fully developed narrative, more direct, more linear, more nuanced, and more capable of locating healing within the story than the confused rambling she shared with me at our first meeting.

Mattie listens attentively. She outlines the legal basis of why the case could not be prosecuted. She recognizes that the flawed investigation contributes significantly to her decision. She apologizes and suggests that if we find new evidence, she will review it. After our hour-long visit, Cathleen and I get back into the elevator. She sighs, "I feel relieved."



As I PREPARED to close out Cathleen's case, I invited her into my office to discuss this long and challenging journey and mark the closure of her legal case. Cathleen spoke clearly as the articulate master's-degree-candidate that she had become. She explained how she felt from the first day we met. She no longer felt helpless. Before, she felt like no one had heard her describe this life-changing event. She says that my listening gave her hope. The resources helped her realize she could recover and that she has something to contribute to the world. Cathleen explained that the fact that the police hadn't handled her legal case properly became something she could live with after meeting with Mattie. She explained that my representation meant that she could focus on her recovery and "not worry about advocating for myself because ... recovery was hard."

Cathleen did not get a substantial personal injury award (due to policy limits). She did not get the moment when Jamie would have been handcuffed in the courtroom after a jury announced he was "guilty." She did not get the outcome she initially sought. But we focused on the behaviors and variables and made good decisions within them. Cathleen was able to find processes to help her heal.

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RULE #4: LISTENING IS PARAMOUNT.

Imagine this: You and your co-counsel meet with a client going through a rough time. Co-counsel repeatedly interrupts your client as he explains what matters to him most. Co-counsel tries to be helpful by explaining the law, what is "relevant," and outlining strategies. Bored and slightly irritated, you decide to conduct on-the-spot field research and tally up the talk time: the client speaks less than twenty percent of the time and the lawyer eighty percent. This is a true story.

Is healing possible when the lawyer does all the talking *about*

the client's problem? Rachel Naomi Remen says, "Listening is the oldest and perhaps the most powerful tool of healing."⁶ I agree. What changes does the client go through while talking, while we listen? Can those changes occur when they aren't given the opportunity to speak? To feel heard? We may know the law, but we don't know much else.

We don't know the facts that are essential to the client. We don't know what our client is feeling or thinking. We don't see how our client imagines their life in five or ten years and how this "legal problem" fits into their life story. If we don't figure out how to be silent and listen, we may never hear the client communicate their objectives in resolving the conflict.

In restorative lawyering, we listen deeply and without an agenda. We allow clients to structure their thoughts, even when they are challenging to follow. We work to discover the importance of what our clients say and how they compose their stories. We are not interrupting to get to the relevant facts quickly! One of my teachers, Judge John Michaels, claims there is no such thing as an irrelevant fact when the client talks. If the client decides that it's important enough to communicate with the lawyer, it is relevant. Listening exposes the world of possibilities for resolution — resolutions developed to give clients what they need.

A colleague, attorney Mandy Burr, understands listening. Along with her law partner and husband, Dick Burr, she has represented clients on death row in Texas for many years. Mandy describes her process as "listening to listen," not listening to "fix" someone. One afternoon, she spoke with me about this kind of listening — a listening that happens by being open and listening to gain insight — not just to hear words being spoken. Mandy experiences her need to engage in intense listening most acutely after clients on death row decide to abandon their appeals. Mandy listens to the client, re-engaging the client's connection with life. This connection develops as the client tells the story and as they are listened to without judgment.

Mandy values the impact of deep listening to clients, even when it does not impact the legal outcome of the case. She remembers one client who received a death sentence. The client did not have a lawyer before Mandy's post-conviction appointment, and her job was to develop the case to mitigate the circumstances, if possible, for the state not to execute the client.

Mandy met with the client to uncover his motives for his crime, personal history, or any means to mitigate the punishment. The client continued to insist that he had not committed the crime, the murder of his close friend. After a long series of legal proceedings, the court granted the client a new trial, and he continued to insist that he was innocent. As they were preparing for the new trial, Mandy played his recorded confession to him. The client broke down and realized he'd blocked out the entire evening. As he came to terms with what he had done, Mandy realized that her client could not bring himself to acknowledge it before that moment. She decided not to engage in a confrontational situation with him.

After the client began to accept what he had done, he wrote a letter to the victim's family to apologize. Mandy describes her experience as an attorney working with a client to provide the best representation she could. She found his revelation to be "(I)ntuitive and accidental, but it taught me you can't make assumptions about why someone denies an event. We have to listen and develop trust for those types of things to happen, but they won't happen if you don't approach people that way." Mandy describes this experience as being open as she listens to gain insight rather than for the purpose of "fixing" them.

Listening is the core of healing. One client emailed me after our first meeting. "Thank you for listening. That was the most important thing anyone has done in a long time. I took a risk (in talking) because I trust you." The next chapter will examine techniques and methods to improve our listening. We'll look at how to listen and expand the ways that lawyers listen. Listening is paramount. Listen.

5

RULE #5: RIGHTS ARE A MEANS, NOT AN END

"Thinking like a lawyer" often obliges lawyers to zealously enforce every identifiable right a client may have without pausing to understand how enforcing the right helps meet the client's objectives. Sara, an attorney in my community, represented a father of four young children in a divorce, taking the case over from his first attorney. The situation demonstrates a potential tension as to what rights to enforce versus what rights to leave alone to meet the client's stated interest. The mother was waiting for an organ transplant and was often too sick to care for the children during her custodial time. She'd call the father to come and care for the children until she felt better. As the mother's illness became worse, the father grew concerned about the children's long-term well-being. He hired his first lawyer to provide him with an assurance that the children would always be adequately cared for during the mother's hospitalization.

But the attorney went the usual route and filed and served pleadings. Borrowing a common term that relies on a war metaphor--the "custody battle" ensued. The mother quit calling the father for help. Everyone kept copious notes and detailed calendars. The court appointed a *Guardian Ad Litem* to interview the children, visit the homes, and submit a report to the judge. The father retained Sara, but it was too late. The court held several hearings, each one escalating the level of the conflict.

How did this strategy, this "custody battle", benefit anyone in this case? What interest did asserting every legal argument serve? Did the parties not share many interests and needs? Did the attorneys promote meeting those needs or enforcing abstract rights?

How does this tension look in other practices? As I have launched into my work as a restorative lawyer, I have learned to work within needs-based inquiries to map out criteria and strategies

for resolving the client's legal problem, or what we call "the case," in all situations. After understanding the client's subjective and individual needs, legal analysis helps locate enforceable rights to fulfill those needs.

Lauren and Rose Ringer helped me to understand this tension and the potential resolution through a personal injury case. When I met with the two women in a pre-mediation meeting, they articulated that they wanted to move on from the hurt and trauma of the car accident they'd experienced. Lauren, the daughter, wanted a down payment for a house to buy with her new husband. Her mother, Rose, wanted to return to school for a career change in the next six months.

We provided bills and records to the insurance adjuster, who continued to value the case much lower than we did. Their offer to resolve the case was too low to meet Lauren and Rose's articulated financial needs.

After filing suit, the carrier's lawyer agreed to informal discovery and early mediation. This agreement was important to me since both women had personal deadlines to meet in the next six months, which increased the subjective value of an early resolution. Counsel for the carrier also agreed to early mediation and that both the party and the insurance adjustor would attend the full meeting.



LAUREN, Rose, and I show up for mediation at about the same time and are seated in the conference room. Defense counsel, his clients, and the claims rep arrive and sit across from us at the oversized wooden conference table. The mediator is a former judge who exclusively employs evaluative style mediation. He comes into the conference room, sits down, and does his introduction — describing the process, the location of the restroom, and confidentiality requirements. After twenty minutes, he turns to me to make our

opening statement. I defer to Lauren, who has asked me for the opportunity to tell her story.

"I'm sorry. I'm nervous. But on the day of the wreck, I was driving my Toyota. It's old and not worth much, but it's all I could afford. Mom and I had been to Target to pick up some things for a birthday party. I was pulling out onto the highway and was going to turn left. I was waiting for a chance to pull out, and then the other car rear-ended me and pushed me into the road. We got hit by another vehicle. It was terrible ..."

"You know what made me really mad? The lady who hit me didn't do anything. Nothing. She didn't even get out of the car to see if my mom and I were okay. She just sat there. And that was just the beginning."

Lauren does not pause. "She didn't even call the insurance company. They didn't do anything. My car was so messed up, and I was terrified to drive it. The back end was entirely smashed up, and it had no bumper. But it was the only way to get back and forth to work, so I kept driving. And their insurance company did nothing to help me."

Rose pipes in. "It wasn't safe for my daughter to drive that way. We both were hurt pretty bad. We had to go to physical therapy and the chiropractor for months. I missed a lot of work, and really, I can't even go back to my job now." The defendants listen politely. When Rose finishes, I summarize and make a few legal points about negligence and causation that no one pays much attention to.

The mediator asks the defense counsel if he has a response. He responds to legal arguments. Ron, the defendant's husband, asks if he can speak. He looks right at Lauren and Rose. "I am so sorry you went through all of this. It is a terrible mistake, and I am sad that you had to go through it. I got to the wreck about ten minutes after it happened. And you are right; my wife was sitting in the car. She had not moved a muscle. She just sat there, staring straight ahead. I don't know if she was in shock or if she just didn't know what to do, but I had to talk her calmly out of the car and take her home. If she

were right in her mind, she would have gotten out to check on you. It's not like her not to care about somebody in this kind of situation."

Lauren looks at him. "Thank you."

Ron speaks with compassion. "I'm sorry."

The defendant, Margaret Woods, looks at both women. "Really. That's true. I'm sorry."

Ron continues. "And this is the first time I ever heard about the insurance company not helping you out. We called the insurance company and reported the claim as soon as we got home that day. They did not tell us to do anything else. I'm glad you were not hurt driving your car around. That must have been scary after having just had the wreck."

Lauren still has something to say. "They didn't even offer to fix my car or get me a new one for weeks. It was too long."

"I will have to talk to my agent because that is not right. I'm sorry."

The mediator asks if anyone has anything further. I think he's slightly off his game since nothing happening today has anything to do with establishing rights based on negligence. He gets back into his stride. He escorts the defendants, the claims adjuster, and their counsel down the hall. He leaves us in the conference room, where we will remain for the balance of the mediation. The mediator will usher offers and responses back and forth to reach a resolution.

After about an hour, we reach an agreement.



REFLECTING ON THIS EXPERIENCE, I recognize that we didn't base the settlement amount on probabilities or statistics, anecdotes, or guesses stemming from the clients' legal analysis of their rights. We found our settlement on what the clients needed. The plaintiffs received the amount that they sought to move on with their lives immediately. Both the plaintiffs and the defendants left the table transformed, enjoying better relationships as members of the same

community and more at peace with this traumatic event that changed everyone's life. We argued Rose and Lauren's legal rights to get to the negotiation table. Once there, we could work on meeting their needs.

Does this mean that we should ignore clients' rights? No! Rights are considered, evaluated, and re-evaluated throughout the development of the case. Rights constitute part of the information we provide to the clients from the beginning as we engage them in their decision-making process.

Rights form the backbone of our laws. Rights are the means by which our government cannot become tyrannical. Rights are constructed and provide a framework for us to strive to be equals among each other. As a restorative lawyer, I am not recommending abandoning rights. Instead, I want to ensure that the level of enforcement of the right is integral to meeting the client's needs and that rights are not elevated to be superior to the people they protect.

What are the client's needs? If meeting needs is integral to enforcing legal rights, how do we identify them? Many lawyers tell me that the case's resolution is all about numbers: dollar amounts or prison sentences. Yet, these same lawyers tell me when they get the client the dollar amount or jail term, the client is not satisfied. Even when a right is identified, the needs must be identified and met while attending to the right.

A few years ago, a young woman came to see me, wanting me to enforce her right to privacy in the most fundamental way.



"I TAN every week at Quick Tan Salon in Mason. A few months ago, I answered the door, and the Sheriff was standing there. He tells me that a guy who works in the same strip mall has been video-taping me in the tanning bed. We have a hearing next week." I spend about an hour with Amelia, trying to figure out how she feels

and what she wants. I come away understanding that her biggest fear is that the videotape will not remain private. Her goal is that no one ever sees the tape. She feels exploited and does not want it exhibited.

On the morning of a status hearing in the case, Amelia and I ride the elevator to the third floor of the courthouse and walk down the hall lined with benches full of litigants towards the swinging double doors that lead to the courtroom. Amelia was not the only woman he photographed. Just outside the door, Heather sits on a bench, waiting for the hearing. The hearing is postponed, but Amelia, Heather, and a third victim, Brittany, hire my firm within a few weeks. Other victims also hire counsel.

This case goes on for months, and then years, and extends into many hours of meetings with our clients, the district attorney, and defense counsel. We file a civil suit against the tanning salon. We spend hours with the other victims, the insurance carrier and their attorneys, and the offender in meetings, negotiations, and mediation.

Amelia, Heather, and Brittany learn to clearly articulate their big and small goals in resolving their legal dispute. For criminal penalties, they are less interested in a lengthy incarceration period and more interested in the offender accepting responsibility, a public conviction, publication of that conviction, and sufficient conditions established to prevent him from doing this again. They also want to avoid a criminal trial since they do not want the videotape shared with attorneys, the jury, or the public. They want everyone to agree that the videotapes be destroyed.

Their goals in the civil case are related. They do not want to have a trial, and they want the tapes destroyed. They want the offender to pay damages out of his pocket for a period of years as a reminder of the harm he caused. They welcome damages that insurance may pay, but getting the largest settlement possible is not as high a priority for these victims as their other goals.

We continue to work to meet those well-developed goals, inter-

ests, and needs. Orders are issued to destroy the videotape, and we oversee their destruction. The offender pleads guilty and is placed on probation with restrictions. The civil case is resolved with a settlement from the insurance carrier and periodic payments directly from the offender. The three women are not “made whole.” However, we have worked to make things as right as possible.



AS IN LAUREN and Rose’s case, this situation describes how an effort to enforce rights may help the restorative lawyer seek to make things as right as possible. A more extended period of incarceration or a higher sum from the insurance company may have been within their legal rights. Having identified an essential need, the destruction of the tapes, the three women resolved the legal case and the lawyers met our obligation to satisfy the clients in identifying and meeting that need.

6

RULE #6: LET GO OF THE SEARCH FOR THE TRUTH — WORK TO CREATE OPPORTUNITIES FOR MULTIPLE COEXISTING NARRATIVES.

The established legal process allows a “finder of fact” to determine the truth after being presented with two independent theories of the case by advocates. However, most lawyers understand that our clients’ narratives are complex, each containing details that coexist with discrepancies created by multiple viewpoints of the events. I remember one time when a young colleague articulated feeling frustrated upon first hearing that an adjudicatory process may not establish an objective “truth.” As an assistant district attorney, I filed a petition to remove Cassidy Guttenberg, a two-year-old,

from her mother, Brianna, after the child suffered second-degree burns. The Department of Social Services worker identified the pattern of the burns as consistent with abusive behaviors sometimes observed incident to toilet training. In the mid-1990s, the experts would have had no trouble establishing this fact. Brianna persisted through the initial hearing, sticking to her story that this must have been an accident. The child was temporarily placed in a foster home. After a few months, we returned to court for the adjudicatory hearing to begin the process of terminating Brianna's rights. Both sides called witnesses sufficient for the judge to adjudicate the facts necessary to determine if Cassidy was an abused child, consistent with state law.



THE MORNING OF THE HEARING, Brianna sits alone at a table in the courtroom, joined only by her attorney. After listening to the testimony of several social workers, a nurse, and a doctor, it's her turn. She moves to the witness stand, next to the judge's bench, and takes a seat. She raises her hand and swears to tell the truth. On direct examination from her attorney, she testifies that her father routinely provided Cassidy's care since birth. While he had physically abused Brianna throughout her life, she had no reason to believe he would harm her two-year-old daughter.

I begin my cross-examination. Brianna articulates a new story, accusing her father of scalding Cassidy when she peed her pants. She continues, and her answers are inconsistent with her prior account, creating a story of the young mother as an innocent victim, placing too much trust in her abusive parent. But I wonder if her bravery is genuine and sustainable. What has happened, as the months passed, for Brianna to distance herself from her father? Could Brianna be strong enough to keep the child away from her grandfather?

Brianna's lawyer calls another social worker, Mary Griffith, to

testify. She doesn't know much, having been assigned to the case for about six weeks. She has been in Brianna's home and describes it favorably. She also testifies that Brianna bonded with Cassidy before the state placed the child in the foster home.

Jane Chattam, the child's *Guardian Ad Litem*, calls Dr. John Cavanaugh, the psychiatrist who evaluated Brianna's mental health. He testifies about her abusive upbringing, level of cooperation, limited intellectual capacity, and the lack of any other firm mental health diagnosis. As he concludes, the court looks at the clock hanging prominently on the long wall to my left.

We adjourn for lunch.

Dr. Cavanaugh joins Jane, Mary, and me for lunch at a small café near the courthouse. We sit outside and wait for our meal. We speak casually about this family, the subject of the case, and complex relationships. The young social worker, Mary, stirs her iced tea and stares at us with wide, innocent eyes. "What is the truth?"

Dr. Cavanaugh smiles and shakes his head, "the truth." Jane and I smile, but then Jane turns profoundly serious. "This is not about uncovering a truth — I don't think that's possible. We can only figure out what should happen to this child now."

Mary persists. "But I want to know the truth — did Brianna know this would happen? What happened? Who else was there?"

Dr. Cavanaugh responds, "We don't know."



WE DID NOT SPEAK from an academic viewpoint. We have observed and participated in decades of litigation. Most people testify about what they see, feel, and remember. However, the evidence does not create truth. The stories about the events cannot be unified and singular. Even an omniscient viewer arrives at a story with their viewpoint, personal history, and unique interpretation of events, creating a diverse and nuanced story.

Does anyone believe that the adversarial process discovers the one narrative that comprises the "truth"? Is it possible that two or more advocates, applying trained, logical reasoning, selecting bits of pieces of a story (limited and sequenced by the rules of evidence and procedure), reveal the "truth" to a neutral finder of fact?

No. There is no absolute truth, much less one that is discoverable through an adversarial argument.

