

## A Law Student Prepares: Bringing Theater into a Law School Curriculum

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*“Oh sure, acting . . . is the equivalent of going to law school, so why would you need that?”<sup>1</sup>*

The stage is set as each side gives an opening monologue trying to persuade the audience through compelling storytelling. As the audience silently looks on, questions regarding credibility and who to believe run through their heads. As the clock ticks on, the audience must decide if the defendant is guilty or liable or whether an innocent victim is caught in the clutches of the legal system. This may sound like the makings of a live theatrical drama, but it is what goes on in courtrooms every day. Theatricality touches every attorney in some way, so the question becomes: why aren't more law schools adjusting curriculum to address this?

It is true that law school curricula is intentionally designed to be rigorous, with specific American Bar Association (ABA) standards that must be met to ensure ABA-approved schools are compliant with providing students a “sound [legal] program.”<sup>2</sup> According to these standards, law schools must seamlessly blend “doctrine, theory, skills, and legal ethics,” to create new lawyers in a matter of three years.<sup>3</sup> However, despite the requirements that the ABA places on approved schools,<sup>4</sup> the ABA standards fail to develop a student's “emotional intelligence.”<sup>5</sup> The

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1. *The Grinder* (Fox television broadcast Sep. 29, 2015).

2. *Frequently Asked Questions*, AM. BAR ASS'N, [https://www.americanbar.org/groups/legal\\_education/resources/frequently\\_asked\\_questions.html](https://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions.html).

3. Am. Bar Ass'n, Section for Legal Educ. & Admissions to the Bar, *Chapter 3: Problem of Legal Education* 15, 17 (2018-2019), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf).

4. Unless noted, the term “schools” shall refer to ABA-approved schools.

5. Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education*, 18 CLINICAL L. REV. 283, 318 (2011); Anne Scully-Hill et al., *Beyond Role Playing: Using Drama in Legal Education*, 60 J.F. LEGAL EDUC. 147, 149 (2010) (citing Peter Reilly, *Teaching Law Students How to Feel: Using Negotiations Training to Increase Emotional Intelligence*, 21 NEGOTIATIONS J. 301, 313 (2005)). Emotional intelligence is the ability to identify and manage your own emotions and the emotions of others. *What is Emotional Intelligence*, PSYCHOLOGY TODAY, <https://www.psychologytoday.com/us/basics/emotional-intelligence> (last accessed Apr. 15, 2019).

standards also do not require law schools to address the practical skills of being a lawyer. For example, schools rarely teach on the necessary social skills like quickly connecting with clients and factfinders. Nor do the ABA requirements provide guidance on the finer details of presenting a compelling argument which set the best litigators apart from others such as, body language, verbal cues, and blocking.<sup>6</sup> That may be because unlike traditional doctrinal law courses, taught through case law or rote memorization, emotional intelligence and the finer details of lawyering can only be developed and learned experientially.<sup>7</sup>

#### I. THE IMPORTANCE OF INTEGRATING THEATER INTO LAW SCHOOL CURRICULUM

*“You’re a lawyer, you can’t just be an actor!”<sup>8</sup>*

At first glance, acting and litigating seem to be an opposite ends of the spectrum as actors “lie”<sup>9</sup> while lawyers deal facts, however there are stark similarities between the two. These similarities highlight the importance of integrating theater training into a law school curriculum.

From performance such as line delivery and blocking to costumes, the courtroom “presents a dynamic” that closely resembles theater.<sup>10</sup> Actors and lawyers engage in much of the same activities when prepping for their respective “performances” and they oftentimes employ the same methods when persuading their audiences.<sup>11</sup> The only difference between what an actor does on stage and what a lawyer does in a courtroom, is that an actor brings their audience into a fabricated world,<sup>12</sup> while a lawyer has an ethical duty to avoid making misrepresentations or falsehoods.<sup>13</sup> Yet, at the

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6. See Amy Blakely & Joy Radice, *Courtroom Drama: Professor Uses Theater to Help Teach Law Students*, UNIV. OF TENN. KNOXVILLE (Aug. 26, 2014), <https://news.utk.edu/2014/08/26/courtroom-drama-professor-theater-teach-law-students>.

