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THE GAMES WE PLAY

ANN C. JULIANO*

We Civil Procedure professors like to shake our heads and grimly note the unique difficulties we face in teaching Procedure to first year students. We use phrases like “alien and incomprehensible,”¹ “abstract and alienating,”² and “not the most spellbinding course in the first-year curriculum.”³ Students approach the “pamphlet” of the Federal Rules of Civil Procedure (“the Rules”) with trepidation and a weary sigh.

To fight against this predisposition and to demonstrate to students that they have read, interpreted, and employed “rules” for many years, I now begin the semester by playing board games. By spending some time in the first class with Monopoly, Jenga, and several other games, I hope to accomplish many of the objectives suggested in the pedagogical research.⁴ More specifically, by playing card games or Apples to Apples, I am able to raise important points about rules and how we interpret them while setting a less formal, collegial tone for the semester.

I. THE FIRST DAY

Articles providing teaching tips, strategies, and advice stress the importance of the first class. “The first day of class sets the tone for the rest of the term”⁵

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1. Larry L. Teply & Ralph U. Whitten, *Teaching Civil Procedure Using an Integrated Case-Text-And-Problem Method*, 47 ST. LOUIS U. L.J. 91, 92 (2003).

2. STEPHEN N. SUBRIN ET AL., *TEACHER’S MANUAL TO CIVIL PROCEDURE: DOCTRINE, PRACTICE, AND CONTEXT I* (Aspen Publishers, 3d ed. 2008).

3. Ana-Maria Merico-Stephens & Aaron F. Arnold, *One Proposed Tool For Learning, Playing, and Reducing Anxiety in Civil Procedure*, 47 ST. LOUIS U. L.J. 59 (2003).

4. *See infra* notes 5–19 (and accompanying text).

5. BARBARA GROSS DAVIS, *TOOLS FOR TEACHING* 37 (Jossey-Bass 2d ed. 2009). *See also* DONELSON R. FORSYTH, *COLLEGE TEACHING: PRACTICAL INSIGHTS FROM THE SCIENCE OF TEACHING AND LEARNING* 66 (American Psychological Association, 2d ed. 2016) (“Initial judgments influence subsequent judgments even when subsequent information contradicts these initial inferences.”); ANGELA PROVITERA MCGLYNN, *SUCCESSFUL BEGINNINGS FOR COLLEGE TEACHING: ENGAGING YOUR STUDENTS FROM THE FIRST DAY* 35 (Atwood Publishing, 2d ed. 2001) (“The first class meeting of the semester is the most important one of the term! It sets the tone for the entire course – for better or worse.”); DAVID D. ROYSE, *TEACHING TIPS FOR COLLEGE*

and “[y]ou never get a chance to make a second impression.”⁶ Surely, this emphasis on the first class is enough to reduce any new professor to a fit of nerves. A slightly more nuanced take on the first class suggests that “[t]he first day of a course may not determine how well the rest of the course works, but it goes a long way. A good start can carry the instructor through several weeks of early shakiness, and a bad one can take several weeks of damage control to overcome.”⁷

When compiled together, articles discussing what should be accomplished in the first class create a daunting list of objectives.⁸ Of course, you should discuss what one article refers to as the “opening formalities,” i.e. syllabus, assignment schedule, policies, and procedure.⁹ Apart from these formalities, there are several areas of agreement for objectives for the first class:

introduce yourself as a person;¹⁰

create interest in the material;¹¹

AND UNIVERSITY INSTRUCTORS: A PRACTICAL GUIDE 55 (Allyn & Bacon, 2001) (“[Students’] exuberance may never be higher [than the first class.]”); Richard M. Felder & Rebecca Brent, *Getting Started*, NORTH CAROLINA STATE UNIVERSITY (1995), https://www.engr.ncsu.edu/wp-content/uploads/drive/1O9ut2Eq7Tj9JnLCPpFkDWhGMv-0f61aN/1995-r_GetStarted.pdf [<https://perma.cc/3V6E-NVJ9>] (“The first day of a course may not determine how well the rest of the course works, but it goes a long way.”).