As lawyers and judges, we can listen to and respect each participant's stories in the legal process.

We can understand that narratives create a way to order, describe, and give meaning to the moments of our lives. For example, when faced with an occurrence that becomes part of a legal conflict, we can observe the participants working to integrate the parts of the event, the people, the locations, and the activities into a broader context of a vast life story. The narratives built around situations giving rise to conflict often help organize our life experiences, creating context and providing structure for analysis and decision-making. The stories become integrated into identities.

In a TED Talk recorded in 2009, author Chimamanda Ngozi Adichie introduces the idea of the "single story." She described the single story as something like a stereotype. A person living outside a community narrowly defines the people and places they inhabit through their limited, narrow observations of the community. This single story creates stereotypes that lack multiple dimensions, perspectives, and experiences. In acknowledging the danger of the single story, Adichie provides clues on where to find hope. "Stories matter. Many stories matter. Stories have been used to dispossess and malign, but they can also empower and humanize. Stories can break the dignity of a people, but they can also repair it. When we reject the single story, we regain a kind of paradise."⁷ I have discovered that the danger of the single story lies not only in using the story to describe a people, but also an experience.

During my career, I have observed that the law has not created opportunities for complex narratives to be developed, respected,

bridged, and integrated. Instead, each side in the adversarial process looks at the multiple narratives and creates the most believable one, consistent with the client's objectives. In other words, each advocate posits a *single story*. The challenge is to develop a theory of the case that the factfinder adopts. The theory of the case is our effort to weave the client's story into the law and create a believable story, the dominating narrative. Law professor Binny Miller describes it, "Once a case theory is selected, it serves as the centerpiece for all strategic and tactical decisions in the case."⁸

Developing the theory of the case was the centerpiece of my Trial Advocacy class in my last year of law school. We spent a semester working the case up and presenting our theory of the case to a mock jury. My partner, Mary Lee Blackman, and I drew the case of Trudy Doyle, the waitress who died from a shooting in the vestibule of a restaurant where she worked.⁹

Suicide? Murder? Our task was to convince the jury that her boyfriend, police officer Johnny Diamond, murdered her. Witnesses observed what happened before and after the shooting, but no one saw the event. In our mock trial, the jury acquitted Diamond.

The mock jury, the factfinder, believed that Trudy shot herself. The story ended. In 1986, our theory of the case about a depressed, abusive police officer shooting his girlfriend at work was not believable. We lost. His narrative became dominant, and the story of Trudy Doyle disappeared.

During this time, my third year in law school, I was already skeptical of any idea of two lawyer-gladiators battling opposing theories of the case to arrive at "the truth." I already guessed that the party with the power would create the dominant narrative, and any other part of the story would disappear. However, my understanding of the relationship between respecting multiple life experiences, stories, and becoming a restorative lawyer developed further when I had the opportunity to study with Professor Sara Cobb at the Jimmy and Roselyn Carter School for Peace and

Conflict Resolution. Professor Cobb posits that conflict narratives have weak, undeveloped plots without interaction. They wind up producing good and bad characters who are polarized. They tend to focus on the past and future, not so much on the present. In mediation, Professor Cobb tries to "rehydrate" the story — put some water on it to give it depth.

The restorative lawyer recognizes the existence of multiple stories and works to understand how they may survive alongside one another without one story being privileged. The lawyer no longer works to locate the most believable theory of the case and elevate it to be the dominant narrative. Instead, the lawyer collaborates with other lawyers, mediators, and parties to find ways for multiple narratives to define parties' identities and stories.

In my mediation training, we learned, "You can't mediate facts." In Collaborative Practice, we try to be future-focused and not dwell on differing accounts of an event that cannot be reconciled. Those lessons help the restorative lawyer look at complex stories about events in a larger context, with opportunities to bridge or weave stories together. More profound stories provide more significant opportunities for healing through the subjective reconstruction of stories that permit the integration of new information as it is discovered.

Bridging narratives joins stories together through their common ground. Even a litigator cross-examining a witness recognizes that stories have common points and elicits those during testimony. As restorative lawyers, we can find those spots early in the conflict and give those common points attention. When the stories divide, we avoid pushing them into opposite corners of the arena. Stories are not ranked. Instead, multiple narratives are developed. As restorative lawyers, we work to find methods, such as transformative mediation, to permit organic and energetic storytelling, allowing the stories to find their natural bridges and points of intersection.

In addition to creating bridges that join complex narratives, we also find opportunities for those working through legal conflicts to

change their stories. As more information is learned, participants may find new ways of describing their experiences. As time passes, identities often undergo changes that are described through new, emerging narratives. Lode Walgrave, in *Restorative Justice and the Law*, discusses re-story and how "re-biographing changes the conception of the self."¹⁰ Revising how the actor sees their experiences changes for the offender, the victim, and often everyone involved in a conflict resolution process.

Rather than single-mindedly creating a theory of the case and diligently supporting it, the restorative lawyer embraces the potential for healing and repair in relationships by encouraging the development of multiple, complex stories. The restorative lawyer recognizes four important aspects of the parties' narratives while exploring options for addressing disputes. (1) There is no single story; it is an act of power (and violence) to deconstruct multiple accounts into a singular narrative.¹¹ (2) Legal language can be adapted to avoid the single story or the dominant narrative. (3) We avoid creating a dominant narrative by encouraging expansive, nuanced, and integrative storytelling. (4) We become skilled in encouraging remodeling, re-storying, and repositioning, creating opportunities for bridging and weaving narratives.

7

RULE #7: LOOK INSIDE YOUR BAGGAGE AND MAKE YOUR LEGAL PRACTICE A REFLECTIVE PRACTICE.

After I lost Ella's case, I picked my litigation strategy apart — trying to discern what I did wrong and discover what I could have done differently. For starters, when filing an action after a father killed a mother, I would ensure the mother's family had the child in their physical custody before initiating the legal proceeding. As I have endeavored to become a restorative lawyer, I've worked to expand my capacity to reflect on my work beyond trial strategy and

into the essence of the work. In other words, as a restorative lawyer, I work to develop a "reflective practice." In *Zen and the Art of Motorcycle Maintenance*, Robert Persig describes the reflective life. "You look at where you're going and where you are, and it never makes sense, but then you look back at where you've been, and a pattern seems to emerge."¹²

D.A. Schon, a writer in the field of professional education, created the term "reflective practice" to describe how professionals gain awareness of their implicit knowledge and learn from their experience. Theory becomes integrated into practice so that the professional may continue to grow and learn.¹³ My early lessons from Ella's case included improving my trial skills. I wanted to create better researched and articulated arguments. In other words, I wanted to master my skills within the adversarial process. Most of the lawyers I've worked with Monday-morning-quarterback cases, sometimes for years.

I propose a reflective practice for the lawyer that extends beyond individual cases and litigation strategies. I am challenging the restorative lawyer to adopt a practice encouraged by Michelle Leering in *Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism*.¹⁴ A reflective practice creates room for personal and professional growth. We move beyond asking ourselves, "Okay, I did this thing or that thing today ... did it go where I wanted it to ... Did I pick the right arguments? Could someone else have been a better witness?"

Instead of focusing on how to be a better adversarial advocate, the restorative lawyer identifies their values and determines how the work promotes those values. The restorative lawyer reflects on their thoughts and feelings about their work. We consider the emotions and concerns of our clients, their families, and their communities. Leering describes reflective practice by using a metaphor that describes the hand as representing the practical/technical reflection (skills), the head, for the critical reflection (knowledge), and the heart, for the self-reflection (values.)¹⁵ This

metaphor helps to appreciate the broad reflective practice of the restorative lawyer — moving beyond evaluating our skills and knowledge into considering our values.

About twenty years after Ella's case, I represented Evan and Louise Warren, another family whose daughter was murdered by her husband. We filed the petition for them to retain custody of their granddaughter, Emma. I learned that reflecting on my work in an adversarial process requires me to examine my arguments, my values, and my attention to my relationships during the legal proceeding.



THIS COURTHOUSE WAS BUILT in 1836 and reconstructed in 1871. Producers selected it for a set in the Civil War movie, "Gods and Generals." The courtroom is huge, the bench high, the well of the court spacious. Spectators sit on long pews at graduated elevations behind the well of the court. You could easily fit 200 or 300 spectators in those pews.

But this is a child neglect proceeding, and the only spectators are family members. We arrive and take our assigned seats. Like Ella's case, I'm still outnumbered. But this time, the children's court-appointed attorney sits at my table. Norman, the defendant, his family, his criminal lawyer, the custody lawyer, and an intern sit at the other table. The bailiff comes in, "All rise." The lawyers all do a half squat as the judge comes in for a motions hearing.

I doodle on the top of my legal pad and watch to see how Louise is doing. We have agreed that the expert may testify by telephone. The judge dials from the speaker telephone on the bench. It doesn't work. Judge McDougal asks us to move to his chambers for the call. We stand up and walk to a carved wooden door behind the bench. I am preoccupied, focusing on the questions to ask this potential expert witness. I look up as Louise and Norman come through the doorway side by side. Louise looks pale and faint. She

stands inches away from the man who had, months earlier, murdered her daughter.

I miss it, too focused on my legal strategy and anticipating my questions. I fail as Louise's advocate, too busy being her lawyer. Afterward, I reflect on this experience and learn from it: hand, head, and heart. While my reflective practice was young that day, it was engaged. And this reflective practice propelled me to create this book. My reflection revealed the shortcomings I experienced in the "law as lived." These reflections build the course of study for me to become a restorative lawyer.



WHEN I FIRST READ ABOUT reflective practice, I had to "say no to no." I wanted nothing to do with it. It seemed full of pitfalls. I had concerns. Fears. Would it be easy to fall into a trap and become self-absorbed in our practices, in ourselves? Would this self-absorbed approach benefit clients? Would my "critical thinking" background as an attorney cause me to be too harsh on myself? But, as a restorative lawyer, we find room for a small part of the day to include positive, healthy reflection on the work and find that reflective contemplation creates a vital building block of the restorative practice.

My reflective practice has become habitual, intentional, and has extended my awareness of what's happening within and around me, as well as inside the institutions. The restorative lawyer will accept those "disorienting dilemmas" (concrete and theoretical things that challenge our experiences and assumptions.)¹⁶ The reflective practice requires diligence and focus and may be tethered to something concrete and routine. Some journal, others meditate, exercise, or find ways to think broadly about their work. The reflective practice for us, as restorative lawyers, demands that we examine where we are in our practices and where we might be able to go with our clients, our colleagues, and our communities.

8

RULE #8: YOU CAN'T IGNORE TRAUMA.

As restorative lawyers striving to meet clients' needs, we should understand a few things about trauma. We should be able to consider our client's experiences of trauma when we are working with them. Most clients have experienced trauma, sometimes in the events that bring them to us.¹⁷ We provide legal services in a way that is accessible and appropriate to the person who has experienced trauma. We learn about trauma-informed care to decrease the potential of triggering or exacerbating trauma symptoms or retraumatizing our clients. Trauma-informed practices change our thinking from "what is wrong with this individual" to "what happened to this individual." When I began my legal career working with legal services, no one was talking about trauma awareness. One evening I was working late, alone in the same office where I first met Ella.



SITTING at my desk in deep concentration, I sense someone coming in. I look up. Zuri stands in the middle of the room. She is a skinny woman with thick blond hair, wearing tight jeans and high-top Reebok sneakers.

"Can I help you?"

"Thank you." Still standing, she hands me a petition filed by her mother. She stares at me with a wide-eyed, scared expression as I read. I skim the petition; she still stares. The paragraphs allege that Zuri's boyfriend abused her son. I read a few paragraphs of the petition aloud.

"Petitioner asserts that the Respondent has failed to protect said child, to-wit: she has exposed him to a live-in boyfriend, Larry

Martin, who has recently been released after serving a period of incarceration for a series of violent attacks."

"What's going on? Do you know anything about this?"

Zuri's eyes gloss over. She disengages from our conversation and then, nearly catatonic, speaks. Softly, she describes in detail how Larry Martin lives in her house. She tells me that he stripped the boy naked, abused him, then held him into the air and dropped him, ritualistically, on his head. As she ends the story, she stares off into space.

I listen. My mind actively engaged, thinking about my legal strategy to regain custody. I know how to do that. But I do not know what to do with this catatonic woman. Intuitively, I ask her, "Has anyone ever hurt you?" She continues staring but grows more intense and looks off in the distance. Her full body begins to tremble. Through her whispers, she tells her story of being physically and sexually abused throughout her childhood. I have no idea how to help her continue to describe her traumatic upbringing in a safe, protected way.

I ask Zuri if it's okay for me to call my friend, a counselor, and she nods her head. I call Becca who coaches me through the interview. Zuri moves through the past and into the details of her current situation. She shares sufficient facts for me to draft a responsive legal pleading.



I FILED THE RESPONSE, and Zuri began working with a counselor. A few weeks later, she moved into a new apartment without her boyfriend. A few months later, her son came to live with her.

It would be another twenty years before I would begin to understand that listening to Zuri's story challenged me to understand her trauma and how to begin her recovery. Eventually, I would find additional training and education on how to approach

legal representation while being mindful of a client's experience of trauma.

It would also be twenty years before I would begin to understand that listening to Zuri's story and being engaged in her recovery exposed me to tertiary trauma. Dr. Cheryl Tally, the professor who introduced me to our neurological response to say "no" also explained tertiary trauma. Many professionals, such as lawyers, experience secondary trauma when working with clients to address legal problems, often related to the client's experiences of trauma. Dr. Tally described a study involving rats where scientists followed biological measures of two rats in a physical fight alongside those of a rat witnessing the event. The chemical changes of the witness rat indicated the witness suffered a more substantial neurological response to observing the trauma than the rats engaged in the physical fight. Additional research and programs with Pauline Tesler and Laura van Dernoot Lipsky provided me with insight into how to respond in a restorative way to our client's trauma and our experience of secondary trauma.¹⁸

Restorative practices, by focusing on building relationships, collaboration, and working to meet needs, potentially create a proactive and healthy response to secondary trauma experiences. The practices provide ways to hear the traumatic experiences of clients and incorporate our understanding within our strategies to resolve the legal problem. Counselors-at-law never substitute for mental health therapy, but the trauma-informed practice of law positively impacts our lives, including our work.

9

RULE #9: MAKE SURE YOUR LIGHT IS FULL BEFORE YOU DECIDE TO SHINE IT.

On an afternoon in late summer 2020, watching a webinar produced by the American Shakespeare Theater, "Perhaps My

Protest Looks Different," I discovered another teacher. Addressing the challenges of being an outspoken dissident and organizer, speaker Bria Samoné Henderson reminded me of the importance of caring for ourselves. She said she makes "sure my light is full before I decide to shine it."¹⁹ The term *restorative lawyer* expands beyond using restorative processes and practices in our legal work to heal the client, the victim, the offender, and the community. It also stands for using restorative measures to sustain us, making sure our light is full.

Since I graduated from law school in 1987, I've read the reports published in many state bar magazines about colleagues being sanctioned and disbarred for missing deadlines, court hearings, and other derelictions that could be attributed to being overextended, experiencing depression, or abusing alcohol. One autumn after I had been out of law school for over thirty years, the toll our work can take hit home. Three lawyers whom I've had close relationships with during my career died. Two of them were barely fifty years of age. One was just under sixty. None of them had heart disease or cancer or were in accidents. The three drank too much, and they died too soon.²⁰

During the past few years, I have worked with Elliot Hicks, a colleague who shares both my experience of grief in losing colleagues and a desire to create systemic reform to help prevent further losses. We conduct workshops on the "Art and Science of Lawyer Well-being."²¹ We explore opportunities for incremental changes, consistent with restorative principles and values, to improve lawyer wellness. They involve four easily identifiable areas that are particularly relevant to the restorative lawyer: (1) Using collaborative, problem-solving approaches to reduce the fight-flight-freeze response, (2) Appreciating natural empathic responses, (3) Valuing relationships, and (4) Creating work that feels rewarding and is consistent with personal values.

A collaborative, problem-solving focus helps eliminate fight-flight-freeze responses at work. During a typical day at the office, it

is not unusual for a lawyer to face multiple situations that trigger the response. A client blames you for failing to inform them of an outcome properly. Opposing counsel sends a threatening email because you did not return a call. A quick telephone hearing triggers stress when an argument for sanctions is made, and you can't be sure that you provided requisite notice.

Fear triggers a primitive fight-flight-freeze response in animals. The reaction is necessary for self-preservation when animals are threatened by predators or other dangers. People have the same neurological primitive reaction when triggered. Fear creates an anxious state, ready to defend or retreat from our position. In this state, the amygdala part of the brain guides the quick decision to create safety. The full cognitive abilities of the prefrontal cortex are not engaged. In the practice of law, stress often artificially triggers the response, and many lawyers enter a cycle that may be difficult to escape. Overeating, drinking, and other negative responses result from prolonged engagement in the fight-flight-freeze response.

When we work collaboratively with multiple stakeholders to jointly seek resolutions to legal problems and conflicts, the fight-flight-freeze response is less likely to be triggered. Staying in the calm, rational prefrontal cortex of our brains increases our ability for creative and rational responses.²² Lawyers who commit to using a less adversarial approach to resolve legal problems may make better decisions as well as enjoy an improved sense of well-being.

Working collaboratively also creates opportunities for better by honoring our natural empathic responses towards compassion and empathy. Contrary to some economic theories, substantial contemporary evidence suggests that people are inherently compassionate.²³ Like some mental health professionals, lawyers are impacted by empathically engaging with clients experiencing pain and trauma. Failing to recognize that takes a toll on mental health and may create further stress, anxiety, and discord for lawyers. Additionally, lawyers may naturally experience empathy for other parties or witnesses. The adversarial approach then demands that

attorneys act contrary to those natural empathic responses, creating additional stressful biological reactions impacting emotional and physical health. The restorative lawyer recognizes and respects the empathic responses to clients, opposing parties, and witnesses and creates opportunities to reduce harm resulting from that response by working compassionately and cooperatively.

