

## INTRO

(The following is read by Laura Colby over jazz music composed by Manual Cinema)

Hi, I'm Laura Colby and this is the Middle Woman, A Roadmap to Managing the Performing Arts. I'll be sharing personal anecdotes from my 30 years in the field, exploring the nitty gritty and the technicalities of this job. I'll tell you the story of how I got here and what it's taken for me to work in the industry of the performing arts.

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## EPISODE 17

LAURA COLBY: Hello, this is Laura Colby, founder and president of Elsie Management, and I'm delighted to have Brian Goldstein here with me today of GG Arts Law. You've heard me refer to my brilliant entertainment lawyer. This is him, folks! I'm very excited because we're going to get to dig into more things on contracting from the lawyer himself, right here in the room.

Before we get started, I did want to say that Brian, I have been your client since 1998 and we started with a situation where an artist owed me money and you held my hand and walked me through small claims court and what my legal rights were. It was amazing.

BRIAN GOLDSTEIN: Wow. I'm reflecting on that in the midst of time. That was before I even knew my wife. That's how long that goes back.

LAURA: That's so great. Brian and I have been through, several, how should we say, professional development periods.

BRIAN: Learning experiences.

LAURA: Yes.

BRIAN: Lots of education.

LAURA: We had lots of education through some pretty grisly situations and I have been so grateful to have you in my corner and I have learned so much from you.

BRIAN: You've been a great student.

LAURA: Why, thank you. Please let us know how you got into this industry, specifically as a lawyer in entertainment law.

BRIAN: I was a theater major. Theater kid from day one, like when I was four years old, theater camp, all that stuff, theater major, oh my god, you have to have a backup plan. For some reason, I thought law, well, that'll be fun because I'm good in front of an audience.

And then I realized that litigation involves lawyers and I realized how much I hate lawyers. And I actually wound up in the dark side for quite some time. Practicing with what I call a, quote, real law firm. And it is the worst, most horrible, gut wrenching, soul-stealing experience you would ever want to have. I really can't say enough about how attorneys get everything they deserve.

I was great in court, but I found out that court's boring. You can't do costumes. You can't have surprise witnesses. Discovery ruins everything. Nobody wants to solve any problems. So I did that by day and ran a theater company at night. And then I'm like, that's it, I can't do this. And then one friend said, Well, rather than quit entirely, why don't you try, you know, working with people in the arts, they need help too.

I sort of found my niche working with the people that nobody else wanted to work with. I'm not talking about film and television. I'm talking about the jazz artists, the actors, the balloon people, the clowns, the dancers, the opera singers, the live performing arts is a whole different field unto itself. Film and television is very corporate, just like any other part of corporate law.

This, not so much. And I realized, oh yeah. So it's sort of like back in, you know, high school where I was the only one who could, you know, speak and write Elvish. I found my little group of people and it's kind of like doing any kind of law that helps people, doesn't actually make any money, but it's good to be with that group. And so now that grew into a niche performing arts practice.

LAURA: And that practice is GG Arts Law.

BRIAN: GG Arts Law, yes.

LAURA: And your partner in crime is

BRIAN: Is Robyn Williams. Robyn, my dear, dear partner. We've been together a long time. She has a background in arts too. She came from a very different trajectory.

She worked with various different orchestras, eventually becoming the Artistic Administrator for the National Symphony's pop program. And then she, at the Kennedy Center, was dealing with all of these agents and managers. But the artists never quite knew what was going on. So she decided she was going to law school, and then she would come back triumphant with all this knowledge, and then she discovered that, what I discovered too, which is really what you wind up doing is like 5 percent law and 95 percent therapy. So, it's like, the law degree is nice, but is it something that we draw upon everyday? Not really.

Robyn and I work well together because we both understand from the industry. The best way I always explain it is that if you ask most lawyers, they will say, *Oh, we're a law firm that works with maritime or a law firm that works with real estate.* We see ourselves as a part of the performing arts community that provides legal services as opposed to part of the legal community because we really don't identify well with the other lawyers. Every time I hang out with them, I just get frustrated and break out in hives.

LAURA: I'm really grateful for everything I've learned from both you and Robyn, and my staff, and the knowledge you have imparted to us has definitely steered us and has provided a great foundation for when those moments come up, it's like, but wait a minute, what right do I have on behalf of the artist right now?

BRIAN: I have to say your organization and you and your company has been unique in that, this partnership has worked really well because you know, a lot of our clients have an automatic reset button. Where they'll come, we'll have a problem, fix the problem, they come right back and they've done the same thing all over again. I just had this a couple of months ago. *This is the third time that same venue has not paid you. Why did you go back a third time?* You know, and I'll have a lot of people where I'll, you know, I use the expression my Southern mother always had, which was: bless their heart.

LAURA: Bless their heart.

BRIAN: Bless your heart.

LAURA: Your newsletter is worth, anybody listening, going on to GG Arts Law's website and signing up for that newsletter to keep you on top of not just visa

issues, but contracting issues and just to get a pulse on the legal aspect of things that are happening in our field.

I also want to say that GG Arts Law, was the recipient of the 2010 Sydney R. Yates Advocacy Award for Outstanding Advocacy on behalf of the performing arts that is awarded by APAP, the Association of Performing Arts Professionals. That was a really proud moment.

BRIAN: That was a very great moment.

LAURA: Before we dig in, I just want to give an overview of what I spoke about in Contracts Part 1.