6. RICHARD PREGENT, *CHARTING YOUR COURSE: HOW TO PREPARE TO TEACH MORE EFFECTIVELY* 141 (Atwood Publishing, English ed. 2000).

7. Felder & Brent, *supra* note 5.

8. FORSYTH, *supra* note 5, at 66–67 (American Psychological Association, 2d ed. 2016) (“The first class is the ideal time to give a clear introduction to your course that includes information about yourself, your goals, and the nature of evaluation; set the norms and tone for the classroom; motivate students by arousing their interest, involving them in the learning process, and displaying your enthusiasm for the course material; and correct any misperceptions or inaccurate social norms.”); PREGENT, *supra* note 6, at 141–42 (“The first class is so important that you should devote 30–60 minutes . . . to attaining [four objectives]: explain the organization of the course; gather information about the students; arouse interest in the course material; and, create a favorable climate for positive interpersonal relations.”); *Tips for Teaching on the First Day of Class*, NC STATE UNIV., <https://projects.ncsu.edu/grad/about-grad/docs/orientation/teaching-tips-first-day-of-class.pdf> [<https://perma.cc/HAT2-XUW5>] (“Take time to plan carefully what you will do on the first day in order to give students a clear impression of the course content and your expectations.”).

9. Felder & Brent, *supra* note 5.

10. WILBERT J. MCKEACHIE & MARILLA SVINICKI, *MCKEACHIE’S TEACHING TIPS* 21–22 (Wadsworth Publishing, 12th ed. 2005) (“[Students] come to the first class wanting to know what the class is about and what kind of person the teacher is.”); FORSYTH, *supra* note 5, at 67 (“[S]tudents are busy searching for information that helps them understand who you are and what you expect of them.”).

11. WASH. UNIV. IN ST. LOUIS, *supra* note 8; PREGENT, *supra* note 6, at 142; FORSYTH, *supra* note 5, at 68; Felder & Brent, *supra* note 5.

- display your own enthusiasm for the material;¹²
- set an open and positive tone for discussion and interaction;¹³
- and, get to know your students.¹⁴

Throughout these objectives, the literature suggests the use of humor to create an informal atmosphere and lessen anxiety.¹⁵ Of course, if your teaching style skews toward the more formal, then humor and the following suggestion may not be applicable to you.

The use of an “icebreaker” is a widely suggested activity for the first day of class.¹⁶ Icebreakers, in the ideal, allow students to interact with each other in an informal manner, engage students in class by encouraging discussions and interactions, and help to create the positive environment mentioned earlier.¹⁷ Spending time on the first day with an “activity” will help the students understand that you expect them to be active learners.¹⁸ Finally, an icebreaker linked to the subject matter of the course will both foster engagement with the material and make the fact that they are doing an “icebreaker” less awkward.¹⁹

12. FORSYTH, *supra* note 5, at 66–67 (“The first day of class is the ideal time to ... motivate students by arousing their interest, involving them in the learning process, and displaying your enthusiasm for the course material.”).

13. PREGENT, *supra* note 6, AT 142 (“Create a favorable climate for positive interpersonal relations.”); FORSYTH, *supra* note 5, at 67 (set the norms and tone for the classroom); MCGLYNN, *supra* note 5, at 52 (“Your Goal: A Relaxed Environment from Day 1.”); DAVIS, *supra* note 5, at 37 (“To put students at ease, try to create a relaxed, open classroom environment conducive to inquiry and participation, and let students know what you will expect from them and what they can expect from you and the course.”).

14. Felder & Brent, *supra* note 5 (“Do something that will help you learn the students’ names.”).

15. MCGLYNN, *supra* note 5, at 67 (“Use humor, where appropriate, to create a more informal atmosphere.”).

16. *See id.* at 35 (“[I]cebreakers and other activities to get students comfortable in the classroom is becoming more widely accepted.”); DAVIS, *supra* note 5, at 37–42 (“[P]lan an activity that provides opportunities for students to speak to one another or to solve problems.”).