In contrast to restorative justice, the adversarial approach to conflict tends to minimize the importance of creating and maintaining good relationships. We often develop a destructive way of interacting with opposing parties and opposing counsel. This pattern impedes relationships with our colleagues, family, and friends. Lawyers Pauline Tesler and Louise Phipps Senft have written extensively about the importance of relationships to lawyer wellness. Millions of years of evolution have required that people rely upon one another, facilitating reliance by building alliances and creating interpersonal bonds. Without deep, constructive relationships, people often fail to thrive in almost any community. Lawyers who cultivate transactional successes over developing positive connections inevitably damage healthy, valuable relationships at work and at home.

The restorative approach provides opportunities to increase the lawyers' health and well-being by providing a means for work to be rewarding. In the restorative practice, lawyers may feel less anxiety when they bring the same values to their lives at home and work. Work becomes satisfying and enjoyable when the lawyer switches from the adversarial, competitive approach to a broader relationship-building and problem-solving style to resolve conflict and promote healing.

10**RULE #10: LEGAL PROBLEMS ARE NOT COMMODITIES,
AND NEITHER ARE THE LAWYERS WHO WORK TO
RESOLVE THEM.**

The restorative lawyer collaborates with clients to identify harm, objectives, and needs. The work often involves finding the best process to heal the harm and repair relationships. People and their experiences are not commodities. The restorative lawyer does not approach a legal problem as something holding financial value to be maximized. What does a practice look like when a client is not a commodity? What happens when suffering is not analyzed as an entity for which we must maximize economic value, but instead as a harm to heal? Sandy Carter and her son Russ came to see me after a neighborhood dog bit Russ' son, Ashton.



ON THIS RAINY, gloomy day, we meet in a small, cramped, conference room. Russ sits across from me. He seems detached. Sandy stands behind him while we talk. I wonder if Sandy is an overbearing mother/grandmother. I study their dynamic, trying to figure out the parties' interests. This may take time. Sandy talks a lot and describes her relationship with her grandson. His mother died several years ago, and Russ relies on Sandy to take care of Ashton.

As we talk, we delineate immediate needs. I'll start by verifying that the dog has vaccines. We'll contact county animal control officers to protect future victims. Next, we will locate the insurance carrier and identify sources for payment for medical bills. We outline Ashton's medical treatment with Russ and Sandy and detail options for payment. We decide to wait until the child is emotionally and physically healed before filing a lawsuit.



SINCE THIS JURISDICTION permits a child to reach eighteen before the statute of limitations begins to run, our timeline extends for a few years. I worked to build a relationship with Sandy, Russ, and Ashton. The needs shifted and changed when Russ died unexpectedly. Sandy decided to adopt Ashton, who continued his life-long healing journey after losing both parents and suffering the trauma of the dog-bite as a child.

We gathered supplemental medical information and made a demand to the insurance company and the parties. Everyone ignored us. We persisted. As Ashton's 18th birthday approached, I scheduled a meeting to create a strategy to finish his "dog-bite case." We created a budget, projecting how he might best allocate the proceeds from a potential settlement, concentrating on maximizing his educational opportunities.

A few months after we settled for the amount available under the insurance policy in the case, I saw Sandy, and she let me know that Ashton was doing well, going to community college and preparing to transfer to finish an engineering degree at a university. For me, Sandy, Russ, and Ashton were never "the dog-bite case." Their case was never treated as a potential policy-limit product for me to cash in on. Like all families, this family had needs that I worked to meet, using the skills of the restorative lawyer.

Clients (and their legal conflicts) are NOT commodities. They are people, not objects or injuries, that can be defined, boxed, valued, and traded. We cannot negotiate the value of our clients' suffering. Instead, they engage us as individuals with unmet needs. Although our system establishes criteria to place dollar amounts on clients' injuries, that process does not convert the clients, or their hardships, into a commodity. The restorative lawyer does not trade in pain.

Lawyers and the minutes and hours of our days are also not commodities. The afternoon in my first year of law school when my

husband returned from the bookstore with Duncan Kennedy's book *Legal Education: Reproduction of a Hierarchy* raised so many questions. Could a company consider employees commodities? Could a law firm describe the attorneys as assets or inventory?

Law school creates lawyers who too often become machines, tools for the law firm to exploit for profit. The billable hour turns lawyers into things of economic value. A senior partner at a large law firm, Jana Cohen Barbe, published an open letter saying:

Billable hours and revenue generation are the two key metrics in how law firms compensate attorneys. ... Partners, including the most senior, ... have billable-hour targets, and their compensation may rise or fall with the achievement or missing of those targets.... The pressure — to work seven days a week, to miss family events, to forgo vacations, to miss needed doctor's appointments — cannot be overstated. We feel guilty taking a Saturday or Sunday off, and it takes several days to let go of the guilt and begin to feel the relaxing effects of a vacation.²⁴

In the modern practice of law, lawyers, clients and the conflicts that become cases can be assessed by the amount of money they generate. The restorative lawyer may work to develop financial resources sufficient to maintain a healthy law practice, while concurrently never losing sight of the fact that people are people. Not commodities. Not products.

These Ten Rules of Engagement describe a few ways to bring restorative principles and values to our work. They can be a convenient way to remind ourselves of how we can strive daily to create a better way to advocate for our clients. While they begin to describe some of the hands-on ways we are changing the practice of law, the next section of this book will describe concrete skills, methods, and techniques that any lawyer may include within their practice to make it more restorative.

10 Rules of Engagement



RULE #1:
There Are No Rules for Restorative Lawyering

Only Guideposts That Give Form to Principles.



RULE #2:
Learn to Say "No" to "No."



RULE #3:
Imagine Working "Outcome Blind."



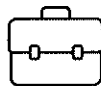
RULE #4:
Listening Is Paramount.



RULE #5:
Rights Are a Means, Not an End.



RULE #6:
Let Go of the Search for the Truth
Work to Create Opportunities for Multiple
Coexisting Narratives



RULE #7:
**Look Inside Your Baggage and Make
Your Legal Practice a Reflective Practice.**



RULE #8:
You Can't Ignore Trauma



RULE #9:
**Make Sure Your Light Is Full Before You
Decide to Shine It**

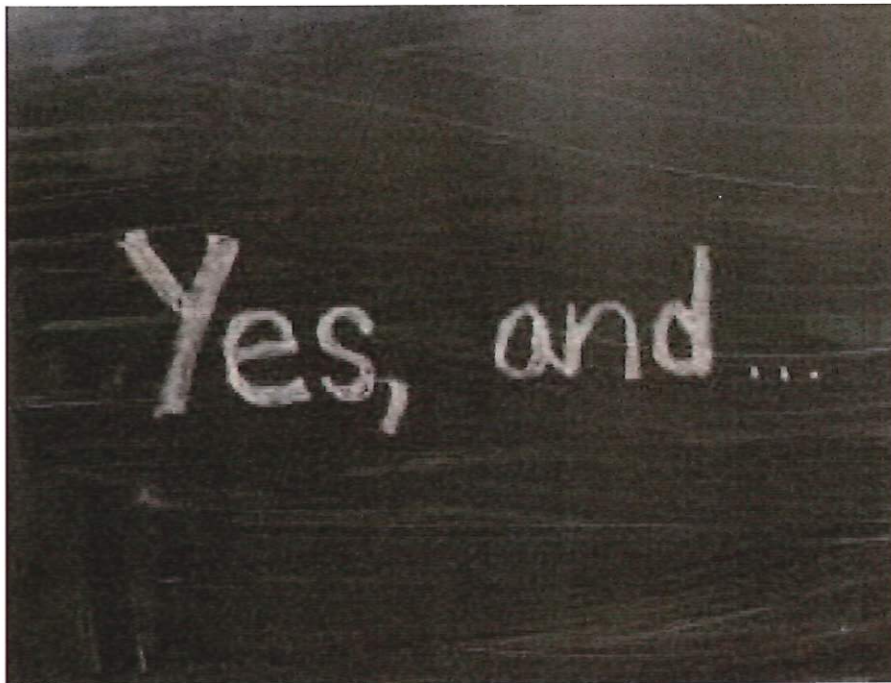


RULE #10:
**Legal Problems Are Not Commodities,
and Neither Are the Lawyers Who Work
to Resolve Them.**

The power of “Yes and...”

Jun 01, 2024 | [EDR Blog](#)

by Danya Rumore



In recent blogs, I have explored the relationship between conflict and power. I have made the case that [our greatest source of power](#) when dealing with conflict is to intentionally choose how we respond to conflict, including through identifying and being ready to exercise our [best option possible](#) (or what I refer to as “the BOP”).

In this blog, I want to share another key source of power when dealing with conflict, one that I, like many other conflict resolution professionals, consider core to making conflict productive: “yes, and” thinking.

What is “yes, and” thinking and why does it matter?

“Yes, and” thinking is a mindset and way of speaking that reflects the simple but profound fact that the world is complex, and seemingly contradictory things can—and do—coexist.

While this may seem obvious, the reality is, as I have discussed in previous blogs, we tend to default to seeing the world through a scarcity mindset and a zero-sum lens. This often leads us to assume that for one thing to be valid, the other has to be invalid, or that there isn't enough room for multiple different things to be simultaneously possible.

This zero-sum lens and scarcity mindset are epitomized in our tendency to think and speak in terms of “yes, but.” For example, we often say things such as:

- Yes, I want to go to bed, but I want to stay up and watch a movie.
- Yes, I love my family, but I need some space from them.
- Yes, I need to catch up on work, but I need to spend some quality time with my kids this week.
- Yes, you want Indian food for dinner, but I want Thai food.

“Yes, and” thinking recognizes that it is not only possible but also entirely normal for people to have different needs and wants. Let me illustrate by reframing the above statements through a “yes, and” lens:

- Yes, I want to go to bed *AND* I want to stay up and watch a movie.
- Yes, I need some space from my family *AND* I love them deeply.
- Yes, I need to catch up on work *AND* I need to spend some quality time with my kids this week.
- Yes, you want Indian food for dinner *AND* I want Thai food.

Take a moment and think about how those two different framings—the “yes, but” and “yes, and” versions—of those statements feel. Also, think honestly about which reflects the way you tend to speak—and think—about situations in your life.

There is a saying that “everything that comes before ‘but’ doesn’t matter.” My experience and observation suggests this is typically true. For example, when we say something such as “I love my family, but I need some space from them,” the focus is on the fact that we need some space; the fact that we love our families feels like an afterthought or a reason for why we can’t take a little space. This can lead us to act unlovingly toward those we love—and/or it can lead us to feel guilty for needing a little space. Either response is not helpful and tends to lead to negative outcomes.

Similarly, if I say “Yes, you want Indian food for dinner, but I want Thai food,” I am effectively making it sound and feel like only my wants matter and, in so doing, effectively negating your desires.

When we think and speak in terms of “yes, and,” we acknowledge and embrace the fact that it is totally reasonable and understandable that we have different needs, wants, ideas or perspectives. For example, it is totally reasonable and understandable that another person and I might want different types of food for dinner. It is also entirely reasonable and understandable that you want a little space from your family, even if (and perhaps especially because) you love them deeply.

This is the first reason “yes, and” thinking is so powerful: It is all about accepting that “conflict just is,” which (as I have made clear in prior blogs) is a critical first step in learning how to make conflict productive.

The co-creative potential of “yes, and”

That is why “yes, and” is one of the key principles I try to teach in all of my conflict and collaboration courses and trainings. One of the ways I like to do this is through a simple exercise I learned from an applied improvisation workshop years ago (“yes, and” is also a core principle in improv). The exercise goes something like this:

I get people into groups of four and ask them to design a party together. In the first round, I ask one person in the group to start things off by saying, “Let’s throw a party!” Then I have them go around in a circle with each person adding something to the party plan, starting with “yes, but.” They keep doing this for about two minutes. It usually looks something like this:

- Person 1: “Let’s throw a party!”
- Person 2: “Yes, but it can’t be until next week, because we have finals due this week.”
- Person 3: “Yes, but next week is graduation.”
- Person 4: “Yes, but I don’t like parties.”
- Person 1: “Yes, but we need to throw a party!”
- Person 2: “Yes, but person four doesn’t like parties.”

And so on and so on.

You get the vibe, right? Let’s just say the “yes, but” parties tend to not be very inspiring.

In round two of the exercise, I ask groups to do the same thing. However, this time, they are asked to start each contribution with “yes, and” instead of “yes, but.” That second round tends to look something like this:

- Person 1: “Let’s throw a party!”
- Person 2: “Yes, and let’s have a unicorn theme!”
- Person 3: “Yes, and let’s have amusement park rides!”
- Person 4: “Yes, and let’s have it professionally catered!”
- Person 1: “Yes, and let’s get the department to pay for it!”
- Person 2: Yes, and this is going to be the best party ever!”

Take a moment and compare the vibe of the “yes, and” party to the “yes, but” party. Pretty different, right?

When I do this exercise in my classes and professional trainings, the outcome is consistently the same. “Yes, but” is a stilted race to the bottom, whereas “yes, and” results in all sorts of creativity, laughter, and some really interesting parties. This is because “yes, but” is a block—it basically takes whatever the other person said, negates it, and redirects in a different direction. This is how we tend to approach conflict situations. We feel that we need to ignore or block what the other person needs or wants in order to get our needs and wants met.

“Yes, and” is quite the opposite. Instead of blocking, it takes what was said as a building block, embraces it, and adds to it. In other words, “yes, and” is inherently co-creative.

That is why “yes, and” is a core principle in improvisation, which is all about co-creating scenes and activities.

It is also the second reason “yes, and” thinking is so powerful: It inherently pushes us to stop blocking and to instead co-create something new and better from different ideas, needs, wants, and perspectives. And that is what effective conflict resolution is all about.

A few important clarifications about “yes, and”

While the concept of “yes, and” is simple in theory, it can be challenging to put into practice in reality. Here are a few important clarifications to help you understand and apply this mindset and way of speaking:

- **The yes in “yes, and” does not mean agreeing to the other person’s requests or positions.** It also does not mean you are agreeing to do anything or support anything. All it means is that you are validating that they feel a certain way or want a certain thing. In other words, it is not “Yes, you are right” or “Yes, you should get that.” Instead, it is just “Yes, I hear that is important to you” or “Yes, I hear you would like that thing.” Once you have validated that the other person wants a certain thing

or feels a certain way, you can then build on that by expressing your feelings or needs in a way that adds to and does not diminish the other person's concerns. This same concept applies if you are working through conflict within yourself.

- **Along a similar vein, “yes, and” doesn’t mean you support the way someone is behaving.** In fact, it helps us address problematic behaviors without negating that the other person has legitimate concerns. In other words, it helps us separate the people from the problem. For example, we can think, “Yes, that person has legitimate concerns—and their behavior is unacceptable and needs to be addressed,” or we may need to say to someone, “Yes, I want to hear your concerns—and when you yell at me, it is hard for me to do so.”
- **In understanding “yes, and” it is also important to be clear that the words we use are important—and so is the intention and meaning behind those words (see what I did there? Yes, and!).** For example, we can say “yes, and” but really be conveying “Yes, but.” Or we can say “yes, but” in a way that is building and not blocking. Whatever words you use, the goal is to embrace the fact that the world and situations are non-zero sum and to communicate in a way that makes space for complexity and the co-existence of divergent needs, wants, ideas, and perspectives.

“Yes, and” thinking will change you—and you will change the world

I have taught the skill of “yes, and” thinking to hundreds of students, colleagues, and friends, and I can say with confidence that people who embrace this idea and practice it—myself included—consistently find it life-changing in a very positive way. They commonly say it helps them approach life with an abundance (rather than scarcity) mindset and create opportunities from challenges. I encourage you to give it a try—and to be open to how it might change you and the world for the better.



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SAYING “YES, AND” TO A CHANGING LEGAL PROFESSION THROUGH IMPROV

Ben Bratman*

Abstract

As legal practitioners confront the potent impacts of society’s latest technological innovation, legal education can and should say “yes, and” to all the change and uncertainty by leaning into the teaching of human skills. That’s “yes, and,” as in the guiding principle of improvisational theater, or improv. As a form of embodied learning through play, improv exercises are a proven tool for building and refining fundamental human skills, often called the “soft” skills, within a low-stakes learning environment. They can and should be a part of any law school’s effort to graduate confident and skilled communicators who are strong team players—empathetic, creative, adaptable, and resilient.

While applied improv (the application of improv techniques and exercises outside of the theater space) has become a recognized field, and while many business schools and medical schools have embraced its use, law schools have done so to a much lesser extent. More broadly, legal education does not have a strong track record when it comes to training students in fundamental human skills.

Through the example of an applied improv course at the University of Pittsburgh School of Law and detailed description of several improv exercises, the article seeks to provide a template for law schools and willing law faculty to integrate improv into their students’ learning. Improv can help law students grow the confidence and agility needed to navigate the evolving landscape of law practice and thrive as professionals.

I. Introduction

The great danger we face as we become more intimately involved with our computers—as we come to experience more

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of our lives through the disembodied symbols flickering across our screens—is that we’ll begin to lose our humanness, to sacrifice the very qualities that separate us from machines.¹

Improvisation is a metaphor, a path, and a system; it is a modus operandi that anyone can learn.²

As generative artificial intelligence (AI) offers more cost-effective ways of completing many tasks traditionally performed by lawyers, common sense tells us that lawyers will be pushed to distinguish themselves and prove their worth through their human skills.³ How should legal education respond to the profound challenges of this AI-driven moment? The answer, this article contends, is with a confident and mindful “yes, and.”

Yes, the “yes, and” that is the fundamental building block of improvisational theater, commonly known as improv. In improv, “yes, and,” also known as “accept and build,” calls on players in a group to gradually create an unscripted reality that each one accepts (the “yes”) and somehow adds to (the “and”).⁴

¹ NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* 207 (2010).

² PATRICIA RYAN MADSON, *IMPROV WISDOM: DON’T PREPARE, JUST SHOW UP* 18 (2005).