7. See William S. Blatt, *Teaching Emotional Intelligence to Law Students: Three Keys to Mastery*, 15 NEVADA L. J. 464, 470 (2015); Damien T. Munsinger, *How Acting Informs the Practice of Law*, LAW PRACTICE TODAY (Sept. 15, 2014), <http://www.lawpracticetoday.org/article/acting-informs-practice-law>.

8. Allie Pape, *The Grinder Recap: RIP, Mitchard Grinder*, VULTURE (Dec. 2, 2015, 1:58PM), <http://www.vulture.com/2015/12/grinder-recap-season-1-episode-9.html> (quoting *The Grinder* (Fox television broadcast Dec. 1, 2015)) [emphasis added].

9. DAVID KRASNER, AN ACTOR’S CRAFT THE ART AND TEACHING OF ACTING 169 (2012).

10. See Laurie L. Levenson, *The Theater of the Courtroom*, 92 MINN L. REV. 573, 581 (2008).

11. See Kathleen B. Havener, *Method Acting for Lawyers*, 31 LITIG. 48, 49 (2005).

12. See Zelda Finchandler, *The Lying Game*, AM. THEATRE (Jan. 1, 2005), <https://www.americantheatre.org/2005/01/01/the-lying-game>.

13. See MODEL RULES OF PROF’L CONDUCT r. 3.3(a)(1)-(3) (2018).

end of the day both professionals are paid to convince their audiences through creative and persuasive story-telling.<sup>14</sup>

### 1. *Authenticating the Role*

Just as an actor knows that an authentic performance focuses on *how* they say their lines, not what their lines are,<sup>15</sup> a lawyer must be seen as authentic in the eyes of the court.<sup>16</sup> This concept of “authenticity” permeates both acting and litigating. Authenticity requires an emotional connection that generates a more meaningful and impactful responses from their audiences.<sup>17</sup> A lawyer who presents their case in a believable and “real” manner and talks *with* their audience will be more effective than a lawyer who talks *to* their audience.<sup>18</sup> The key to authenticity is not just about *what* is being communicated, but rather *how* the words are conveyed.<sup>19</sup>

Another contributing factor to authenticity is listening. During a performance, actors actively listen to what other characters are saying in order to react accordingly.<sup>20</sup> In the courtroom, active listening is an important tool for a lawyer because it forces them not to just *hear* the words being said, but actively engage with the statements both verbally and through body language.<sup>21</sup> For example, during a direct or cross exam a lawyer must listen to what a witness is saying and be cognizant of juror reactions and nonverbal cues. This allows the attorney to tailor themselves to address the needs of the listener, be it the witness, jury, or judge.<sup>22</sup> By actively listening to opposing counsel, a lawyer can respond by filling in gaps, missed or bad facts, and use the statements to help strategize the case.<sup>23</sup>

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14. Jean Schiffman, *Playing Lawyers*, BACKSTAGE (Dec. 10, 2010 3:59 PM), <https://www.backstage.com/advice-for-actors/acting-teachers/playing-lawyers>.

15. See Havener, *supra* note 11, at 49.

16. See *id.*

17. See *id.*; Hon. Margaret McCurdo, *QLS Modern Advocate Lecture Series: Advocacy Inside and Outside the Courtroom* 1, 5 (2017); Heidi K. Brown, *Quiet Lawyering: Authenticity as Power*, 86 J. KAN. B. ASS'N 29, 29–30 (2017).

18. See Nelly N. Khouzan, *Do's and Don't's of Talking to the Jury*, 2 A.B.A GEN. PRACTICE SOLO & SMALL FIRM DJV 20 (1998).

19. See Levenson, *supra* note 10, at 581.

20. See Craig Wallace, *3 Reasons Why Listening Is the Most Important Part of Acting*, BACKSTAGE (July 18, 2014, 10:00 AM), <https://www.backstage.com/advice-for-actors/backstage-experts/3-reasons-listening-most-important-part-acting>.

21. See Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. L. REV. 145, 158 (2012); George Khoury, *Active Listening for Lawyers: 3 Important Tips*, FINDLAW (Oct. 3, 2018 2:58 PM), <https://blogs.findlaw.com/strategist/2018/10/active-listening-for-lawyers-3-important-tips.html>.