17. DAVIS, *supra* note 5, at 44 (listing the goal of “creating a positive classroom environment”); MCGLYNN, *supra* note 5, at 36 (noting that icebreaker techniques encourage student interactions and influence the quality and extent of future class discussions); ROYSE, *supra* note 5, at 58–59 (suggesting that teaching is a lot like performing and “ice-breakers” used by teachers to make their students comfortable are similar to “warm-up acts” used by performers to set the mood).

18. WASH. UNIV. IN ST. LOUIS, *supra* note 8 (“If you want students to be active learners . . . you should conduct activities on that first day that encourage the students to be active.”).

19. DAVIS, *supra* note 5, at 42 (“Linking your icebreaker to the content of the course may make it more palatable to students.”).

II. TEACHING PROCEDURE

To listen to Civil Procedure faculty, our course is simultaneously “the most important class in law school”²⁰ and “the foreign language in the law school curriculum.”²¹ Civil Procedure is certainly the first-year course “with which 1Ls have the least familiarity.”²² Students approach the course with preconceived notions (often helped along by upper-level students, sometimes by practicing attorneys) that the course is both difficult²³ and boring.²⁴

In a charming bit of understatement, Professor Kevin Clermont has stated, “[t]eaching basic civil procedure has its problems.”²⁵ In addition to the students’ unfamiliarity with the issues, another problem is situated in the interdependencies of the topics.²⁶ “Not until they have seen everything can they

20. Michael A. Wolff, *Teaching Civil Procedure: Introduction*, 47 ST. LOUIS U. L.J. 1, 1 (2003).

21. *Id.* (“Nearly all first-year students come to the course illiterate.”).

22. Keith Sealing, *Civil Procedure in Substantive Context: The Exxon-Valdez Cases*, 47 ST. LOUIS U. L.J. 63, 63 (2003); Teply & Whitten, *supra* note 1, at 92 (“Civil Procedure often seems alien and incomprehensible.”); JAMES E. MOLITERNO, EXPERIENCING CIVIL PROCEDURE 13 (West Academic Publishing 2013) (“Civil procedure can feel different for students from their other courses.”); A. LEO LEVIN, PHILIP SCHUCHMAN & CHARLES M. YABLON, TEACHER’S MANUAL FOR CASES AND MATERIALS ON CIVIL PROCEDURE 3 (The Foundation Press, Inc., 2d ed. 1992) (“There are few concepts in civil procedure that are familiar to students. . . .”); JUDITH RESNIK & NANCY S. MARDER, ADJUDICATION AND ITS ALTERNATIVES: AN INTRODUCTION TO PROCEDURE (Suggestions for and Reflections on Teaching) 5 (Foundation Press 2004) (“Procedure teachers also have special challenges. . . the subject matter of procedure is less accessible than that of other first-year courses.”); STEPHEN C. YEAZELL, TEACHER’S MANUAL TO CIVIL PROCEDURE 2 (Aspen Publishers 7th ed. 2008) (“The subject matter of procedure is generally more mysterious to the student than that of any other subject.”).

23. Teply & Whitten, *supra* note 1, at 91 (“Many students consider Civil Procedure to be the most challenging first-year course in United States law schools.”).

24. Sealing, *supra* note 22 (“[M]any students come into Civil Procedure thinking that the subject is, first, either the hardest course in the first year, . . . and, second, the most boring course in the first year curriculum.”); Merico-Stephens & Arnold, *supra* note 3, at 59–60 (“Let’s confess. Civil Procedure is not the most spellbinding course in the first-year curriculum. . . . [F]or many [indeed, too many] students, Civil Procedure is the cause of more than its fair share of headaches.”); BARBARA ALLEN BABCOCK, TONI M. MASSARO & NORMAN W. SPAULDING, TEACHER’S MANUAL TO CIVIL PROCEDURE: CASES AND PROBLEMS v (Aspen Publishers 4th ed. 2009) (“students are usually primed to dislike the course”); RESNIK & MARDER, *supra* note 22, at 6 (Students, “aware that Procedure studies the theories and rules by which people make claims, create ‘cases,’ and resolve disputes, assume the issues to be technical and dry, if not boring.”).