³ See Jordan Furlong, *The Rise of the “Human Skills” Lawyer*, SUBSTACK (June 14, 2023), <https://jordanfurlong.substack.com/p/the-rise-of-the-human-skills-lawyer> (arguing for the development of the humanity of legal professionals, as generative AI takes on other, more technical types of legal work, and categorizing numerous lawyering skills as either human or technical) [hereinafter *The Rise of the “Human Skills” Lawyer*]; Jordan Furlong, *Stewardship and the Post-AI Legal Profession*, SUBSTACK (May 2, 2025), <https://jordanfurlong.substack.com/p/trusted-oversight-a-role-for-the> (arguing that, in the face of AI’s rapid development of humanlike skills, lawyers can distinguish themselves by providing clients stewardship and peace of mind) [hereinafter *Stewardship and the Post-AI Legal Profession*]; Jordan Furlong, *The Coming Revival of the PeopleLaw Sector*, SUBSTACK (Feb 25, 2026), <https://jordanfurlong.substack.com/p/the-rising-revival-of-the-peoplelaw> (“Even as AI is poised to make human lawyers less necessary in the delivery of commercial legal services, I believe it will make human lawyers more necessary in the delivery of personal legal services.”); see also David King, *How to Retain Being a Human Lawyer While Using Generative AI*, 61 CAL. W. L. REV. 331 (2025) (discussing the importance of human roles, including emotional intelligence, storytelling, ethics, and independent professional judgment).

⁴ See KELLY LEONARD & TOM YORTON, *YES, AND: HOW IMPROVISATION REVERSES “NO, BUT” THINKING AND IMPROVES CREATIVITY AND COLLABORATION* 13, 23-26 (2015) [hereinafter *YES, AND*].

Consider the following opening of an improv scene: Performer A walks onto the stage, followed closely by Performer B. Suddenly, A points to the ground on the other side of the stage and says excitedly, “Look, Sam, a mongoose.” In fact, there is nothing there, but B needs immediately to accept the reality that her partner just created: There is a mongoose there. She also needs to accept the reality that she is named Sam, she is with someone who knows her name (thereby indicating a level of familiarity), and they are in a place where a mongoose might be sighted. But all of that is just the “yes.” In improv, the “and” is crucial to the process of constructing the reality. There are numerous options for Performer B—none is wrong, as long as she adds something that does not deny any of the reality that Performer A has established. She might say, “Oh, wow. Hey, didn’t you write a paper in junior high on the mongoose?” Performer A, needing to “yes, and” B’s response, might reply in a sullen voice, “Thanks for reminding me. Mr. Bonesteel gave me an F on that. Still bugs me to this day.” The scene would progress from there, completely unscripted, ultimately transitioning somehow to another scene, though the full structure of an improvisational performance is beyond the scope of this article.

But wait, law students should do improv? They should make things up on the spot, and play and laugh? Well, yes, but more precisely, *applied* improv, meaning exercises and games similar to those used by improv performers when they practice.⁵ Applied improv does not train law students to give a theatrical performance; rather, as a form of embodied learning,⁶ it can directly enhance students’ human skills.⁷ At the most fundamental level, these human skills, or

⁵ See generally THERESA ROBBINS DUDECK & CAITLIN MCCLURE, *APPLIED IMPROVISATION* (Dudeck & McClure eds., 2018).

⁶ Embodied learning “stems from embodied cognition theory, which posits that cognitive processes are deeply rooted in the interactions between the body and the environment. In education, learners often enhance their performance by integrating sensory experiences and physical activity into the learning process.” Zhiwei Liu et al., *The Effect of Embodied Learning on Students’ Learning Performance: A Meta-analysis*, 16 *FRONT. PSYCHOL.* 1658797, Aug. 21, 2005, <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2025.1658797/full>.

⁷ See Susan P. Liemer, *Embodied Legal Education: Incorporating Another Part of Bloom’s Taxonomy*, 95 *U. DET. MERCY L. REV.* 69, 71–72 (2017) (discussing how physical education in law school can help law students build empathy and assorted “soft skills”); Paul Marchegiani, *Untethered: Why Legal Education Needs to Get Lawyers Out of Their Seats*, ABA (Nov. 24, 2025), https://www.americanbar.org/groups/legal_education/resources/syllabus/2025-fall/untethered-why-legal-education-needs-get-lawyers-out-their-seats/ (“Lawyering is not primarily a seated, cognitive exercise;

“soft” skills,⁸ encompass a set of communication and social competencies: among others, speaking, listening, awareness and interpretation of nonverbal communication, empathy,⁹ adaptability, resiliency, creativity, and collaboration.¹⁰ These and other uniquely human skills are increasingly salient in the practice of law.

When students adopt the “yes, and” construct from improvisational theater, their participation in improv exercises gently guides them toward speaking more confidently, listening more actively¹¹ and empathetically, adapting with agility to the unexpected, recovering quickly and smoothly from mistakes, thinking more

advocacy, counseling, negotiation, and leadership are physical practices requiring deliberate physical training.”). Of course, a student who uses a wheelchair also can participate in improv and practicing law without physically leaving their chair, instead doing so metaphorically.

⁸ Human skills are, broadly speaking, appropriately categorized as “soft skills.” See Kathleen Vinson, *What’s Your Problem?*, 44 STETSON L. REV. 777, 824–25 (2015) (quoting Peggy Klaus, *The Hard Truth About Soft Skills* 2 (2007)) (“‘Soft skills encompass personal, social, communication, and self-management behaviors’ involving varied and extensive abilities and traits.”). However, as the connotation of “soft” makes the term an unfortunate one for skills of such enormous importance, I will refer to them throughout as human skills.

⁹ In basic terms, empathy is the capacity to understand what another person is feeling or thinking. *Empathy*, PSYCH. TODAY, <https://www.psychologytoday.com/us/basics/empathy> (last visited Feb. 23, 2026). Of greatest relevance to law, there are two categories of empathy—emotional, or affective, and cognitive. Lauren A. Newell, *Rebooting Empathy for the Digital Generation Lawyer*, 34 OHIO ST. J. DISP. RESOL. 1, 6 (2019). Emotional empathy involves feeling what another person is feeling and is perhaps most relevant to client counseling, *id.* at 27–28, while cognitive empathy involves *understanding* what another person is feeling or thinking and is perhaps most relevant to negotiation. See Shermin Kruse, *The Power of Tactical Empathy*, 34 DCBA Brief 12 (Sept.–Oct. 2021) (describing cognitive empathy as “easily weaponized in negotiations”).

¹⁰ This list reflects core human skills most prominently addressed by applied improv, the focus of this article. Jordan Furlong’s more expansive list of “human lawyer skills” includes collaboration, conflict management, cultural fluency, empathy, exercising judgment, fiduciary relations, interpersonal relations, leadership, persuasion, “reading the room,” and stress management. *The Rise of the “Human Skills” Lawyer*, *supra* note 3.

¹¹ “‘Active listening’ is a type of listening widely recognized in a variety of contexts that require gathering information and problem-solving Active listeners work to capture the speaker’s entire message, which includes not only the meaning of the speaker’s words but also any critical context, including accompanying emotions, discomfort, and anxieties.” Lindsey P. Gustafson, Aric K. Short & Neil W. Hamilton, *Teaching and Assessing Active Listening as a Foundational Skill for Lawyers as Leaders, Counselors, Negotiators, and Advocates*, 62 SANTA CLARA L. REV. 1, 10–11 (2022).

creatively and divergently, collaborating effectively with others, and more.¹² Therein lies the premise of Human Skills for Lawyers (originally named Applied Improv for Lawyers), a course I created and teach at the University of Pittsburgh School of Law.¹³ And therein lies great potential for the learning and growth of students at any law school.

Getting groups of students together to do improv allows them to play and laugh, but not for gratuitous reasons. Play is a science-backed form of learning, even for adults,¹⁴ and laughter is a form of relief from the very real stressors inherent in legal education and the practice of law.¹⁵ Playing through improv also fosters an environment in which the stakes are low and the support from each member of the

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- ¹² See Ronald A. Berk & Rosalind H. Trieber, *Whose Classroom Is It, Anyway? Improvisation as a Teaching Tool*, 20 J. EXCELLENCE COLL. TEACHING 29–31 (2009), https://www.ronberk.com/articles/2009_improv.pdf (discussing benefits of improv as a teaching tool based on research evidence, including, among other skills, “interactivity, inductive discovery, attentive listening, nonverbal communication, . . . risk-taking, [and] team building,” and noting the use of improv as a teaching tool for oral presentation skills and “respond[ing] quickly and decisively to unanticipated challenges”); Peter Felsman, Sanuri Gunawardena & Colleen M. Seifert, *Improv Experience Promotes Divergent Thinking, Uncertainty Tolerance, and Affective Well-Being*, 35 THINKING SKILLS & CREATIVITY 100632 (2020), <https://www.sciencedirect.com/science/article/abs/pii/S1871187119302470?via%3Dihub> (discussing research showing positive effects as to divergent thinking, uncertainty tolerance, and well-being after only twenty minutes of participation in improv); Ankit Mehta & David Fessell, *Improvisation in the Time of a Pandemic: Field Notes on Resilience*, 14 J. GRAD. MED. EDUC. (1) 13–17 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8848893/> (discussing evidence linking improv training to the bolstering of resilience).
- ¹³ Syllabus for *Human Skills for Lawyers*, Professor Ben Bratman, University of Pittsburgh School of Law, Spring 2026 (on file with author) [hereinafter Syllabus 2026].
- ¹⁴ STUART BROWN, *PLAY: HOW IT SHAPES THE BRAIN, OPENS THE IMAGINATION, AND INVIGORATES THE SOUL*, 5–11, 101–02, 141–44 (2010) [hereinafter *PLAY*]; see also Stuart Brown, M.D., *The Power of Play at Every Age: The Case for Play—Adulthood*, WELL BEING J. (Sept. 3, 2025), <https://wellbeingjournal.com/the-power-of-play-at-every-age/#the-case-for-play-adulthood> (“The human brain can keep developing long after we leave adolescence—and play promotes that growth.”) [hereinafter *The Power of Play*].
- ¹⁵ See Kenneth Townsend, *Forming Good Lawyers*, 58 WAKE FOREST L. REV. 981, 988–89 (2023) (noting law students’ rates of anxiety and depression are higher than those of medical students and those of admitted law students who have not yet begun their studies).

group is high.¹⁶ Moreover, the resulting growth in human skills has value not just in the practice of law but in any pursuit, professional or personal.

Part II of this article discusses the background and importance of teaching human skills in law schools, supporting a case that basic human skills can and should be taught. Part III provides more background on improv and introduces the field of applied improv, a cross-disciplinary practice employed in a wide variety of settings, including in higher education. Applied improv is used most prominently in business and medical schools, but to date less frequently in law schools, where its embrace of embodied learning and play could provide great benefit.¹⁷ Part IV describes the course Human Skills for Lawyers in greater detail, noting, among other things, the importance to students of the “safe space” to take risks and be vulnerable. Part V suggests ways law schools can offer the benefits of applied improv to their students, providing a template for any law school in the country to introduce improv-related content, whether in a dedicated course or through workshops.

II. Human Skills in Legal Education

Human skills stand in contrast to what legal commentator Jordan Furlong describes as “technical” or “hard” skills—i.e., those subject to falling into “the vortex of generative AI.”¹⁸ Included among the technical skills are, for example, legal research, legal analysis, and document drafting.¹⁹ This is not to say that so-called robot lawyers will take over all technical skills; rather, it is to say that generative AI does and will play a far greater role supporting lawyers in their execution of technical skills than it will in their execution of human

¹⁶ See DEL CLOSE, CHARNA HALPERN & KIM JOHNSON, *TRUTH IN COMEDY* 37–38 (1994) (discussing the fundamental improv tenet of supporting one’s fellow performers to ensure that they always look good) [hereinafter *TRUTH IN COMEDY*].

¹⁷ See Liemer, *supra* note 7.

¹⁸ *The Rise of the “Human Skills” Lawyer*, *supra* note 3.

¹⁹ *Id.*

skills.²⁰ Indeed, the human skills are aptitudes that “separate us from machines,” borrowing Nicholas Carr’s words.²¹

Given the salience of human skills for lawyers in the age of generative AI, law schools need to step forward to provide students more training in those skills and opportunities to practice them and grow as young professionals. For the most part, law firms, corporations, and other legal employers are no longer offering robust mentorship-based training programs for their new hires out of law school, instead outsourcing much of the training.²² This places an onus on legal education. Setting aside any arguable gaps in law schools’ coverage of the still-important core technical skills (legal research, analysis, and writing), there remains the question of how much law school curricula and programs are covering the very important and different *human* skills.

Overall, American legal education does little directly to develop law students’ human skills,²³ notwithstanding the ABA’s experiential

²⁰ This article does not seek to discuss AI or technology directly, nor confront the question of whether and to what extent generative AI can or will replicate skills commonly thought to be human skills. To a certain extent, it already does. See *Stewardship and the Post-AI Legal Profession*, *supra* note 3. Rather, it accepts the premise that, regardless of the extent of generative AI’s impact on the practice of law, clients will continue to value human lawyers precisely for their human capacities. See *id.* If that premise turns out to be wrong, then we have far bigger matters—indeed, existential matters—to be concerned with.

²¹ CARR, *supra* note 1, at 207.

²² See, e.g., Rhys Dipshan, *Law Firms Are Turning to Online Training Platforms as Apprenticeship Model Falters*, LAW.COM (Oct. 17, 2024), <https://www.law.com/2024/10/17/law-firms-are-turning-to-online-training-platforms-as-apprenticeship-model-falters/> (exploring law firms’ failure to return to an apprenticeship model after the end of the COVID-19 pandemic); Jen Leonard & Bridget McCormack, Episode 28: *Redefining Legal Training with AI*, Am. Arbitration Ass’n: AI and the Future of Law (July 9, 2025), <https://www.adr.org/blog/ai-and-the-future-of-law-episode-28/> (exploring the training of lawyers “in an era when the traditional apprenticeship model is breaking down”).

²³ See Marni Goldstein Caputo & Kathleen Luz, *Beyond “Hard” Skills: Teaching Outward- and Inward-Facing Character-Based Skills to 1Ls in Light of ABA Standard 303(B)(3)’s Professional Identity Requirement*, 89 BROOKLYN L. REV. 809, 831 (2024) (discussing how the first year of law school pushes students to concentrate on “hard” skills and sideline the “soft” skills); Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 153 (2012) (noting that the first-year curriculum in law schools “continues to emphasize cognitive-analytical skills with virtually no attention to relationship and communication skills such as listening, counseling clients, or interviewing”).

learning requirements.²⁴ Scholars have bemoaned law schools' failure to develop students' core communication skills, including listening²⁵ and empathy,²⁶ and research supports that law school tends *not* to foster resilience or a growth mindset in its students.²⁷ Legal education's emphasis remains on absorption of legal doctrine and the learning of technical skills (e.g., legal analysis, legal research, document drafting).²⁸

To be sure, at least some of the human skills addressed most prominently by applied improv (and this article)—listening, speaking, awareness and interpretation of nonverbal communication, empathy, adaptability, resiliency, creativity, and collaboration—are implicated in representational work within externships and clinics.²⁹ Overall, however, legal education requires minimal dedicated attention to the

²⁴ ABA Standard 303(a)(3) directs that schools must require students to complete “one or more experiential course(s) totaling at least six credit hours.” Standards and Rules of Procedure for Approval of Law Schools, ABA (2025–2026),

https://www.americanbar.org/groups/legal_education/accreditation/standards/standards-rules/ [hereinafter ABA Standards]. Experiential courses include simulation courses, law clinics, or field placements (externships), as defined in Standard 304. But these requirements only touch the surface of the “profoundly physical, embodied, integrated activity” of lawyering. See Marchegiani, *supra* note 7. Lawyers “negotiate in real time, think on their feet during client emergencies, and maintain authority in high-stakes meetings where body language, clarity, and presence matter as much as legal analysis. The lawyer who thrives in this environment is[] . . . the one who can walk into a room (physical or virtual), read the dynamics, adjust their communication style, deliver sound advice, and persuade through authentic human connection.” *Id.*

²⁵ Hamilton, *supra* note 23, at 145; *see also* Gustafson et al., *supra* note 11, at 3–4.

²⁶ Newell, *supra* note 9, at 69.

²⁷ Sue Shapcott, Sarah Davis & Lane Hanson, *The Jury Is In: Law Schools Foster Students' Fixed Mindsets*, 42 LAW & PSYCH. REV. 1, 28 (2017–2018).

²⁸ *See* Marchegiani, *supra* note 7.

²⁹ Through the client-centered approach, clinical legal education has a rich history of prioritizing client-facing human skills, including empathy, *see generally* Stephen Ellmann, *Empathy and Approval*, 43 HASTINGS L.J. 991 (1992); Katherine R. Kruse, *Engaged Client-Centered Representation and the Moral Foundations of the Lawyer-Client Relationship*, 39 HOFSTRA L. REV. 577 (2011), and practical judgment, *see generally* Mark N. Aaronson, *We Ask You to Consider: Learning about Practical Judgment in Lawyering*, 4 CLINICAL L. REV. 247 (1998). Communicating with clients, interviewing them, counseling them—these are all tasks calling for mindful execution of several human skills. Of note here, however, is that many students graduate from law school without participating in a clinic at all. Hamilton, *supra* note 23, at 154.

wide range of human skills relevant to the practice of law both inside and outside the courtroom.³⁰ Additional coverage of human skills beyond externships and clinics would typically be limited in scope, arising in law school courses or programs covering broader topics. Examples would include courses and programs on leadership,³¹ client counseling, negotiations or other alternative dispute resolution, and trial advocacy or other oral advocacy, including oral argument³² in legal writing or lawyering skills courses.

The urgency for greater human skills training and practice is borne out by data concerning the childhood experiences of those in the age range of most current law students.³³ Most students coming to law school today lived their adolescence in an era of smartphones and social media, and in the not-too-distant future most will have lived their entire lives in that era. Compared with their predecessors, today's entering law students have spent much more time interacting with screens than with people.³⁴ Given that fundamental human skills are largely interpersonal or social in nature, it stands to reason that

³⁰ See Marchegiani, *supra* note 7. To be sure, ABA standard 302 requires establishment of learning outcomes including competency in oral communication and in "other professional skills needed for competent and ethical participation as a member of the legal profession." Standard 302, ABA Standards, *supra* note 24. But the "other professional skills" may be "determined by the law school." Interpretation 302-1. They "may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation." *Id.* One human skill that legal education does address directly through curricular or programmatic offerings is cultural fluency. In compliance with ABA Standard 303(c), law schools have instituted a variety of courses and programs providing the required "education to law students on bias, cross-cultural competency, and racism." Standard 303(c), ABA Standards, *supra* note 24.