22. See Levenson, *supra* note 10 at 621.

23. See Sander N. Karp & Teresa L. Hock, *Effective Opening Statements From the Plaintiff's Perspective*, AM. BAR ASS'N (2003), <http://apps.americanbar.org/labor/lel-aba-annual/papers/2003/karp.pdf>; see Hamilton, *supra* note 21, at 153.

## 2. *Rehearsing for a Win*

It is common knowledge that actors must rehearse, rehearse, rehearse before taking the stage to bring consistency to their role and to “develop” his character.<sup>24</sup> A lawyer must also rehearse their opening and closing statements and movement before performing in court.<sup>25</sup> Just as a professional stage play with a paid audience would not be well received if the actors were constantly looking at their scripts and fumbling through movements, neither is an attorney in the eyes of the jury, court, and opposing counsel.

A lawyer’s opening and closing statements are the first and last thing a trier of fact hears, and they are viewed as one of the most critical aspects of a case.<sup>26</sup> As the law can be very complex, and jurors do not always have a clear understanding of the law, a lawyer must rehearse to “fill in any gaps” of her statements.<sup>27</sup> A lawyer should also be off-script when delivering these statements to avoid appearing unprepared or uninterested, and prevent a trier of fact from becoming bored.<sup>28</sup>

Maintaining the jury’s interest can be achieved through movement, blocking, and body language. Just as actors embody<sup>29</sup> a character to create an engaging performance,<sup>30</sup> a lawyer must do the same. Since “[h]alf of the human brain is devoted directly or indirectly to vision,” a lawyer’s non-verbal cues and physicality are essential to influence and persuade a jury.<sup>31</sup>

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24. Joanne Baron & D.W. Brown, *Why Rehearsal Should be Valued & Respected*, BACKSTAGE (Mar. 22, 2017 10:00 AM), <https://www.backstage.com/advice-for-actors/backstage-experts/why-rehearsal-should-be-valued-respected>; VIOLA SPOLIN, *THEATER GAMES FOR REHEARSAL A DIRECTOR’S HANDBOOK* 85 (1985).

25. See Mark Wilson, *Should Lawyers Take Acting Classes?*, FINDLAW (Dec. 19, 2014 8:45 AM), <https://blogs.findlaw.com/strategist/2014/12/should-lawyers-take-acting-classes.html>; see also Levenson, *supra* note 10, at 622.

26. See J. ALEXANDER TANFORD, *THE TRIAL PROCESS: LAW, TACTICS AND ETHICS*, 147 (3d ed. 2002); Ken Lopez, *6 Reasons the Opening Statement is the Most Important Part of a Case*, A2L CONSULTING (Dec. 15, 2011 1:15 PM), <http://www.a2lc.com/blog/bid/50588/6-reasons-the-opening-statement-is-the-most-important-part-of-a-case>; *Differences Between Opening Statements & Closing Arguments*, U.S. COURTS, <http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/differences> (last accessed Apr. 15, 2019); Munsinger, *supra* note 7.

27. See Carrie L. Christie, *Beginning and Ending*, 5 GA. B.J. 9, 10, 13 (1999); Karp & Hock, *supra* note 23, at 5.

28. See *id.* at 10.

29. Use their body to express non-verbal communication and emotion, or to emphasize something they are saying.

30. See Gary Genard, *5 Acting Techniques for Greater Stage Presence in Public Speaking*, GENARD METHOD, at 3 (Jan. 31, 2017), <https://www.genardmethod.com/blog/5-acting-techniques-for-greater-stage-presence-in-public-speaking>; see also *Acting with the Body*, THEATREFOLK, <https://www.theatrefolk.com/freebies/acting-with-the-body.pdf> (last accessed Apr. 15, 2019).

31. *MIT Research - Brain Processing of Visual Information*, MIT NEWS (Dec. 19, 1996), <http://news.mit.edu/1996/visualprocessing>.