25. RICHARD H. FIELD, BENJAMIN KAPLAN & KEVIN M. CLERMONT, TEACHER’S MANUAL TO ACCOMPANY MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE vii (Foundation Press 10th ed. 2010) (identifying latency of values and interdependence of topic as two such problems). I should take this opportunity to thank Professor Clermont (as well as Professor Faust Rossi) for passing along a love of procedure.

26. *Id.*; LINDA J. SILBERMAN, ALLAN R. STEIN & TOBIAS BARRINGTON WOLFF, TEACHER’S MANUAL TO CIVIL PROCEDURE: THEORY AND PRACTICE 1 (Aspen Publishers 3d ed. 2009) (“One of the reasons Civil Procedure is difficult for first-year students is that it is hard to fully comprehend

even hope to understand anything.”²⁷ So we must provide an overview of all the issues to hope to show students the overall puzzle before we dive into each piece.²⁸

Finally, we must work, in Civil Procedure, a little harder to expose the underlying values inherent in a system of procedure and how the seeming neutral rules impact different players in the system. Raising issues of socio-economic class, language access, race, gender, and resource issues (to name a few) require looking beyond the rules.²⁹

So how to use that vital first class in a difficult course filled with alien, incomprehensible, and boring material in a class of anxious 1L students?

A. *The First Day of Civil Procedure*

Like most rookie law faculty members, when I began teaching Civil Procedure, I read every teacher’s manual I could get my hands on. Some casebook authors suggest beginning with an overview of the system.³⁰ Many others recommend starting the course by asking the students to create a system of dispute resolution.³¹ There’s the “shipwrecked on a desert island” version,³² the “you have suffered some injustice at the hands of the law school” version,³³

any given topic without understanding how it relates to the whole.”); THOMAS D. ROWE, SUZANNA SHERRY & JAY TIDMARSH, *TEACHER’S MANUAL TO CIVIL PROCEDURE* 5 (Foundation Press 2d ed. 2010) (“One of the greatest challenges in teaching Civil Procedure is getting students to see the forest and not just the trees and twigs.”).

27. ROWE, SHERRY & TIDMARSH, *supra* note 26, at 5.

28. Teply & Whitten, *supra* note 1, at 95 (“One of the first problems facing a Civil Procedure teacher is orienting students to the subject and providing them with perspective.”).

29. RESNIK & MARDER, *supra* note 22, at 6 (“We want students to focus on the problems of people in conflict and on the roles that the gender, race, and ethnicity of various participants might play in terms of perceived and actual fairness.”).

30. SILBERMAN, STEIN & WOLFF, *supra* note 26 (overview of structure of judicial system and stages of a lawsuit); SUBRIN, *supra* note 2, at 6 (“we lecture about civil procedure generally and explain why it is an important and interesting course”); MICHAEL VITELLO, *CIVIL PROCEDURE SIMULATIONS* 1–3, (2012). Professor Vitello’s book begins with a potential script for a client interview and suggests that students evaluate the case. *Id.*

31. *See, e.g.*, MOLITERNO, *supra* note 22, at 13–14. The Moliterno casebook starts with a list of questions about designing a dispute resolution process with a goal of demonstrating that there are “multiple ways in which a process could be designed.” *Id.* at 13.

32. YEAZELL, *supra* note 22, at 25 (referring to Stephen Subrin’s shipwrecked on a desert island with no rescue).

33. BABCOCK, MASSARO & SPAULDING, *supra* note 24, at 2–3 (“Hand out a fictional letter of summary dismissal from the dean to one student. Ask her how she has been injured and use this as a springboard to reach . . . core questions.”); JEFFREY W. STEMPEL ET AL., *TEACHER’S MANUAL TO LEARNING CIVIL PROCEDURE* 1 (West Publishers, 2013). One of the co-authors begins class “by asking the class to imagine that one of the students has suffered some injustice at the hands of the law school, perhaps being falsely accused of making misrepresentations in law school admissions materials.” *Id.*

and the edgy “I don’t like your kind so I’m kicking you out of my class” version.³⁴

For each of these scenarios, the idea is to create a basic dispute resolution process. What are the minimum requirements?³⁵ As you create the system suggested by the students on the board, you can preview the topics that will arise in the course. One advantage of beginning the course in this manner is that students can’t be “wrong” and hopefully, this exercise will encourage the students to participate in class.³⁶ The exercise also serves as an introduction to the Socratic method and an overview of the course.³⁷ Finally, through specific questions, you can spark the students’ thinking about the goals and values embodied in dispute resolution systems.