³¹ For more details on leadership courses in law schools, see *Section on Leadership*, Ass'n of Am. Law Sch., <https://www.aals.org/sections/list/leadership/>.

³² While ABA Standard 302 requires establishment of learning outcomes in oral communication skills, no specific type or content of instruction is required. ABA Standards, *supra* note 24.

³³ See generally JONATHAN HAIDT, *THE ANXIOUS GENERATION* (2024); JEAN M. TWENGE, *IGEN: WHY TODAY'S SUPER-CONNECTED KIDS ARE GROWING UP LESS REBELLIOUS, MORE TOLERANT, LESS HAPPY—AND COMPLETELY UNPREPARED FOR ADULTHOOD—AND WHAT THAT MEANS FOR THE REST OF US* (2017).

³⁴ See HAIDT, *supra* note 33, at 32–34, 120–21 (citing and discussing a 2015 study showing significant increases in screen time among teens and a 2020 study showing a precipitous decline in time spent with friends among those ages 15–24); Twenge, *supra* note 33, at 69–77 (citing and discussing other similar studies).

many students are arriving in law school with underdeveloped human skills.³⁵

Finally, a discussion of coverage of human skills in legal education is incomplete without addressing mental health. Management of one's mental health is fairly categorized as a human skill, and it is also implicated by an ABA standard.³⁶ But mental health is an area where more work is apparently still needed, as law students continue to exhibit very high rates of anxiety and depression.³⁷ Despite wellness initiatives designed to meet ABA Standard 303(b)(3), law school remains an inherently stressful and high-pressure environment.³⁸ Likewise, the legal profession presents its own inherent stresses and pressures, leading to high rates of anxiety, depression, and substance abuse among practicing lawyers.³⁹

III. Applied Improv

Applied improv is an “umbrella term widely used to denote the application of theatre improvisation (theories, tenets, games, techniques, and exercises) beyond conventional theatre spaces to foster the growth and/or development of flexible structures, new mind-sets, and a range of inter- and intrapersonal skills required in today's . . . world.”⁴⁰ Other identified benefits include “personal

³⁵ See Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 44–57 (2018) (discussing data showing that members of Generation Z, born between 1995 and 2010, are generally slower to “grow up” and are “saturated with technology,” factors that hinder their learning).

³⁶ ABA standard 303(b)(3) requires schools to provide substantial opportunities for “the development of a professional identity” and then elaborates in Interpretation 303-5 that development of a professional identity involves, among other things, “well-being practices.” ABA Standards, *supra* note 24.

³⁷ See David Jaffe, Katherine Bender & Jerome M. Organ, “It’s Okay to Not be Okay”: The 2021 Survey of Law Student Well-Being, 60 U. LOUISVILLE L. REV. 439, 453–69 (2021) (discussing law students’ increasing rates of depression, anxiety, substance abuse, and other mental health problems). In the broader population encompassing future law students, rates of depression among teenagers have increased dramatically since 2010. HAIDT, *supra* note 33, at 37.

³⁸ See Townsend, *supra* note 15, at 988–89; Shapcott et al., *supra* note 27, at 6.

³⁹ See Jarrod F. Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 VILL. L. REV. 361, 364, n.10 (2020) (citing numerous sources).

⁴⁰ DUDECK & MCCLURE, *supra* note 5, at 1.

development, team building, creativity, innovation, and meaning.”⁴¹ Applied improv’s earliest uses were within the fields of human and organizational development,⁴² but, in one iteration or another, applied improv exercises are used today in business, community service, education, government, health care, science, law, and other disciplines.⁴³

A. The Core Elements of Applied Improv

The ten core elements of applied improv, as identified by experts in the field from around the world, are

- 1) Making your partner look good
- 2) “Yes, and”
- 3) Atmosphere of play
- 4) Curious listening
- 5) Complete acceptance
- 6) Flexibility/Spontaneity
- 7) Focus on the here and now
- 8) Risk taking
- 9) Personal awareness/mindfulness
- 10) Balance of freedom and structure⁴⁴

Item one on the list, “Making your partner look good,” is fundamental to building trust and breaking down barriers (e.g., self-consciousness, introversion, etc.) to participation in improv exercises.⁴⁵ People who do improv together, whether in a performance setting or applied setting, must collaborate and work as a team. In an improv performance, if someone on the team is struggling on stage, other members of the team come to their “rescue” in a manner that remains faithful to the scene and the reality that has been constructed.⁴⁶ In applied improv, when one person steps forward to participate in some manner in an exercise, that person has made themselves vulnerable. The goal of others in the group

⁴¹ *What is Applied Improvisation?*, Applied Improvisation Network, <https://www.appliedimprovisationnetwork.org/what-is-applied-improvisation->.

⁴² DUDECK & MCCLURE, *supra* note 5, at 7–9.

⁴³ *See id.* at 1.

⁴⁴ *What Is Applied Improvisation?*, *supra* note 41 (linking to PDF of a study conducted in 2014).

⁴⁵ *See* TRUTH IN COMEDY, *supra* note 16.

⁴⁶ *See id.* at 38.

immediately becomes to support that person and ensure that they look good. This means that at least one other member of the group should also step forward to participate in a supportive manner that accepts and builds on whatever initial reality the first person has created. And the remaining members of the group will lend their support, either by ultimately stepping in to participate themselves or by simply observing, encouraging, and admiring, never judging.⁴⁷

Before going onto the stage, improv performers will often say to one another, “I’ve got your back,” and literally tap one another’s backs when doing so.⁴⁸ That is the defining ethos of improv and applied improv.⁴⁹

Item two on the list, “Yes, and,” reminds applied improv participants of the fundamental tenet of improv—saying “yes” to the presented reality and then adding to it. Some improv beginners misunderstand “yes, and” as an obligation to agree with whatever a scene partner says. But disagreeing can sometimes be fully consistent with “yes, and.”⁵⁰

More to the point for the purposes of applied improv, “yes, and” transcends agreement or *disagreement* with what another person has said. In an improv exercise, after Participant A⁵¹ says a certain something to Participant B, what matters most is that B’s response naturally carries the scene forward by building on what A has said. Framed in the context of law practice, how does Lawyer B carry the conversation forward after Lawyer A begins a negotiation session by making a monetary settlement offer that Lawyer B perceives as unreasonably low? Even following “yes, and,” Lawyer B certainly cannot agree to the offer. Rather, Lawyer B builds on the fact that an offer is on the table, perhaps identifying it as a good jumping-off point

⁴⁷ See *id.*

⁴⁸ This has been my own experience performing on several different teams.

⁴⁹ See Matt Williams, *6 Lessons From Improv That Apply To Life*, MEDIUM (Jan. 16, 2019), <https://medium.com/@mattwilliamscreative/6-lessons-from-improv-that-apply-to-life-5c8d510d2993>. (“Before a show, it’s customary for every player to look at each other square in the eye and say, ‘I’ve got your back.’”); see generally TRUTH IN COMEDY, *supra* note 16.

⁵⁰ Imagine a scene in which Performer A looks around his surroundings, sighs nervously, and says, “I just hate these giant home improvement stores. They’re so overwhelming.” Performer B embraces “yes, and” in this scenario by accepting the created reality—the two characters are in a home improvement store, and the other character does not like home improvement stores—and then building on it. Performer B’s character can like or even love home improvement stores, perhaps saying, “But the ceiling fans are so cool, Jake. Just give me ten minutes with them.”

⁵¹ The use of “Participant” in lieu of “Performer” is intentional, denoting the context of *applied* improv.

and avoiding a dismissive or judgmental reaction that might alienate Lawyer A or even bring the session to an unsatisfactory end.

Items 4 (curious listening), 5 (complete acceptance), 7 (focus on the here and now), and 9 (personal awareness/mindfulness) on the list of applied improv elements reflect how applied improv calls on participants to fully immerse themselves in the moment and suspend disbelief. Items 3 (atmosphere of play), 6 (flexibility/spontaneity), and 8 (risk taking) highlight the important role that openness to vulnerability plays in successful applied improv. All participants should strive to suspend judgment of themselves and others to create an environment in which play, spontaneity, and risk taking are possible.

Item 10 on the list (balance of freedom and structure) provides useful context for the entire undertaking of applied improv. Effectively executed, a session of applied improv exercises gives participants freedom to play and to grow, but always within a supportive and affirming structure.

B. Current Use of Applied Improv in Business and the Legal Profession

Applied improv has established a significant foothold within the corporate world, as numerous private consultants and improv theaters market corporate improv sessions to businesses to help employees build their creativity, collaboration skills, and leadership skills.⁵² One prominent example is Second City Works, the corporate training arm of the famous Second City Theatre in Chicago, Toronto, and New York City, which has been retained by a wide variety of businesses, including several prominent and large corporations.⁵³

Various articles in assorted online journals exhort the benefits of improv for lawyers,⁵⁴ though, by all appearances, law firms and

⁵² See Sam Sanders, *Can Improv Comedians Make a Living? Yes, in Your Office*, N.Y. TIMES (Jan. 25, 2025),

<https://www.nytimes.com/2025/01/25/business/corporate-improv-comedians.html>. For individual examples, see, e.g., Business Improv, <https://businessimprov.com/> and The Second City Works, <https://www.secondcity.com/second-city-works>.

⁵³ The Second City Works, *supra* note 52.

⁵⁴ See, e.g., Peter B. Bensinger, Jr., *How Improv Can Improve Your Legal Skills*, ABA (Oct. 13, 2023),

https://www.americanbar.org/groups/young_lawyers/resources/tyl/professional-development/how-improv-can-improve-your-legal-skills/; Zarina Hora, *Learning Improv Can Help Lawyers*, Held2gether: Improv for Life (Jan. 19, 2021), <https://www.held2gether.com/learning-improv-can-help-lawyers-by-zarina-hora/>; Allison Wolf, *Five Tips from Improv Theatre for*

lawyers pursue professional improv training to a lesser extent than those in the corporate world.⁵⁵ There are, of course, many parallels between improvisational performance and trial advocacy, making trial lawyers a natural target audience for improv classes.⁵⁶ However, lawyers in other practice areas seek out improv and recognize its many benefits as well.⁵⁷

Busy Legal Professionals, SLAW (June 9, 2014), <https://www.slaw.ca/2014/06/09/five-tips-from-improv-theatre-for-busy-legal-professionals/>; Justine Gottshall, *Improv Makes Me a Better Lawyer*, LAW360 (Apr. 10, 2025), <https://www.law360.com/articles/2302796>; Bull Garlington, *How Learning Improv Gives Lawyers an Edge*, ATTORNEY AT WORK (July 6, 2017), <https://www.attorneyatwork.com/learning-improv-lawyers/>.

⁵⁵ Law firms and lawyers do not seem to be a significantly sized market for improv training. Second City Works, for example, identifies its major clients on its website, and none of them is a law firm. The focus is rather on Fortune 1000 companies. The Second City Works, *supra* note 52. For examples of theaters and CLE providers marketing to lawyers, see *Beyond the Objection: How Improv Workshops Can Sharpen a Lawyer's Edge*, New York Improv Theater (Apr. 16, 2025), <https://newyorkimprovtheater.com/2025/04/16/beyond-the-objection-how-improv-workshops-can-sharpen-a-lawyers-edge/>; *How Improv Skills Can Be a Game-Changer for Attorneys*, Washington Improv Theater (Feb. 9, 2022), <https://witdc.org/news/improv-skills-for-attorneys/>; Sharon Geller, *Improv for Lawyers: A Funny Thing Happened on the Way to Arbitration—Not Your Typical CLE*, http://www.sharongeller.com/improv_lawyers.php; Legal Improv—Lawyer Skills Training Program (CLE), <https://legalimprov.com/>; Grier Ferguson, *Attorney Starts Venture to Help Lawyers Through Improv*, BUSINESS OBSERVER (Oct. 5, 2018), <https://www.businessobserverfl.com/news/2018/oct/05/jennifer-strouf-improv4lawyers-attorney-improv-lawyers/>.

⁵⁶ See Steven Lubet & Thomas Hankinson, *In Facetiis Veritatis: How Improvisational Comedy Can Help Trial Lawyers Get Some Chops*, 7 TEX. REV. ENT. & SPORTS LAW 3 (2006) (discussing the parallels between long-form improvisational performance and trial advocacy premised in the principle of “constructed stage reality”); Amy Johnson Conner, *Improv Training Can Improve Your Trial Skills*, LAWYERS WEEKLY USA, <https://www.improventures.com/press/lawyers/index.html> (quoting several trial lawyers who have taken improv classes).

⁵⁷ See James B. Perrine, *How Improv Comedy Improved My In-house Counsel Skills*, ACC DOCKET (Sept. 12, 2022), <https://docket.acc.com/how-improv-comedy-improved-my-house-counsel-skills>; Hora, *supra* note 54.

C. Current Use of Applied Improv in Higher Education

Education scholars have studied the learning benefits of using improv in the college classroom and have identified numerous benefits, including the promotion of deep learning and collaborative learning.⁵⁸ Not surprisingly, then, teachers have employed applied improv in several different settings within higher education for many years. Reliable data on the extent of usage in different disciplines is not available, but internet searches and a review of published scholarship indicate, for example, that many business schools⁵⁹ and executive leadership programs⁶⁰ use improv in the classroom to one extent or another.

Perhaps the most extensive use of applied improv in higher education is in medical schools. Numerous clinical professors of medicine and other academics in medicine have written about their use of improv in the medical school classroom to assist students in developing patient interaction skills.⁶¹ Moreover, it is common

⁵⁸ See Berk & Trieber, *supra* note 12, at 36–39.

⁵⁹ See *The Leaders of Tomorrow Will Shape the Future of the Workplace*, Business Improv, <https://businessimprov.com/partnerships/university/> (discussing collaborations with dozens of different MBA programs, executive management programs, and other undergraduate and graduate programs in the United States and throughout the world) [hereinafter Business Improv University Partnerships]. In addition, many business schools run their own improv-based offerings. See, e.g., Acting for Business, Course Number 45895, Carnegie Mellon University Tepper School of Business, <https://www.cmu.edu/tepper/programs/courses/45895.html>; Sabrina Skacan, *Improvisation Exercises Teach Leadership Development in Spring Course*, USC Marshall School of Business (Dec. 19, 2024), <https://www.marshall.usc.edu/posts/improvisation-exercises-teach-leadership-development-in-spring-course>; Faculty Profile: Dan M. Klein, Stanford School of Business, <https://www.gsb.stanford.edu/faculty-research/faculty/dan-m-klein> (faculty biography of Dan M. Klein, Lecturer in Management at Stanford School of Business, who “teaches improvisation full time”).

⁶⁰ See, e.g., *Zicklin Executive MBA Students Improve Leadership Skills with Improv*, Baruch College Zicklin School of Business (June 23, 2025), https://zicklin.baruch.cuny.edu/zicklin_news/zicklin-executive-mba-students-improve-leadership-skills-with-improv/; *Business Improv—Think on Your Feet in the Workplace*, University of Texas at Austin Center for Professional Education, <https://professionaled.utexas.edu/s/course/a1Kcs000000BIUrEAO/busin-ess-improv-think-on-your-feet-in-the-workplace>.

⁶¹ See, e.g., Katie Watson, *Perspective: Serious Play: Teaching Medical Skills With Improvisational Theater Techniques*, 86 ACAD. MED., 1260, 1260–65 (2011), <https://journals.lww.com/academicmedicine/Fulltext/2011/10000/Perspe>

practice in medical schools in the United States for students to practice their patient communication skills in simulated settings with trained standardized patients (SPs).⁶² By the very nature of their role in taking on the characteristics of a real patient in a simulated interview, SPs are improvising and facilitating an improv exercise for the medical student conducting the interview.

Applied improv is such an integral part of medical education that Northwestern University's Medical Humanities and Bioethics Program offers train-the-trainer workshops for individuals to learn methods for bringing medical improv back to their home institutions.⁶³ The goal of the medical improv program at Northwestern is to "establish and maintain the highest standard of quality for the curricular content, teaching, research, and implementation of medical improv."⁶⁴

As for the law school classroom, applied improv does make a showing, though not to the extent it has entered the medical school or business school classroom.⁶⁵ Faculty at a handful of schools have offered, and in some cases continue to offer, courses specifically on improv skills for lawyers.⁶⁶ One of those courses, Human Skills for

ctive Serious Play Teaching Medical Skills.23.aspx; Donald A. Misch, M.D., *I Feel Witty, Oh So Witty*, 315 J. AM. MED. ASS'N 345 (2016), <https://jamanetwork.com/journals/jama/article-abstract/2484343#>; Ari Hoffman et al., *Improving Medical Student Communication Skills Through Improvisational Theatre*, 42 MED. EDUC. 537 (2008), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2597306/>; Evonne Kaplan-Liss, M.D., M.P.H. et al., *Teaching Medical Students to Communicate with Empathy and Clarity Using Improvisation*, 93 ACAD. MED., vol. 93, 440 (2018), <https://pubmed.ncbi.nlm.nih.gov/29059072/>; Robert Shochet, M.D. et al., "Thinking on My Feet": An Improvisation Course to Enhance Students' Confidence and Responsiveness in the Medical Interview, 24 EDUC. FOR PRIMARY CARE 119 (2013).

⁶² See Octavia L. Flanagan & Kristina M. Cummings, *Standardized Patients in Medical Education: A Review of the Literature*, CUREUS J. MED. SCI., SCIENCE (July 17, 2023), <https://www.cureus.com/articles/167496-standardized-patients-in-medical-education-a-review-of-the-literature#!/> (noting that only eight of 195 accredited medical schools in the United States do not advertise the use of SPs in their online marketing and web pages).

⁶³ *Upcoming Workshops*, Medical Improv (2026), <https://www.medicalimprov.org/upcoming-workshop>.

⁶⁴ *Medical Improv*, <https://www.medicalimprov.org/>.

⁶⁵ A prominent provider of improv training in higher education lists only one law school among more than three dozen schools with which it works. See Business Improv University Partnerships, *supra* note 59.