### 3. *The Costume*

Cinderella without her rags is just a girl, the Phantom without his mask holds no mystery, and Evan Hansen without his arm cast would remain a nobody.<sup>32</sup> Costumes are a vital component to any play or musical because “they help tell the story . . . and they immediately tell the audience something about what’s going on.”<sup>33</sup> In other words, “[c]ostumes communicate the details of a character’s personality to the audience,”<sup>34</sup> so it is important that a lawyer “dress like a lawyer.”<sup>35</sup> Just as an actor’s costume sets the tone of his character, a lawyer’s dress is a courtroom’s first impression of her.<sup>36</sup> Lawyers must be mindful that what they wear has impact on the court, and if they are not dressed appropriately, first impressions can be hard to overcome.<sup>37</sup>

### 4. *The Performance Through Storytelling and Voice*

Two of the most critical characteristics of a great performance are the ability to tell a story and the use of vocal intonation.<sup>38</sup> An actor’s intonation, timbre, volume, and inflection all add to the authenticity of the performance and the believability of the story they are telling.<sup>39</sup> Actors tell the story of the play or musical they are performing, and it is necessary that each individual performer know when to draw focus and when to step back.<sup>40</sup>

Knowing when to be the focus of the attention and to cede focus to another is something that lawyers must also know when to do in the courtroom. In the instance of direct witness testimony, a lawyer should be cognizant that she is not making herself the center of attention, but instead,

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32. See RICHARD RODGERS & OSCAR HAMMERSTEIN, *CINDERELLA* (1957); see ANDREW LLOYD WEBER ET AL., *THE PHANTOM OF THE OPERA* (1986); see STEVEN LEVENSON ET AL., *DEAR EVAN HANSEN* (2015).

33. Kerry Hishon, *How Costumes Affect Your Costumes*, THEATREFOLK (Sept. 23, 2017), <https://www.theatrefolk.com/blog/how-costumes-affect-your-character>.

34. Deborah Noodleman Landis, *Costume Design*, ACAD. OF MOTION PICTURE, ARTS & SCI. 1, 2 (2014).

35. Gary J. Ross, *Dress Like a Lawyer*, ABOVE THE LAW (June 23, 2015 12:39 PM), <https://abovethelaw.com/2015/07/dress-like-a-lawyer>.

36. See *id.*

37. See Christie, *supra* note 27, at 13.

38. See Andrew Hearle, *The Importance of Voice Work*, STAGE MILK DRAMA SCHOOL (Aug. 24, 2017), <https://www.stagemilk.com/importance-of-voice-work-for-actors>; see also Risa Bramon Garcia & Steve Braun, *Storytelling Your Way to the Callback*, BACKSTAGE (June 11, 2014 10:00 AM), <https://www.backstage.com/advice-for-actors/backstage-experts/storytelling-your-way-callback>.

39. See Nathan Hurwitz, *The Role of Voice & Sound in Theatre*, STUDY.COM, <https://study.com/academy/lesson/the-role-of-voice-sound-in-theatre.html>.

40. See NANCY BISHOP, *AUDITIONING FOR FILM AND TELEVISION: TELLING A STORY* 36 (2015).

place all of the focus on the witness.<sup>41</sup> However, during cross-examination the lawyer may bring the focus back to herself by placing herself in the role of the teacher of facts, *not* the witness.<sup>42</sup> A lawyer may also use her voice to convey what she wants a jury to focus on, such as using an empathetic tone to connect with the witness, or intonation to emphasize something she wants the jury to zero in on.<sup>43</sup> The skill of knowing when and where to place focus all contributes to a lawyer's storytelling, as she is trying to craft a compelling story that will pique the interest of the jury.<sup>44</sup>

##### 5. *Integrating Theatre into Law School is Beneficial for Students*

The ultimate shared goal of lawyers and actors is to win over their audience. This shared goal has caused some members of the legal community to take notice of theatrical training, and recognize the benefits of theater in the legal profession.<sup>45</sup>

Practicing lawyers are finding value in theater training classes, which often focus on the same concepts that actors learn, such as communication, storytelling, and improvisation.<sup>46</sup> Lawyers are realizing that it takes more than solid facts to win a case, but the key to "winning" is how the facts are perceived.<sup>47</sup> A lawyer cannot rely on the facts to speak for themselves, but must make a great courtroom presentation.<sup>48</sup>

The importance of theater training in the legal community is one that state bar associations are starting to recognize as well. Within the last six years, the New York State Bar Association (NYSBA) approved an improvisation (improv) class that counts towards lawyers continuing legal

41. See Nat'l Def. Training Project 2017 Pub. Def. Trial Advoc. Program, *Direct Examination: "Allowing Others to Help Tell Their Story"*, UNIV. OF DAYTON SCH. OF LAW 1, 13 (2017).