I latched onto the Due Process Game suggested by Babcock, Massaro and Spaulding. Their casebook begins with due process and, more specifically, notice and opportunity to be heard. As they begin the course, they suggest beginning with the Due Process Game. They suggest beginning the game by handing a student a fictional letter of summary dismissal from the Dean due to violations of the Honor Code.³⁸ The Teacher’s Manual includes a sample script, beginning with questions such as “have you been harmed?”³⁹ They suggest pointing out that the letter does not state what provision of the Honor Code has been violated; that even if the Dean allows the student to reapply, the student has suffered harm; and the importance of procedural rights even if the student is “dead to rights guilty.”⁴⁰

Based *very closely* on their suggested script, I began class with the following:

I want you to imagine that the Dean has informed a classmate of yours that he has been caught cheating on his personal essay on his law school application. If you were that student, what rights would you want?

Do you want a chance to talk to the Dean?

34. ROWE, SHERRY & TIDMARSH, *supra* note 26, at 6–7 (“One of us takes a heavily Socratic—and jokingly confrontational—approach to this material that sets the stage for the rest of the course both substantively and stylistically. Be warned: You have to have the right personality for this gambit! Pick out a student in advance and tell him (or her) that you don’t like men (or women) and you don’t like Italians (or French or Polish, or whatever—look for ethnic names, but stay away from any who might already feel like victims of discrimination), so you’re not going to let him take your class. Ask the rest of the class to be the student’s lawyers, and ask him and them what they’re going to do about it.”).

35. YEAZELL, *supra* note 22, at 25.

36. BABCOCK, MASSARO & SPAULDING, *supra* note 24, at 2–3; ROWE, SHERRY & TIDMARSH, *supra* note 26, at 4.

37. ROWE, SHERRY & TIDMARSH, *supra* note 26, at 4.

38. BABCOCK, MASSARO & SPAULDING, *supra* note 24, at 2.

39. *Id.*

40. *Id.* at 2–3.

Do you want someone to come with you?

Does it depend on what the punishment may be?

Do you want to know why the Dean thinks so?

Suppose you convince the Dean that you didn't cheat on your essay and then the next month, he decides that yes, actually, you did, and reports you to the Law School Honor Committee?

Suppose the Dean gets to make the final decision - do you want someone to review it? What if the person who reconsiders the decision is the Dean? What if it is the Associate Dean who reports to the Dean?

Do we want the Dean to articulate the reasons for any decision - whether the classmate violated the honor code and why he thinks that and what the punishment is and why?

Now suppose you are the Dean and you KNOW that someone cheated on their personal essay - would you want this convoluted, multi-step process?

Often, a student in the class took a course as an undergraduate and will cite a due process case or principle at which point you will need to remind them that the class is starting from scratch, i.e. there is no binding precedent. But in general, this exercise worked well. After we created a system based on the answers to the questions, I pointed out the values embodied in our system and raised other goals for dispute resolution systems. I was able to control the amount of time spent on the discussion and then move on to an overview of the federal civil system.

Then, one August, I had what I thought at the time was a brilliant idea but realized in retrospect was my worst idea ever.