⁶⁶ See Nora Smith, *A New Pitt Course Is Using Improv to Build More Confident, Empathetic Lawyers*, PITTWIRE (Oct. 4, 2023), <https://www.pittwire.pitt.edu/pittwire/features-articles/improv-law-course> (referencing Applied Improv for Lawyers, taught by the author at

Lawyers, is discussed in more detail below.⁶⁷ Professors at other schools have incorporated improv lessons and exercises into classes on advocacy,⁶⁸ oral argument,⁶⁹ negotiation,⁷⁰ and leadership.⁷¹

D. The Case for More Applied Improv in Law Schools

Research specifically on the learning benefits of improv supports that participating in even a single improv session can have positive effects for participants—promoting tolerance of uncertainty, divergent or creative thinking, and general well-being.⁷² Ongoing participation certainly has the potential to provide even greater

Univ. of Pittsburgh School of Law); Adjunct Law Faculty, Drexel University Thomas R. Kline School of Law, <https://drexel.edu/law/faculty/adjunct/> (referencing Improvisation for Lawyers taught by adjunct professor Sharon Geller at Drexel University Thomas R. Kline School of Law under entry for Sharon Geller); Syllabus for Lawyers as Effective Communicators (on file with author) (first-year elective previously taught by Clinical Professor Olwyn Conway at Ohio State University Moritz College of Law); Michael Murphy, Clinical Professor of Law, Ohio State University Moritz College of Law Faculty Directory, Michael Murphy, Clinical Professor of Law, <https://moritzlaw.osu.edu/michael-murphy> (faculty biography indicating work in improvisation and courses previously taught at Duke University School of Law).

⁶⁷ See *infra* Section IV.

⁶⁸ See Angelo Lavo, *Arizona Law Students Use Improv Comedy to Loosen Up, Listen Up*, James E. Rogers College of Law (May 17, 2017), <https://law.arizona.edu/news/2017/05/arizona-law-students-use-improv-comedy-loosen-listen>.

⁶⁹ See Deborah L. Borman & Dana Hill, *Freeze! Using Theatre Improvisation Techniques to Practice Oral Argument*, *The Law Teacher*, Fall 2012 (May 1, 2012), <https://ssrn.com/abstract=2049523>. The author has also employed improv exercises for oral argument training of his first-year students in Legal Analysis & Writing.

⁷⁰ See Jeffrey Krivis & Brian Breiter, *Whose Trial Is It Anyway? Using Improv to Help Lawyers 'Present' More Effectively*, 28 ALTS. TO HIGH COST LITIG. 105, 107 (2010) (discussing “Improvisational Mediation and Negotiation” course at Pepperdine University School of Law); John M. Lande, *Lessons from Teaching Students to Negotiate Like a Lawyer*, 15 CARDOZO J. CONFLICT RESOL. 1, 4–23 (2013) (discussing use of improv-based simulations in a negotiations course at the University of Missouri School of Law).

⁷¹ Marsha Nagorsky, *Learning Leadership, One Improv Game at a Time*, University of Chicago Law School (July 10, 2012), <https://www.law.uchicago.edu/news/learning-leadership-one-improv-game-time>.

⁷² See Felsman et al., *supra* note 12 (discussing a study in which participants engaged in a single twenty-minute session of improv).

benefits, helping participants to be better listeners, more conscious of nonverbal communication, more empathetic, more comfortable with taking risks and speaking in front of others, more resilient, and better able to work as part of a team.⁷³

As a pedagogical tool, applied improv is a form of embodied learning, which studies show to have a positive effect on student learning performance, even at the university level.⁷⁴ Indeed, most improv exercises involve not just verbal interaction with others but also active bodily movement.⁷⁵ Accordingly, applied improv would be categorized as high-level and active embodied learning, empirically shown to be the most beneficial for student learning.⁷⁶ Moreover, improv embraces play, which is backed by research as an essential and effective vehicle for growth and learning—and not just for children.⁷⁷

The effectiveness of improv in applied settings arises in significant part from the grounded and relationship-based nature of improv performance as an art.⁷⁸ One of the most revered figures in improvisational theater, Del Close, wrote that laughter should not even be the purpose of an improvisational performance but rather a “side effect of attempting to achieve something more beautiful, honest, and truthful.”⁷⁹ Indeed, the humor in exemplary improvisational performance comes not from a performer’s conscious effort to be funny but rather from “[h]onest discovery, observation, and reaction.”⁸⁰ As a grounded improv scene plays out, as characters

⁷³ See sources cited *supra* note 12; see also Kaplan-Liss, *supra* note 61 (examining the use of improv to teach medical students to communicate with empathy).

⁷⁴ See Liu, *supra* note 6 (noting that, while the greatest positive impact occurs with high school students, embodied learning has a positive impact even at the university level).

⁷⁵ See *infra* Appendix describing several improv exercises.

⁷⁶ See Liu, *supra* note 6. Legal education, of course, does not include a significant amount of embodied learning, as highlighted by the very nature of most physical classroom spaces in law schools. See Marchegiani, *supra* note 7.

⁷⁷ See PLAY, *supra* note 14; *The Power of Play*, *supra* note 14. The lack of play in the overwhelming majority of law school classes seems a fact that, if relevant in litigation, could perhaps qualify for judicial notice under Fed. R. Evid. 201(b)(1) (a fact “generally known”).

⁷⁸ This statement holds true more for long-form improv than it does for a somewhat different category of improv, short-form, which is more based in games and quick laughs, and which has been popularized by the television program *Whose Line Is It Anyway?* See Lubet & Hankinson, *supra* note 56, at 1, 3 (discussing the differences between long-form and short-form improv).

⁷⁹ TRUTH IN COMEDY, *supra* note 16, at 24–25 (1994).

⁸⁰ DUDECK & MCCLURE, *supra* note 5, at 5–6.

react in the moment to whatever happens, the authenticity and vulnerability of those characters can and frequently do reveal deeply funny moments.⁸¹ The resulting laughter is “more organic to character and relationship.”⁸²

For an improv performance to succeed and elicit organic laughter from an audience, the performers need to listen carefully to one another to understand the reality and constructively take part in expanding it. Likewise, they need to communicate clearly, both verbally and nonverbally, to help their fellow performers listen and understand. Performers need to empathize with and understand the circumstances of both their fellow performer and the character that their fellow performer is portraying within the constructed reality. They also need to adapt swiftly to whatever happens in the scene and be resilient enough to stay in the moment when something doesn’t go quite right, such as when someone inadvertently contradicts an earlier established aspect of the reality. However, there are not really any mistakes in improv, just moments to accept and build on—and to find humor from.⁸³

At its best, applied improv extracts the core skills that performers employ to achieve that hilarious improv performance and then targets those skills through assorted low-stakes exercises and games for participants. There is often laughter from the group, for the same reason that there is often laughter from the audience at a well-executed improv performance. But, more importantly, there is skill building, there is confidence building, and there is professional and personal growth.

IV. Human Skills for Lawyers at the University of Pittsburgh School of Law

Human Skills for Lawyers is a two-credit, graded, upper-year course with an enrollment cap of twenty students that I first offered at the University of Pittsburgh School of Law as Applied Improv for Lawyers in fall 2023.⁸⁴ I modeled the course to some extent on the course Lawyers as Effective Communicators, a first-year elective previously taught by Professor Olwyn Conway at Ohio State

⁸¹ See Lubet & Hankinson, *supra* note 56, at 4–5 (discussing how the process of “revelation” can create humor in long-form improvisational performance).

⁸² MICK NAPIER, *IMPROVISE: SCENE FROM THE INSIDE OUT* 87 (2004).

⁸³ See YES, AND, *supra* note 4, at 16 (“[B]y acknowledging the mistake and incorporating it into the narrative, something new and unexpected happens that makes the audience go wild.”).

⁸⁴ See Syllabus for *Applied Improv for Lawyers*, Professor Ben Bratman, University of Pittsburgh School of Law, Fall 2023 (on file with author).

University Moritz College of Law.⁸⁵ The class meets once per week for two hours.

The course focuses on helping students to develop and refine communication and social skills, including “listening, empathy, mindful presence and awareness of status, confidence and authenticity in verbal and nonverbal communication, adaptability, resiliency, and collaboration with others.”⁸⁶ The theme running through each week’s class is student participation in improv games and exercises—general warmups followed by more substantial exercises that implicate skill sets relevant to lawyering. Descriptions of several of the exercises used in the course appear in the Appendix.

The foundation of the course is a set of community practices, akin to ground rules, designed to create a safe space for student participation and risk taking.⁸⁷ The four core practices are (1) everyone participates (to the extent physically able); (2) everyone has one another’s back, meaning that they nonjudgmentally support one another and strive to make others look good; (3) everyone suspends disbelief and embraces “yes, and”; and (4) everyone embraces being average, not trying to be funny but rather to be grounded and authentic.⁸⁸ All students are asked to make a good-faith effort to adhere to these practices, thereby allowing for an environment in which students can more comfortably be vulnerable and embrace “failure,” as in a “failure” to be funny. When all students in the class strive to adhere to the community practices, there are no mistakes.

The bulk of the course is divided into three segments, each one loosely focused on a core lawyering task: (1) client relations and interviewing; (2) oral presentation and advocacy; and (3) negotiation. As part of the client interviewing segment, a standardized client (a trained SP from the University of Pittsburgh School of Medicine) visits the class for a series of exercises calling on each student to interact with the client and to observe classmates doing the same. As part of the oral presentation and advocacy segment, each student

⁸⁵ See Syllabus for *Lawyers as Effective Communicators*, *supra* note 66.

Professor Conway is now Associate Professor of Law at American

University Washington College of Law,

<https://www.american.edu/wcl/faculty/oconway.cfm>.

⁸⁶ Syllabus 2026, *supra* note 13.

⁸⁷ The idea of setting forth community practices in an applied improv course or session is drawn from Olwyn Conway, Associate Professor of Law, American University Washington College of Law, who previously taught *Lawyers as Effective Communicators* at Ohio State University Moritz College of Law. The four listed community practices are adapted from Professor Conway’s.

⁸⁸ See *supra* notes 78–82 and accompanying text (regarding the grounded and relationship-based nature of improv performance).

completes a five- to seven-minute presentation in front of their classmates in the student's chosen format of either a closing statement to a jury or an oral argument to a panel of judges. During the negotiation segment, which comes toward the end of the semester, students participate in more advanced improv exercises involving free-flowing dialogue akin to that which may take place during a negotiation session.⁸⁹

In advance of most classes, students read an assigned article or watch an assigned video and then submit a reflection paper. After warmup exercises, the class briefly discusses reflections on the week's assignment before proceeding into the week's featured improv exercises or other scheduled activity.

The first two classes of the semester are devoted largely to introduction to improv and getting acclimated to the unconventional nature of the course. After then proceeding through the three segments discussed above, the course wraps up with two classes devoted to student group presentations. Each student is assigned to a group, which creates and then demonstrates an improv exercise, explaining how it implicates core human skills for lawyers.

As a counterbalance to the cognitive pressures facing students in their other law school classes, the course covers almost no law and requires almost no legal analysis. Reading law and analyzing legal issues are technical skills, whereas the course is focused on *human* skills—more specifically, the embodied dimension of being a lawyer. Aside from the individual oral presentation, for which students are provided a single short precedent case and a straightforward fact pattern, none of the exercises or assignments concerns law.⁹⁰ For most exercises, the class is asked to identify a mundane prompt (e.g., a type of relationship or a particular venue) in order that the focus remains not on the subject (which sometimes remains unclear) but on the implicated human skills. In a similar vein, all assigned readings and reflection papers address core human skills (e.g., listening, empathy) or the relevance of improv to lawyering.

The course grade is based on class participation, written reflection papers, individual oral presentation, and the group project and

⁸⁹ One of the better exercises for this purpose is Park Bench. See *infra* description of exercise accompanying note 123.

⁹⁰ For the exercises involving interaction with the standardized client, the students are given some limited facts related to the client's circumstances. There are legal implications, of course, but students are asked not to do any legal research or legal analysis. Rather, they are given the basic legal context (e.g., there might be a potential fraud claim) and asked to prepare for establishing rapport with the client and gathering facts. The focus of the exercises themselves remains on the human skills implicated during client interactions.

presentation. Given the nature of improv, especially its encouragement of risk taking and acceptance of failure, grading an improv course is a chancy proposition. However, offering a graded course not only lends legitimacy to its goals but also encourages more meaningful participation. As the students are informed at the first class, grading is based not at all on talent as a performer but rather on good-faith commitment to the premises of improv, to full participation, and to timely completion of all assigned work.

Student evaluations from two offerings of the course (fall 2023 and fall 2024) reflect positive feedback focused mainly on three themes: creation of a safe environment for taking risks and being vulnerable, exposure to the practical aspects of being a lawyer, and growth in confidence and communication skills. Representative comments included:

The promotion of a classroom atmosphere that was very open/accepting and which accepted the totally strange but hilarious skits that sometimes came up, was valuable for really allowing people who might be more introverted to just jump in.⁹¹

[The professor] created a safe and inclusive learning environment that allowed us to try things out and learn from them.⁹²

I think that I'll inevitably forget the holding of any particular case but the foundational skills I have learned here will be kept and improved for the rest of my life.⁹³

[The course] broadened my sense of what all the non-legal lawyering skills are, as well as my sense of confidence that I can be a lawyer in the practical sense, as well as the academic.⁹⁴

This class has taught me a lot about my nonverbal and verbal communication style. I am much more aware now that I was before about my posture and what that conveys, active

⁹¹ Teaching Survey for Applied Improv for Lawyers, —LAW 5157—Applied Improv for Lawyers—1010—(Practicum), at 7 (Dec. 21, 2023) (Ben Bratman) (on file with author) [hereinafter Teaching Survey 2023].

⁹² Teaching Survey for Applied Improv for Lawyers, —LAW 5157—1010—(Practicum), at 6 (Jan. 21, 2025) (Ben Bratman) (on file with author) [hereinafter Teaching Survey 2024].

⁹³ Teaching Survey 2023, *supra* note 91, at 7.

⁹⁴ *Id.* at 5.

listening, and empathy. I feel like I have learned skills to improve these communication skills, which has also helped me feel less nervous in similar situations outside of class.⁹⁵

I feel much more confident in public speaking . . . Now, I can rehearse less and adapt as I go, which makes my speaking feel more natural and authentic. Additionally, if I make a mistake, I can recover much more easily and stay on track.⁹⁶

V. An Improv Template for Law Schools

Toward the important goal of investing in the human skills of future lawyers, legal education can and should embrace the use of applied improv to whatever extent possible. As revealed by the experience at the University of Pittsburgh School of Law, many of today's law students stand to benefit greatly from improv—in building confidence and comfort with taking risks, refining core communication and social skills, and finding a needed respite from the stresses and pressures endemic to law school.

However, teaching through improv exercises is a considerable departure from traditional law school teaching, particularly podium teaching, and many law school faculty might, as a result, be uncomfortable or unsure about the prospect. Improv embraces a bit of vulnerability; improv embraces failure; improv embraces silliness. Perhaps most importantly, facilitating improv exercises calls for what might be termed a nonhierarchical teaching structure, whereby students do not make “mistakes” or get anything “wrong.” Any choice that a student makes within an exercise, apart from breaching the community practices,⁹⁷ should be respected and honored as a valid choice. Accordingly, a leader of improv exercises serves as part teacher and part facilitator.

There is another aspect of applied improv in law school that may be alienating to many law professors: it is usually best to avoid law as a subject or setting.⁹⁸ Any improv exercise for law students should prioritize staying fully present and engaged, allowing for focus on fundamental human skills and not on law or a legal setting. Studying or thinking about law per se is a cognitive load and a stressor already available in abundance from a conventional law school class. In the

⁹⁵ *Id.*

⁹⁶ Teaching Survey 2024, *supra* note 92, at 6.

⁹⁷ See *supra* note 87 and accompanying text (discussing community practices).

⁹⁸ See *supra* Section IV (discussion of the avoidance of law as a subject in the Human Skills for Lawyers course).

context and setting of applied improv, it can function more as a distraction.

A. Schools Lacking Faculty with Improv Experience or Inclination

Presuming there are no faculty, full-time or adjunct, with the experience and inclination to teach an improv course and/or workshops for students, a school can consider one or more of the following approaches: (1) retaining an improv professional from a local theater to run one or more workshops for students; (2) incentivizing for faculty the retention of SPs from an affiliated or nearby medical school to conduct simulated exercises for students; (3) offering to faculty some foundational training in leading basic improv exercises (i.e., a train-the-trainer workshop), either by retaining a local improv teacher or inviting a professor who teaches improv at another school to conduct a visiting workshop.

1. Retaining an Improv Teacher from a Local Theater to Run Workshops

Though online lists of improv theaters and performing troupes are inevitably dated and incomplete, improv theaters and experienced performers exist all over the United States and the world.⁹⁹ Since improv training sessions generally produce revenue, improv theaters, of course, tend to market and provide such sessions.¹⁰⁰ Offering even just one workshop to interested students each academic year can provide real benefits¹⁰¹ and also signals a school's commitment to bettering their students' human skills.

2. Incentivizing Retention of Standardized Patients by Faculty for Simulated Learning

Research supports that medical students become more comfortable with patient interactions through simulated encounters with trained SPs than they do through other teaching modalities,

⁹⁹ See, e.g., Improv Groups in the United States, [improvwiki, https://improvwiki.com/en/list_of_improv_groups_from/united%20states/us](https://improvwiki.com/en/list_of_improv_groups_from/united%20states/us); List of Improvisational Theater Companies, Wikipedia, https://en.wikipedia.org/wiki/List_of_improvisational_theatre_companies.

¹⁰⁰ See *supra* notes 52–55 and accompanying text.

¹⁰¹ See *supra* note 72 and accompanying text.

including virtual ones.¹⁰² It is not surprising, then, that most medical schools in the United States use SPs,¹⁰³ thereby incorporating improvisational learning into their curriculum.