42. Ky. Bar Ass'n, *Advanced Cross Examination Techniques* 6 (2012), [www.kybar.org/resource/resmgr/2012\\_Convention\\_Files/ac2012\\_17.pdf](http://www.kybar.org/resource/resmgr/2012_Convention_Files/ac2012_17.pdf).

43. See Munsinger, *supra* note 7; see Wilson, *supra* note 25.

44. See Wilson, *supra* note 25.

45. See Anna Stolla Persky, *Clapping for Credit: State CLE Courses Use Unusual Pairings to Stimulate Interest*, AM. BAR ASS'N JOURNAL (June 2012), [http://www.abajournal.com/magazine/article/clapping\\_for\\_credit\\_state\\_cle\\_courses\\_use\\_unusual\\_pairings](http://www.abajournal.com/magazine/article/clapping_for_credit_state_cle_courses_use_unusual_pairings); Bull Garlington, *How Learning Improv Gives Lawyers an Edge*, ATTORNEY AT WORK (July 6, 2017), <https://www.attorneyatwork.com/learning-improv-lawyers>.

46. See *Acting Classes for Lawyers*, MICHELLE DANNER ACTING STUDIO, <https://www.michelledanner.com/acting-classes-lawyers>; Michelle Arkush, *Law as Theater: Attorneys Learn Acting Skills to Polish Courtroom Presentations*, L.A. TIMES (July 10, 1992), [http://articles.latimes.com/1992-07-10/news/va-1680\\_1\\_acting-skills](http://articles.latimes.com/1992-07-10/news/va-1680_1_acting-skills); *Enhanced Legal Skills for Attorneys*, IMPROV FOR LAWYERS, [http://www.improvforlawyers.com/public\\_html\\_improvforlawyers.com/Improv\\_for\\_Lawyers.html](http://www.improvforlawyers.com/public_html_improvforlawyers.com/Improv_for_Lawyers.html) (last accessed Apr. 15, 2019).

47. *Facts Are Not What Wins Cases, Perceptions Do*, FINDLAW, <https://corporate.findlaw.com/litigation-disputes/facts-are-not-what-wins-cases-perceptions-do.html> (last accessed Apr. 15, 2019).

48. See Jeffrey H. Hartje, *Lawyer's Skills in Negotiation: Justice in Unseen Hands*, 1984 J. DISP. RESOL. 1, 1 (1984).

education credits (CLEs).<sup>49</sup> Improv classes and training are powerful tools for lawyers because they provide a safe space to fail and discover what does and does not work in specific situations without jeopardizing a case.<sup>50</sup>

When looking at the data, it is clear that integrating theater into a law school curriculum is beneficial to law students.<sup>51</sup> In 2006 and 2007, a study was conducted in which law students wrote and produced their own productions based on the law.<sup>52</sup> At the end of the study, researchers found that drama could “be an effective tool for teaching substantive law,” learning was enhanced, and students were engaged in combining “substantive and skills based learning.”<sup>53</sup>

In another study on incorporating drama into electronic discovery (e-discovery) simulations, Associate Professor Paula Schaefer at the University of Tennessee College of Law also found that integration was beneficial, even though it was not quantifiable in numbers.<sup>54</sup> This study involved a simulation in which students were assigned a role and conducted e-discovery.<sup>55</sup> The results of Professor Schaefer’s simulation found that providing a “realistic legal dispute” where students learned the intricacies of client-lawyer interactions, proved to be an ideal setting for student learning.<sup>56</sup>

At the University of Tennessee Knoxville, Professor Joy Radice combined her criminal law class with theater by recruiting actors from the drama school to play mock clients represented by first-year law students in a courtroom setting.<sup>57</sup> Professor Radice’s goal was that students would be able to connect legal theory to practice and gain real world experiences of *being* a lawyer.<sup>58</sup> In the exercise, students could test their knowledge of the law, as well as learn the importance of details and communication.<sup>59</sup>

Even though very few studies with empirical data to support incorporating theater into law school exist, there is no appearance of any

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49. See Persky, *supra* note 45; IMPROV FOR LAWYERS, *supra* note 46.