B. The Worst Idea Ever

For reasons I still do not understand, in August 2007, I decided to spice up the due process game. Instead of announcing that a classmate had been caught falsifying their application, I asked our Associate Dean for Academic Affairs (who is responsible for student discipline) if she would come to the first day of class and announce that she needed to speak with a particular student. I explained the due process game and gave her the name of the student to ask to see. Poor Andrew Van Wagner. I picked him as the subject based entirely on his picture in the student photo directory. He seemed like a happy-go-lucky, easy-going fellow. Dean Brogan, a talented teacher and always up for new ideas, agreed to play the game and, ten minutes into the first class, she appeared in my classroom carrying a dreaded blue folder. The interaction went roughly as follows:

Me (acting surprised): Dean Brogan, may I help you?

Dean Brogan: I need to speak with Andrew Van Wagner. Is he here?

Andrew (shocked, from the back row of the classroom): Um, yes?

Me: Excuse me, but may I ask why?

Dean Brogan: There is a problem with his application. He needs to come with me.

Andrew (white as a sheet); Okay. (starts to rise)

Me (panicking because he can't leave the class or the exercise doesn't work): Wait, Andrew. Dean Brogan, you can't just take a student from my class. Andrew, don't you want to ask Dean Brogan what process is in place for taking you out of the classroom?

Andrew (sitting back down as the color begins to return to his face): Yes, yes I do.

At this point, we began the questions listed above. After a few questions, it dawned on most of the students in the class that this was a fabricated exercise. I couldn't sustain the artifice for very long because Andrew looked so panicked. I apologized profusely for scaring him so and promised not to call on him for the rest of the year. It took the rest of the class session for poor Andrew's heart rate to go back down.⁴¹

Needless to say, I realized this was not a stunt to repeat. Fortunately, another idea came to me.

III. THE GAMES – HOW AND WHY

As discussed above, students are primed to find the Rules of Civil Procedure to be difficult, dense, and boring. In an effort to show them that they have plenty of experience reading and applying rules, I now start class with board games. I explicitly state that we are playing games to prove that they know how to read rules and have been doing so throughout their lives. In addition to addressing the substantive skill of reading rules, the board games help accomplish many of the

41. About six years ago, I related this story to my Civil Procedure class and they were horrified. I reached out to Andrew to check in.

All is well with me. I just finished my last session with my psychologist and she believes that an open dialogue between the two of us will be constructive and continue to further my recovery from the traumatic events that took place during my first civ pro class 1L year. It has taken a while, but I am now able to speak in front of small groups of people again. My attorney has also advised that, despite the discovery rule, the statute of limitations has run on any claim for emotional distress, so no need to worry about a suit.

Naturally, I am joking and really am doing well. I did, however, contemplate drafting a fake complaint and having a friend in the Sherriff's Office serve you at school. . . .

. . . .

As for the events on the fateful day 1L year, I thought it was hilarious and I tell people about it all the time. While I did have a feeling of instant terror/panic shoot through me and I thought I'd be on the next flight back to California, I appreciated a great joke as I am usually the one doing the pranking. While I wouldn't recommend doing it again. . . I turned out okay with no lasting effects. If you need me to come in on the first day of class each year to reenact and terrify some future 1Ls, I would gladly do so.

Email from Andrew VanWagner (10/24/2012) (quoted with permission). Andrew is a successful attorney with the Lundy Law firm, working on personal injury matters.

goals for the first class suggested in the literature: set a comfortable tone, allow students to participate in discussion without being “wrong,” learn their names, and bring humor into the class.

After a few years of using board games, I have adopted a few guidelines to make the exercise operate smoothly.

A. *The Process*

Decide in advance who to call up to pick a game. Sometimes, I call on students I met in orientation, thereby indicating to them that I remember their names. Other times, I have called on students without pictures in the directory system so I may learn their names. Another option is a purely random selection by calling on every fourth person on the class list, for example.

After one or two years, I learned to put a sticky note on the front of the box indicating how many people should play the game. By doing this, I am able to make sure that all the games I brought are played and I am able to draw the analogies I hope to make. As the students play the games, I walk around the class and chat with them.

One important question is when to stop the exercise. It does take time for the games to be distributed and for the students to start to play. My current rule of thumb is that the exercise is over when the Jenga tower falls. Of course, if the students playing Jenga are particularly inept at Jenga, you may have to let them play twice. Also keep in mind when planning your class time that it does take time to pack up all the games.