When it comes to client interactions, as well as interpersonal communication more broadly, law students should be no different. Most law schools will either be at a university with a medical school or within a short distance of a medical school. A law school can reach out to the SP program at a medical school to explore the use of trained SPs as standardized “clients” or in some other capacity to expose law students to core interpersonal communication skills in a simulated professional setting. By way of example, the University of Pittsburgh School of Medicine works with several other schools on campus, including the law school and the School of Education, to provide SPs for simulated learning.¹⁰⁴

3. Arranging for Training of Faculty in Leading Improv Exercises

Various schools have law school faculty with improv or theater backgrounds, some of whom have taught improv to law students in one form or another.¹⁰⁵ Some may be available to lead a visiting workshop akin to a teaching talk. Faculty attending a workshop of this ilk would then be well positioned to use improv exercises in their classroom or even lead improv workshops for interested students.

B. Schools Having Faculty (or Staff) with Improv Experience and Inclination

At a school with faculty or staff experienced in improv (or trained under the third approach above) and inclined to facilitate improv exercises for students, options include facilitating exercises within an existing course, offering a dedicated improv-based course, and leading workshops. Apart from courses, selected workshops can provide valuable improv experience for interested students. As one example, in conjunction with the professional development or career services office, an improv facilitator might offer a workshop for students focused on networking skills. Other options include a program during orientation for first-year students; a program on oral presentation skills, offered in conjunction with a student moot court

¹⁰² Flanagan & Cummings, *supra* note 62.

¹⁰³ *Id.*

¹⁰⁴ *Partner with Us*, School of Medicine, Office of Medical Education, Univ. of Pittsburgh, <https://www.omed.pitt.edu/sp-program/Partner-With-Us>.

¹⁰⁵ See *supra* notes 66–71 and accompanying text.

organization; and a program on developing a professional identity, offered to comply with ABA standard 303(b)(3).¹⁰⁶

Whether in a class or workshop, the facilitator should ensure the creation of a safe space for participation and vulnerability. One effective method is to establish some ground rules, better framed for students as “community practices.”¹⁰⁷ These can be phrased in different ways, but a representative set of fundamental practices includes agreement to participate, suspend judgment (of oneself and others), suspend disbelief through “yes, and,” and embrace being average and “failing.” Humor is a side benefit of applied improv, not its goal.¹⁰⁸ When every student does their best to adhere to these practices, there are no mistakes in improv, and applied improv can be a successful undertaking.

Playing improv games in a small group (twelve to twenty) is best, given the participatory nature of the activity. However, there are certainly ways to conduct meaningful improv exercises with larger groups, including by breaking into smaller subgroups for execution of exercises, followed by discussion of the experience among all students. Regardless of the size of the group, what is most important is creating a safe space for taking small risks, making it possible for all to participate.

One challenge inherent in using improv exercises in an existing course is that some students may be very uncomfortable with the idea of vulnerability—whether due to introversion, self-consciousness, anxiety, or other reasons. (For workshops and elective courses, only interested students would attend or enroll, thereby preempting this problem.) Under extenuating circumstances, a student could be excused from participation, but because of the importance of full participation by all of those present, the ideal arrangement is to take steps to mitigate the discomfort for the student. One option is to select exercises appropriate for small subgroups of students, thereby preventing the uncomfortable student from having to “perform” in front of the whole class. The facilitator could instead seek a small number of volunteers to demonstrate the exercise before dividing students into subgroups. After the subgroups complete an exercise, the facilitator can lead a discussion among the whole class about the experience.

In the Appendix are descriptions of selected warmup exercises and several more substantial exercises. Each exercise includes a discussion of its areas of focus, usually referencing relevant human

¹⁰⁶ See *supra* note 36.

¹⁰⁷ See *supra* notes 87-88 and accompanying text (discussing community practices in the Human Skills for Lawyers course).

¹⁰⁸ See *supra* notes 78-82 and accompanying text (regarding the grounded and relationship-based nature of improv performance).

skills. While all improv exercises call on certain baseline communication skills (listening, for example, is important in almost all exercises), many exercises depend most prominently on one or two in particular.

VI. Conclusion

As technology evolves and generative AI takes on greater roles within the practice of law, lawyers, as always, need to be as adaptable as possible, saying “yes, and” by leaning into their uniquely human skills. Comparably, law schools can and should say “yes, and” to the importance of human skills for future lawyers by embracing applied improv for their students. Law students with experience participating in even a small amount of improv will be more confident and skilled communicators, collaborating creatively with others, adapting to the unexpected with equanimity, and rebounding swiftly and humbly from mistakes.

Through exercises like those used by improvisational performers, conducted in a low-stakes and supportive environment (unlike the environment in many a conventional law school classroom), improv frees up law students to find their authentic self and build and refine several fundamental skills central to success in the practice of law or in any other pursuit. As law students and young lawyers face not just the distractions of technology but also significant mental health challenges, improv also serves as a crucial source of play and laughter. The exercises introduced in this article can be employed at any law school to help law students become better speakers, better listeners, more empathetic, more collaborative, more creative, and more adaptable and resilient in the face of so much uncertainty, technological and otherwise.

Appendix

In the list below are descriptions of representative (1) warmup exercises; (2) foundational exercises, focused on general adaptability and resiliency; (3) nonverbal exercises, focused more on empathy and interpreting nonverbal communication; and (4) verbal exercises (oral presentation, storytelling, and interpersonal dialogue), focused more on speaking and listening. The categories are presented, roughly, in order from easier to more challenging, as are the individual exercises within each category. However, any improv facilitator may perceive a given exercise's level of difficulty differently, and each should choose exercises to suit their preferences and learning goals. The listed exercises represent just a small sampling of what can be used in applied improv. Other exercises, and variations on many of the listed exercises, are available from assorted written and online sources.¹⁰⁹

Especially in an educational setting, after completing an exercise, it is beneficial for the facilitator to lead some discussion during which participants reflect on the challenges of doing the exercise and its value. A suggested focus for discussion is included with each exercise.

1. Warmup Exercises

Improv players use a wide variety of exercises to warm up, focused to one extent or another on loosening up the mind or loosening up the body. Described below are some warmup exercises that might be suitable for a group of law students or lawyers: a very basic energy-passing exercise, *Zip Zap Zop*; a name-focused exercise allowing participants to get to know one another, the *Name Game*; and an exercise reinforcing the principle of "yes, and," *Repetition*.

Zip Zap Zop (beginner)

Zip Zap Zop is a widely used and simple energy-passing game in which the entire class stands in a circle. Someone is selected or volunteers to begin by pointing at another student in the circle and saying "zip." That student then points to another and says "zap," and then that student to another, saying "zop." The pattern continues for some minutes until the facilitator sees that everyone has participated at least a few times.

Areas of Focus: Students should be encouraged to keep the game going, even if there is confusion over which student someone is pointing to, or even if someone says "zap" when they should have said

¹⁰⁹ See, e.g., YES, AND, *supra* note 4, at 215–24; *Beginner's Improv Exercises*, Hoopla!, <https://www.hooplainpro.com/improv-exercises-games-formats.html>.

“zop.” Discussion afterward can focus on these two miscues, both of which are very likely to happen. The first presents an opportunity to discuss the value of eye contact as well as being deliberate and intentional in one’s actions. The second presents an opportunity to highlight a so-called mistake that is harmless and even possibly funny.

Name Game (beginner)

In the *Name Game*, the entire class again stands in a circle. Each student is asked to come up with an adjective starting with the same letter as their first name and a physical gesture of some sort to go with it. For example, a student named Ben might choose “baffled Ben” paired with a shrugging motion with their arms and shoulders. Someone is selected or volunteers to begin by introducing themselves by adjective, name, and gesture. Each student then does their own introduction in succession around the circle. It is best to repeat, going around the circle one additional time. Then go around the circle having all students together voicing and gesturing each student’s introduction. An additional iteration has one student voicing and gesturing another student’s introduction, which then prompts that student to do another student’s introduction, which then prompts that student to do another’s, etc.

Areas of Focus: This game is a straightforward way for students to introduce themselves in an applied improv setting. It also calls on students to listen and pay attention to learn other students’ names and be able to perform their introductions. Discussion afterward can focus on what aspects of the game presented challenges and how students approached those challenges. Remembering names and gestures typically comes up as a challenge.

Repetition¹¹⁰ (beginner/intermediate)

The exercise *Repetition* is usually completed with the entire class standing in a circle. One student is selected or volunteers to go first by saying a one-sentence statement on a mundane nonlaw topic. For example, “I walk five miles to school every day.” The next student in the circle then repeats exactly what the other student just said and adds a related statement that naturally follows. For example, “I walk five miles to school every day. My pace is getting faster and faster.” The third and each subsequent student repeats only what the immediately preceding student said. Therefore, the third might say,

¹¹⁰ Drawn from YES, AND, *supra* note 4, at 197–98.

“My pace is getting faster and faster. I am going to try out for the Olympic speed walking team.” The exercise should continue until each student has participated at least once. The facilitator should discourage the use of conjunctions (e.g., drawing on the above example, “I walk five miles to school every day, *and* my pace is getting faster and faster”). However, if students are inclined to use conjunctions to connect statements, the facilitator should insist on “and,” not “but.”

Areas of Focus: *Repetition* is fundamentally a “yes, and” exercise, in which each student says “yes” to what was just said—not literally but by repeating the statement—and then adds something that could naturally follow. As with other exercises, discussion can focus on what aspects of the exercise presented challenges and how students approached those challenges. Listening is an important aspect of this exercise, and students might find themselves thinking in advance of what they will say. That is typically not an effective strategy and one that probably impedes active listening. The prompting for what a student will say does not come until the student who goes immediately prior makes their statement.

2. Foundational Exercises—Adaptability and Resiliency

Ball Drop (beginner)

This exercise is played with all students standing in a circle. A student is selected or volunteers to begin by taking an imaginary ball of any size and throwing it to another student in the circle. The student to whom the imaginary ball is thrown should intentionally fail to catch it in some manner. All students in the group should then clap and cheer for the failure. This exercise calls for miming and physicality. The thrower should undertake all physical actions associated with taking a ball and throwing it in some fashion. The recipient should undertake some physical action reflective of a failure to catch the ball and then going to retrieve the ball from wherever it ended up. The ball is imaginary, but all players should proceed as if it were actually there.

Areas of Focus: *Ball Drop* is a very simple exercise that seeks to normalize failure and recovery from failure. “There are no mistakes in improv” is an oft-heard maxim, and *Ball Drop* reinforces that principle. Some students will act out rather elaborate or outlandish

versions of failing to catch the ball. Though such theatrics are not the main point of the exercise, they help further the broader goal of letting go and embracing vulnerability. Discussion after this exercise can touch on that point and on reactions to the exercise overall.

Take That Back¹¹¹ (beginner)

Students complete this exercise in breakout groups of three, though it is helpful first to demonstrate the exercise to all participants with three volunteers. Within each breakout group, two students will be conversants and one student will be the monitor or “human buzzer.” The two conversants begin a conversation about anything not law related. (If preferred, the facilitator can obtain a prompt of a word or phrase at the beginning to help conversants get started.) At occasional junctures of the conversation when one of the conversants has just finished speaking a line, the monitor should clap their hands and say, “take that back.” The conversant then has to replace the line they just uttered with something new that also fits in the conversation. If, for example, the conversation is about automobile accidents and one conversant initially says, “I always feel awful when I see an accident because I’m afraid someone got hurt,” and then the monitor claps and says, “take that back,” the conversant might say, “I always feel awful when I see an accident because I know it’ll make me late to wherever I’m going.” Depending on the context, the entire line may change or, as in this example, only part of it. After a few minutes, or after each conversant has had to come up with a new line on two occasions, the students should shift roles. There will be three rounds, so that each student serves as the monitor once.

Areas of Focus: *Take That Back* emphasizes verbal agility and adaptability, as well as tolerance of uncertainty, within interpersonal communication. It also implicates the challenges of focus and staying in the moment amid distractions—in this case, the potential that at any moment the monitor might interrupt. This exercise is particularly useful in helping students to build confidence in preparation for networking, which takes place in a social setting with distractions and interruptions. Discussion among all participants after the breakout groups reconvene can address how conversing students managed the awareness of the potential of interruption (i.e., concentrating and staying in the moment) and the actual interruptions (i.e., whether they struggled to think of another line, retained composure, etc.).

¹¹¹ Drawn from YES, AND, *supra* note 4, at 132–34.

Two Chairs (intermediate)

The exercise *Two Chairs* begins with everyone in a circle. The facilitator places two chairs (actual physical chairs) in the center in some unconventional arrangement. Two students come to the center where the chairs are and act out a scene of roughly six to eight lines of dialogue that somehow explains or justifies the arrangement of the chairs. (Because this is improv, the chairs do not necessarily need to be chairs within the reality of the scene.) The facilitator can call the end of the scene after less than a minute, at which point the two students rearrange the chairs into some different position of their choosing and return to the circle. Two new students then come to the center and perform a scene that explains or justifies the new arrangement of the chairs. That pattern continues until all students have taken a turn. Ideally, students should not be called on; rather, they should step forward of their own volition. During scenes, students may sit in the chairs or use them as props.

Areas of Focus: *Two Chairs* focuses on letting go of control of one's circumstances and adapting to whatever happens in the moment. Indeed, if two students come out at the same time, one will have to initiate the scene, and it will not be clear who that is going to be until the moment it happens. The exercise also implicates the "I've got your back" ethos of improv, as one student might step out while others hesitate. Someone else needs to step out to support their classmate who has taken the initiative and is feeling vulnerable. Finally, participants are challenged to be creative in coming up with circumstances that might be suggested by the positioning of the chairs. Discussion after completion of this exercise can focus on the challenges inherent in stepping out to participate and in coming up with a premise for the scene. Adapting in the moment can be challenging, and some students will instead want to come up with the perfect premise before stepping in. The latter is, of course, not the point of improv.

This exercise is marked as intermediate primarily because it asks individual students to place themselves in a vulnerable position in front of all the other students present. Those stepping into the middle of the circle to perform a scene have to engage in free-form dialogue with only the chairs as a prompt for the subject of the scene.

3. Additional Exercises—Nonverbal Communication

Numbers Only (beginner)

Students should perform this exercise in pairs in front of class. For each round, the facilitator should obtain a prompt from the class, such as a physical space (e.g., an office, a bowling alley, a home improvement store) or a relationship (e.g., colleagues, siblings, spouses). The two students then perform a scene in which they speak only numbers, as many as each thinks appropriate in any given moment as the two converse and interact. (A slightly more difficult version of this exercise calls on the students to proceed with the numbers in sequence, meaning that if one student said “five, six, seven,” the other would then need to start the responsive line with “eight,” and so forth.) Students should be encouraged to be active nonverbally—with expressions of emotion and with physicality, even object work (e.g., pretending to lift something or to type at a computer). The facilitator should call the end of the scene after one to two minutes and then lead a class discussion seeking to identify what the scene was about. If the prompt was a location, the discussion might initially focus on identifying the characters’ relationship to each other; if the prompt was a relationship, the discussion might initially focus on identifying where the characters were. After students who observed the round offer their perceptions, the two students who performed can chime in with their own intentions and perceptions.

Areas of Focus: *Numbers Only* is an accessible exercise that helps students to build the skill of reading nonverbal cues. There is not necessarily a right answer as to what any scene was about; indeed, each of the two conversants may have had different intentions or, in some cases, no particular intentions. Whatever a student’s conclusion is as to the gist of a scene, the key is to identify the nonverbal cues that lead to that conclusion. If two students—whether observers of the scene or participants in it—interpreted particular nonverbal behavior differently, the varying interpretations are worth exploration. Misreading a nonverbal cue can be a valuable point for discussion and learning. More broadly, discovering that nonverbal cues are often ambiguous and are often misinterpreted can be eye-opening.

Emotional Mirror/Gibberish Exchange (beginner/intermediate)

This exercise is also best completed in pairs in front of the whole group. In advance, the facilitator should identify assorted emotional states (e.g., angry, elated, surprised, frustrated, embarrassed, etc.) and create multiple slips of paper, each with one emotion on it.¹¹² One emotion is then distributed to each student, who may look at their emotion but should not share it with anyone else. For each round, two students (Participant A and Participant B) stand at the front of class facing each other. Participant A starts acting out their assigned emotion but limits any verbal communication to gibberish (made-up sounds that are not actual words). After watching for a few seconds, Participant B should start to match the emotion of Participant A by copying their nonverbal behavior (no need to match the spoken gibberish exactly). The goal there is not perfect mimicry but rather an effort to capture the essence of Participant A's emotion. After twenty to thirty seconds, the two students shift roles—Participant B acts out their different assigned emotion, and Participant A tries to copy that emotion. Note that the two students are not doing a scene as in the game *Numbers Only*; rather they are completing an exercise through which each is trying to convey an emotional state in one round and interpret the other's emotional state in the other round. Discussion follows the second round, focused on identifying the emotions of each student. The two participants should go first, each trying to guess the other's emotion and explaining what nonverbal cues led them to their guess. Students who observed the round can then chime in with their own observations before each participating student is asked to reveal their assigned emotion.

Areas of Focus: This exercise, like *Numbers Only*, focuses on reading nonverbal cues but more specifically focuses on reading emotions. More broadly, the exercise implicates empathy, especially

¹¹² So-called wheels of emotion or feelings are available from various websites. See, e.g., *The Feelings Wheel: Unlock the Power of Your Emotions*, Calm (Aug. 29, 2025), <https://www.calm.com/blog/the-feelings-wheel>; Hokuma Karimova, *The Emotion Wheel: What It Is and How to Use It*, Positive Psychology (Dec. 24, 2017), <https://positivepsychology.com/emotion-wheel/>; *Plutchik's Wheel of Emotions: Exploring the Feelings Wheel and How to Use It*, 6 Seconds: The Emotional Intelligence Network (Feb. 6, 2025), <https://www.6seconds.org/2025/02/06/plutchik-wheel-emotions/>.

when one student tries to copy the emotion of the other. Trying to immerse oneself in another's emotion can be challenging, and class discussion can focus on that challenge as illustrative of the difficulty of experiencing empathy. Students should be encouraged to identify the specific nonverbal cues that led them to guess a particular emotion. Again, it can be a valuable learning opportunity to explore what led to differing interpretations of a nonverbal cue.