50. Garlington, *supra* note 45; Rob Adler, *Comedy Improv Isn't the Only Improv: 4 Benefits of Improvisation for Actors*, BACKSTAGE (Apr. 17, 2017, 10:00 AM), <https://www.backstage.com/advice-for-actors/backstage-experts/4-benefits-improvisation-actors>; Kathy Matheson, *Improv Helps Future Lawyers Think on Their Feet*, WIS. LAW JOURNAL (Feb. 5, 2013, 10:16 AM), <https://wislawjournal.com/2013/02/05/improv-helps-future-lawyers-to-think-on-their-feet>.

51. See Scully-Hill et. al, *supra* note 5, at 48; see Garlington, *supra* note 45; Paula Schaefer, *Injecting Law Student Drama Into the Classroom: Transforming an E-Discovery Class (or Any Law School Class) With a Complex, Student-Generated Simulation*, 12 NEV. L. J. 130, 151 (2011).; see Adler, *supra* note 50.

52. Scully-Hill et. al, *supra* note 6, at 147–48.

53. *Id.* at 155–56. In the article, no statistics—only conclusions—are reported.

54. See Schaefer, *supra* note 51, at 159.

55. See *id.* at 130–31, 142.

56. *Id.* at 159.

57. See Blakely & Radice, *supra* note 6.

58. See *id.*

59. See *id.*

studies showing disadvantages to this addition in law school curriculum.<sup>60</sup> In fact, a few top tier law schools are offering classes that integrate theater skills and law, or which focus on theater in relation to the law. In fall 2017, Harvard Law School offered students a course that focused on the intersection of performance and law.<sup>61</sup> And Harvard School of Law is not the only law school offering these types of courses, Columbia Law School also offer a theater management and production concentration with a law degree.<sup>62</sup>

So, why should theater be integrated into a legal curriculum? By considering the studies on incorporating theater in the classroom, and the fact that practicing lawyers are taking theater classes, it can be inferred there are no negative reasons as to why integration should not happen.<sup>63</sup> By integrating theater into legal curricula, students will benefit by learning skills not generally taught in a law school setting.

## II. CONCLUSION

*“They teach you Contracts! Obviously, the implication is that in law school they teach ‘law’ not how to practice law.”*<sup>64</sup>

While there is little research on the direct link between improved law school academics and theater exposure,<sup>65</sup> this should not deter law schools from implementing some type of theater training in their curriculum. Law schools should train law students in all aspects of lawyering and allowing them to graduate with a core understanding of *how* to be a lawyer, not just an understanding of *the law*. Students should not have to actively seek out training to learn to present as a lawyer, they should *be* a lawyer once they graduate. If a law school’s job is to prepare students to go out into the world as lawyers, then they should educate their students on all things that a lawyer has to know, not just law and doctrine.

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60. Multiple searches have yielded no results.

61. See *Course Catalog Law and Performing Arts*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=71828> (last accessed Apr. 15, 2019). Harvard Law School also has a student organization, where law students write and perform a musical parody for the school. See *HLS Drama Society*, HARVARD LAW SCHOOL, <https://orgs.law.harvard.edu/drama> (last accessed Apr. 15, 2019).

62. See *Theatre Management and Producing Concentration*, COLUMBIA UNIV., <https://arts.columbia.edu/theatre/management-producing> (last accessed Apr. 15, 2019).

63. See Scully-Hill et. al, *supra* note 5, at 147; Blakely & Radice, *supra* note 6.

64. MY COUSIN VINNY (20th Century Fox 1992).

65. See Scully-Hill et. al, *supra* note 5, at 155; see also Schaefer, *supra* note 51, at 159.