B. *What Games to Use*

I have school age children, so I use their games. Fortunately, we have enough games in our house that, by borrowing a few games from friends, I am able to cover the class (occasionally as many as ninety students). I try to ensure there is a mix of classic games that they have most likely played as children and new games, so they will actually have to read the rules. Further, I try to include one game without any rules, one game with the instructions only in another language, and one game with extremely complicated instructions. After my first year of using board games, a student suggested bringing a deck of cards and omitting what game should be played with the cards. Finally, I brought Twister once but decided to not use the game as it is too awkward for graduate students who don't know each other.

C. *How to Discuss the Games*

Because I have carefully controlled the number of people who play each game, I know that every game has been played. I usually begin by asking a student why he or she selected a particular game. This question allows students to reveal as much or as little of their personality to the class as they choose.

Answers have ranged from “I always had a crush on Ariel, the Little Mermaid” to “it looked interesting.”

I then ask which group had the complicated card game. The instructions to this game are so involved that the students are rarely able to start the game. One year, this group was extremely apologetic that they hadn’t been able to play and thought “we had failed law school on the first day.” I use this game to make the point that if the rules are too complex, you can’t play the game, and this will defeat the purpose of the rules.

For classic games (such as Monopoly), I ask if they bothered to read the rules and if there was any difference between the students in their understanding of the rules. If there was, I ask how they decided which version to use. I use these games to raise the idea of local rules.

For the game with the rules in Spanish, I asked how they played the game. The students often admit frustration but, occasionally, one of the students is fluent in Spanish. I use this game to raise issues of language access in our legal system. For the game with the rules omitted, I ask the same type of questions. Did you play? How? How did you decide the rules? Who decided? I bring jacks (which has many of the same issues as to how to play the game). I try to bring a game that might raise issues of gender bias in the courts. At times, jacks has served this purpose but whether students perceive jacks as a “girls’ game” is inconsistent from year to year.

I ask if any group had a situation that was not answered by the rules or if the rules gave a partial answer. From these games, I introduce them to the concept of rule interpretation and explain that we will study various methods courts use to interpret the grey areas in the Rules of Civil Procedure.

This exercise cries out for Apples to Apples (the Junior version). The rules of Apples to Apples leaves open the criteria for choosing the winning answer. This presents an opportunity for discussing advocacy and methods of dispute resolution. I ask how they choose the judge for each round, whether anyone disagreed with the decision, and if anyone advocated for their answer.

The Board Game exercise is extremely effective. The students are engaged, their first time speaking in class is less intimidating than feared, and many important themes in the course are raised in a humorous way.

D. How to Continue into the Semester

I try to make notes after class on the discussion of the games, particularly if a student had a specific comment about reading or applying rules. I then use this exercise to refer to different topics as we address them throughout the semester. This is often most relevant when we discuss interpreting the Rules or policies behind the Rules (such as liberal amendment of pleadings).

Another suggestion is to return to the lessons from the games once you have completed the material on the Rules. One year on my midterm examination, I asked how the game they played on the first day related to any one of the Rules.

The students did an impressive job discussing interpretation. There is one standout, however. One student stated that he had played Operation on the first day and related that to Rule 35—a request for a medical examination.

IV. KEEP PLAYING

Students seem to appreciate the board game exercise.⁴² Last year, in my Sex Discrimination class, we were analyzing the teaching methods of law faculty. One of the students told me that she was very unsure about the law school class style and then “you walked in with a bag of board games and it made me realize that law school was going to be okay.”⁴³

Although I firmly believe that playing board games does accomplish many of the more serious pedagogical objectives, at the very least, it puts nervous students at ease and thus, able to learn.

42. “Played board games in my first Civil Procedure class AND the prof referenced Cards Against Humanity... this is gonna be good.” Post on Facebook, 8/26/2013 by Rachel Rutter (quoted with permission). For the record, I tell the class that I purposefully choose *not* to bring Cards Against Humanity as one of the games.

43. Katherine Palladino (quoted with permission).