Gibberish—Interpreting Conversation¹¹³ (intermediate)

Participants should be split into subgroups of three, with each subgroup taking turns in front of the class. If there are time constraints or a very large number of students overall, then each subgroup can disperse to a different part of the room to complete the exercise on its own at the same time as the other subgroups do. For each subgroup, two of its members have a conversation entirely in gibberish on some mundane topic suggested by the facilitator or a student. After each line of the conversation, the third member “translates” the gibberish, trying to interpret nonverbal cues, tone of voice, etc. Each subgroup should complete three rounds, with each of the three members serving as the translator once. Those having the conversation should be encouraged to adopt varying emotions and physicality. Each round should last one to two minutes.

Areas of Focus: This exercise calls on students to interpret nonverbal communication and to be more aware of their own nonverbal communication. Like the other exercises in this category, it also implicates empathy, as the translator is trying to understand the feelings of each conversant, and each conversant is trying to understand the feelings of the other conversant. Class discussion after each subgroup's performances should seek to draw out observations about both roles in the exercise—conversant and translator—from both the participants and observers. For the translator role, what were some of the nonverbal cues that informed or seemed to inform the translating choices? For the conversant role, what were the challenges inherent in reacting to both the nonverbal cues of the conversation partner and the translation provided, especially when the two did not seem to match up? As in the previous two exercises, discovery of instances in which participants apparently misread nonverbal cues

¹¹³ Drawn from YES, AND, *supra* note 4, at 206–07.

can be eye-opening and may lead to further reflection on the challenges of interpreting nonverbal communication.

This exercise is marked as intermediate because it requires students to pay close attention to two different people. Those students in the conversation must pay close attention to both their conversation partner and the translator. And, to come up with suitable verbal lines, the translator has to closely watch both conversants throughout the scene with essentially no down time.

Bus Stop¹¹⁴ (intermediate)

This exercise requires the facilitator to prepare in advance a list of assorted characters with basic human wants or needs—for example, a person going to an important job interview but running late. The facilitator should distribute one character description to each student in the class at the beginning of the session, but students should not reveal their assigned character to others. The facilitator should then select two students, or seek two volunteers, to go first in front of the class. Each student in the pair then performs as their respective character but only nonverbally, pretending to be at a bus stop and acting out their assigned character roles. The two students in the pair need not interact with each other. Both continue until someone from the class raises their hand and accurately guesses one of the characters. Once someone guesses accurately (or at least close to accurately) as to one student's character, another student in the class replaces the student whose character was guessed and begins acting out their different assigned character role. The exercise continues the same way until all students have participated.

Areas of Focus: Again, empathy and awareness/interpretation of nonverbal communication. As with *Emotional Mirror/Gibberish Exchange*, perhaps the aspect of this exercise that most implicates empathy is the challenge of embodying the character, which is analogous to taking on another person's perspective that presumably is not your own. Discussion after the exercise can focus on how students approached the challenge. Some might have drawn on their own life experiences, again analogous to a real-world effort to be

¹¹⁴ Drawn from Hannah B. Bayne & Awa Jangha, *Utilizing Improvisation to Teach Empathy Skills in Counselor Education*, 55 COUNSELOR EDUC. & SUPERVISION 250 (2016).

empathetic. Observing behavior and trying to guess a character identity also implicates empathy, given the importance of reading nonverbal cues to better understand what someone is feeling. As with other exercises in this category, observers should be encouraged in discussion to comment on what nonverbal cues prompted their guesses.

Bus Stop is marked as intermediate because empathy can be hard, especially in the context of trying to identify nonverbal behaviors that would match a certain emotion. The facilitator might want to intervene in a supportive way upon, after several guesses, observing students are failing to accurately identify the character trait of one of the students at the bus stop.

4. Additional Exercises—Verbal Communication (Oral Presentation and Storytelling)

Objection¹¹⁵ (beginner)

After a demonstration round using volunteers, *Objection* is performed in subgroups of three students, either in front of the whole class or as breakout groups, dispersing to different parts of the room. For each of three rounds, one student is speaking, one student is listening in anticipation of objecting, and one student is the judge. At the beginning of each round, the facilitator gives a prompt of some historical invention—e.g., the mechanical pencil or alarm clocks. Then the speaking student in each subgroup begins to tell a (usually fabricated) story of the invention. Whenever the listening student hears something that does not make sense, is contradictory, or otherwise merits an objection, they object and provide their argument to the judge as to why the speaker's story is flawed. The judge then either sustains or overrules the objection. If the objection is sustained, the objecting student becomes the speaker, taking over the story where it left off. The speaker then becomes the listener. If the objection is overruled, the speaker continues. After a few minutes, the facilitator can call the round. There should be three rounds in total so that each student serves as the judge in one round.

Areas of Focus: As it mimics a courtroom scene, *Objection* will be an accessible exercise for law students. It challenges students to speak extemporaneously and to be creative in doing so. It also emphasizes listening. Indeed, both presenting students need to follow the story

¹¹⁵ I was introduced to *Objection* by Olwyn Conway, Associate Professor of Law, American University, Washington College of Law.

because, at some point, each will have to take over exactly where the other left off. In discussion after the exercise, the facilitator should guide the students toward reflecting on the skills employed and the challenges faced, as opposed to the actual content of the presentations. One challenge for students possibly worthy of reflection is the challenge of staying in the moment and remaining focused on content that might seem trivial or become convoluted.

Mundane Oral Argument¹¹⁶ (beginner)

Participants should be divided into breakout groups, preferably of four students each, with each group dispersing to a different part of the room. In each of four rounds, one student acts as the advocate, and the other three as a panel of judges that selects some mundane preference for the advocate to argue for. The subject of the preference should not be law related or sensitive in nature. Examples of mundane preferences include using cloth napkins instead of paper ones, choosing pineapple as a pizza topping, filming yourself at the gym, eating oatmeal raisin cookies instead of chocolate chip, using Keurigs instead of drip coffee makers, etc. The advocate will then stand facing the panel and improvise a three-minute oral argument in favor of the preference while students on the panel interject with questions that challenge the advocate's argument, requiring the advocate to answer in the moment. After the argument concludes, the participants rotate so that each student has the chance to be the advocate. The panel of judges should select a different subject for each round.

In a second or subsequent iteration of *Mundane Oral Argument*, a facilitator may want to ask students playing the advocate to adopt and retain a professional posture, either at a lectern or as if at a lectern. Students tend to respond to the lighthearted nature of the subjects by adopting a more relaxed posture, as if in casual conversation. This has benefits in a first iteration of the exercise, allowing participants to ease into the exercise and keeping the stakes and pressure very low. Introducing greater structure and formality in a later iteration may help participants to better refine their posture, with the goal of exuding a more confident professional presence.

Areas of Focus: *Mundane Oral Argument* is a low-stakes exercise that makes each participant the center of attention as a speaker for one round. It also emphasizes listening in all rounds, either as the advocate fielding questions or as a member of the panel needing to identify relevant questions. While the subjects of the arguments are

¹¹⁶ Credit for *Mundane Oral Argument* goes to students Murphy DePompei, Sam Ellis, Jacob Evans, and Andrew Francis, who created and demonstrated this exercise for their group project in Applied Improv for Lawyers in Fall semester 2024.

silly, the overall experience mimics that of an appellate oral argument, a common component of a first-year or second-year legal writing or lawyering skills course. More broadly, as with *Objection*, the exercise calls on participants to speak extemporaneously and creatively in front of others while keeping their composure and to consistently pay attention and listen. In discussion after completing the exercise, students should be encouraged to reflect on the skills they had to employ, particularly when in the role of the advocate. Even on a mundane and inconsequential subject, answering questions on the fly requires some degree of confidence, not to mention creativity.

So, What You Are Saying¹¹⁷ (beginner)

This exercise is performed in pairs, preferably in front of the whole class. Participant A speaks a simple one-sentence statement (preferably in the third person and, again, preferably not law related), e.g., “My sister loves to go to baseball games.” Participant B responds first with, “so, what you are saying is” and then rephrases what Participant A said, trying to convey the same statement but without using any of the same words (e.g., “your female sibling adores attending a sporting event that is played on a diamond with a bat and ball”). The two students then shift roles. Participant B’s statement to Participant A need not be about a related subject. Alternatively, this exercise can be completed progressively from student to student around a circle—Participant A to Participant B, B to C, C to D, etc.

Areas of Focus: *So, What You Are Saying* is a listening and empathy exercise drawn from medical education, where it has been used to build students’ confidence in the patient interview setting.¹¹⁸ Whether a student succeeds in not using a single word that their classmate used is not the important point. Rather, the rephrasing component pushes students to process and understand more deeply what their classmate just said, and the requirement to first utter “so, what you are saying is” provides the time to do so. Discussion after the exercise can focus on the challenges of listening to and processing the statement, as well as the extent to which the rephrasing forced a deeper or even more empathetic understanding.

One-Word Story¹¹⁹ (beginner/intermediate)

This exercise can be completed with the entire class (ideally twenty or fewer) standing in a circle. The facilitator can also

¹¹⁷ Drawn from Robert Shochet et al., *supra* note 61.

¹¹⁸ See *id.*

¹¹⁹ Drawn from YES, AND, *supra* note 4, at 42–44.

participate. The facilitator obtains a prompt from the class—e.g., name of a person and their occupation or their weekend activity. One student volunteers or is chosen to begin a third-person story by stating the first word. The story then proceeds around the circle, one word at a time by each successive student in the group, until such time as the facilitator calls the end of the story—probably more than one revolution around the circle. Before beginning, the facilitator should alert students that sometimes a simple “glue” word, such as an article or a conjunction, will be the best choice.

Areas of Focus: More than anything else, *One-Word Story* is a listening exercise. Students who listen more effectively will stay in the moment, take in what other students are saying, and appreciate how the story develops before their turn to contribute a word arrives. In reality, at least some students will instead be thinking about what word to choose before their turn arrives. In discussion after the exercise, the facilitator can ask if anyone was thinking in advance of what word to say. Any students who acknowledge doing so can be asked to reflect on how that strategy served them. This exercise also emphasizes teamwork and collaboration. In that vein, it is worth discussing the extent to which the group told a coherent story, albeit without calling out any individual student for their choice of word. Students can benefit from reflecting on what attributes of the group effort contributed to more coherence or what attributes contributed to less.

String of Pearls¹²⁰ (intermediate)

Each round of this storytelling exercise should be completed with a subgroup of seven to ten students, though a slightly larger number can work as well. Depending on total number of students, each subgroup can perform in front of the class or complete the exercise within a breakout group consisting of two subgroups telling their respective stories to one another. For each round, first obtain from the class an opening line and a closing line of a story, preferably not law related. An example of a first line might be “One day, a stray dog came to my front door,” and an example of a closing line might be “So, I got a promotion at work.” The students in the subgroup then form a queue, all facing forward toward the audience. The first student and the last student in the queue should confirm they know their respective lines by repeating them once. Then the first student begins the story with the provided opening line. Each successive student in the middle then crafts a line that follows naturally from the one before it to move the story along toward the provided closing line. When the

¹²⁰ Drawn from YES, AND, *supra* note 4, at 191.

story reaches the end of the queue, the final student utters the provided closing line. The same subgroup should perform one additional round in a different order so that the students who spoke the provided lines are in the middle for one round.

In the provided example, hypothetically with eight students total, the lines from students in the middle might proceed as follows—

- It was a beagle with big floppy ears
- I took a picture of it with my phone and sent it to a friend
- That friend sent the picture to her husband
- Her husband happened to be the brother of my boss
- He sent the picture to his brother, my boss
- My boss moonlights as editor of a magazine about beagles and loved the picture

Areas of Focus: This exercise emphasizes listening and concentration, as well as teamwork. As with other storytelling exercises in which effective listening is crucial, thinking too much about a line before one's turn arrives can be counterproductive. As for teamwork, each student in the middle should be mindful of how their choice of line could affect the next student or students in the line or the coherence of the story. In discussion after the exercise, students can be asked to reflect on these and any other challenges inherent to the exercise and collaborative storytelling.

This exercise is marked as intermediate because participants in the middle of the queue must focus in two different directions. They must listen to the lines spoken before their turn while keeping in mind what needs to come after their turn: a coherent flow that leads naturally to the designated closing line. Also, at least in an iteration in front of the whole class, students are placed in a somewhat vulnerable position.

Directed Story¹²¹ (intermediate)

This storytelling exercise is best completed in subgroups of four students each. Each subgroup takes turns telling a third-person story while standing in a row in front of the class, with the facilitator facing the storytellers and serving as the director. To start, the facilitator obtains a set of prompts for the story from the other students in the class. One example would be the names of two travelers, a vacation destination, and a vacation complication. The class might offer up Claudette and Maurice, traveling to Paris, losing their luggage. The

¹²¹ I was introduced to *Directed Story* by Olwyn Conway, Associate Professor of Law, American University, Washington College of Law.

facilitator begins the exercise by pointing to one of the four storytellers, who then begins telling a story. At any point, the facilitator will point to another of the four storytellers, who will then take on the story, continuing from exactly where their partner left off. This cycle continues, with the facilitator moving in random order among the four in the subgroup, until declaring that the story is over—usually after about three minutes. Each remaining subgroup of students then completes the exercise in succession, with some reflective discussion between each round or after all rounds. The facilitator should obtain different prompts for the story topic in each round.

Areas of Focus: *Directed Story* implicates both speaking and listening skills under somewhat pressured circumstances. The important listening challenge, again, is to refrain from thinking about what to say next while one's fellow storytellers are speaking. As in discussion after other collaborative storytelling exercises, the facilitator should ask participants if they found themselves thinking in advance of what to add to the story next, and, if so, how they think doing so impacted their participation when their turn arrived. It is also helpful for students to reflect on the experience of speaking extemporaneously, with no notes and no lectern, in front of an audience. Explicit recognition of the support of their fellow students—both their fellow storytellers and the audience—can be valuable.

This exercise is marked as intermediate mainly because it places students in a vulnerable position, asking them to extemporaneously deliver what amounts to a free-form monologue, which is of indeterminate length, at a moment's notice.

One-Minute Rant¹²² (intermediate)

This exercise is completed in pairs in front of the class. For each pair, one student chooses any topic about which they want to complain and then rants about it in front of the class for up to one minute. (The facilitator should caution students not to choose sensitive or seriously controversial topics or name any specific people in the rant. Examples of topics might include tardiness, holding meetings over Zoom, hot and humid weather, slow drivers, etc.) Then the other student in the pair introduces their ranting classmate to the entire class—not by mentioning the specific content of the rant, but rather by a positive value that underlies it. For example, if a student named Ben rants about people who are late to appointments, the

¹²² Drawn from Sarah Mahoney, *No Joke: The Serious Role of Improv in Medicine*, AAMC (Jan. 13, 2020), <https://www.aamc.org/news/no-joke-serious-role-improv-medicine>.

student with whom Ben is paired might say, “Everyone, this is Ben. Ben is a person who respects other people’s time and greatly values taking the fullest advantage of the time we are afforded in life.” The two students would then swap roles and repeat the exercise.

Areas of Focus: Listening and empathy primarily, but also a bit of analytical thinking. The role of the listening student in this exercise is challenging. Some students will seek to summarize or restate the gist of the rant; others will editorialize or express their agreement or disagreement with the rant. The facilitator should gently remind students of their charge: to distill from the rant an underlying value or values of a positive nature that seem to be informing the content of the rant. Reframing in this way requires empathy; the listener is trying to take on the feelings of the ranting classmate and to understand what underlying value(s) would motivate someone to have those feelings. Reflective discussion after all students have completed the exercise can focus on the challenges faced by the listeners. Being empathetic—i.e., understanding or feeling what is motivating the other person—can be difficult, especially when the ranting student and the listener do not have shared experiences. Reframing the nature of the complaint to one that asserts a positive value also requires analytical skills and an awareness of perspective, both of which are human lawyering skills that can be highlighted.

This exercise is marked as intermediate because of the challenging task faced by the listener to identify an underlying positive value in the moment right after listening to the other student’s rant.

Park Bench¹²³ (intermediate)

This exercise, which plays out like a negotiation, is best completed in pairs in front of class. The facilitator should set up three chairs side by side and label them the park bench. Each pair performs a scene within specified parameters. Participant A’s character begins the scene sitting on the park bench with the intent of remaining there, and Participant B’s character begins the scene by approaching the bench with the intent of persuading Participant A’s character to stand up and leave with them. To start the scene, the facilitator should ask the class to suggest how the two people know one another (e.g., as co-workers, siblings, professor and former student, former high school classmates). After receiving that prompt, the two students should act out the scene. There are no additional restrictions, except that Participant B may not touch Participant A as part of the effort to get them to stand up and leave. Each student in the scene should embrace

¹²³ I was introduced to *Park Bench* by Olwyn Conway, Associate Professor of Law, American University, Washington College of Law.

“yes, and” and other tenets of improv such that Participant A’s character might very well be persuaded at some point to stand up and leave. The scene ends either when Participant A’s character stands up to leave with Participant B’s character or when, after a few minutes, the “negotiation” reaches some sort of impasse.

Areas of Focus: In addition to focusing on several core communication skills (listening, oral persuasion, interpreting nonverbal cues), this exercise also requires participants to confront differences in status as well as shifting power dynamics. One character may possess greater status simply because of who they are, and either character may try to convey greater status by what they say or what they do. Even seemingly small aspects of physicality, such as one character’s standing and the other’s sitting, can affect perceptions of status. Similarly, *Park Bench* is a good vehicle for exploring how individuals gain influence or power within a one-on-one conversation, as well as how they cede it. Discussion after each round should seek the reactions of the two participating students and then the observing students as to all these dynamics. For learning purposes, it is particularly valuable for participating students to reflect on what they did or did not do that may have led to a shift in the power dynamic or to the outcome of the scene. For example, why was a particular statement or action persuasive or not persuasive to the scene partner?

Park Bench is marked as intermediate mainly because, unlike other exercises listed, it calls for free-form dialogue. In other words, it is the closest thing to an actual scene in an improv performance. Taking part in *Park Bench* might not be as daunting as doing an exercise involving free-form *monologue* (e.g., *Directed Story*). However, *Park Bench* works better when participants have already developed at least some familiarity and comfort with the fundamentals of improv performance.