I talked about the structures of contracts. What is enforceability? Your representation agreement needing to define terms, territory, touring fees, commissions paid, artist payment, exclusivity, performance agreements, before you get there, You need to get a documentation of the confirmation of terms. There might also be acceptance of terms, which we talked about in Contracts Part One. Your performance agreements need to define dates of show, payment schedule, exclusivity, repertoire performed, and details of transportation and housing. It also must include the negotiation of your tech rider.

In the course of negotiating your way to getting to that confirmation of terms, we talked about arguing for non-refundable first payments to secure or hold a date. We talked about getting a sign-off on just the regular straight up cancellation clause And we talked about why the specificity of force majeure is so important. And that from our practice, we are specifically making sure that the artists receive out of pocket expenses as spent to-date of the force majeure.

So that's what I managed to get in, in Contracts 1. And we're here with Brian to touch upon anything he wants to add to all of the above. But also to talk about things that we haven't talked about.

BRIAN: Well, I thought it was an excellent overview. I really did. One of the things that you said, a couple of things that resonated was a contract is nothing more than a written memorialization of an agreement.

You gave a great list of things that need to be in a performance contract, but that list is gonna fluctuate. There's also licensing issues, there's copyright issues, there's recordings. *Can I make a recording? What do I do with recording?* You mentioned exclusivity, I think was something that, that everybody gets concerned about, which is true.

You haven't asked a question, but I will answer it, which is knowing all this, okay, everything that you've said in part one, what is the takeaway? And the takeaway should not be that *a contract will protect me. A contract will make sure nothing goes wrong. A contract will make sure I get paid.* That's just never going to happen. Most of what we're doing is looking at somebody who said, well, I signed this contract and now they owe me \$5,000. Okay. *But they're not paying me.* Yep, they're not. *Okay, well, but is my contract valid?* Yep. *So they have to pay me.* Yes. *Well, so, they have to pay me.* Yeah, but they're not going to. *Why?* Well, because they're not. *But it says they have to.* Yes. *So it's a breach of contract.* Yes, it is. *Well, but they're not going to. Why?* Because they're jerks. *Well, what do we do?*

So then you get people saying, *well, why do I bother having contracts? Why do I bother going through all this if someone's going to cancel the show anyway? If someone's going to not pay me anyway.*

Not having a contract is like dying without a will. A contract is your will. So, if you die without a will, the law steps in and comes up with all these things you may not have wanted. It's like people always say, if you die without a will, the state takes your money. They don't. They just say what happens to it. So, if you don't have, for example, a force majeure clause, the law will step in and say, *Oh! Well, the theater had a flood or the pipe burst. Can't use the theater. Force majeure.*

I remember during COVID, obviously a very stressful time and a lot of contracts didn't have the word pandemic. Oh my God, there were people who were upset because it hasn't been an officially declared pandemic. This was Northern California and I'm in Southern California. If any of that ever got to court, a judge is going to say, *could you do the show? No, then everybody get out.*

At the end of the day, nobody wants a cancellation. Venues don't want it, artists don't want it, nobody does it because they're happy. Sometimes there's no choice. In any number of reasons. But what you want is a breach. A breach is I'm doing something I'm not supposed to do. A cancellation is, here, you can cancel by paying X. A force majeure is a get out of jail free card. A force majeure is when something has happened and nobody has to pay anything. But even that can be negotiated.

So like as you mentioned, people can say, okay, but in the event of force majeure, the artist gets their out of pocket cost fees. On the other hand, the presenter can say, *well, why? It's not our fault that we had a flood.* I had this happen just a couple months ago, if you remember, in California. There were all these torrential downpours. And I had this manager call and they're very upset because the theater canceled. Well, why did they cancel? *Well, the police put a curfew in around the*

*area, but not the area that the theater was in. And I said, well, how are they supposed to get to the theater? Well, that theater itself where it was, was not under curfew, but the other areas were. So now they're not paying. And I said, well, but they were under a flood watch. Everything was under a flood watch. Yes, but it turned out the flood didn't happen.*

*So what can I do?, he wanted to know, to put in my contract to make sure this never happens again. And I said, get insurance. And he said, well, they're the ones who are supposed to have insurance. I said, no, you have insurance. Well, what's the point of having this in my contract language? I said, the contract is an invitation to discuss. And then you learn, oh, this could happen. Or you learn, oh, it's a university and I can't sue them. Oh, this is when you decide I'm going to take this risk and go forward.*

My basic approach to contracting is risk management. It's not about guarantees. It's not about protection. It's about risk management so that you can make a decision as to whether or not to go forward with the date or the commission or the project or whatever that is.

LAURA: Through these episodes of *The Middle Woman*, we have been advocating for people in the course of negotiation for an engagement to get as much defined as they can: like I need that white marley. I need to be picked up at the airport, I expect five hotel rooms, six nights, etc, etc so that from the get go, that is in your confirmation of terms, so it's not a surprise when we get to the contract.

BRIAN: Oh, but it'll still be a surprise.

LAURA: Of course it'll be a surprise.

BRIAN: And why will it be a surprise? Because nobody reads anything.

LAURA: Correct.

BRIAN: And to be fair, you know, everybody is overworked and busy.

LAURA: Yeah.

BRIAN: What you're saying is so true, as the way it should work. It should be an opportunity to say, hey, wait a minute. We need to discuss this. I didn't realize, you know, you don't have that size of a dressing room. Or you don't have that fly space. You have to hold people's foot to the fire. Or, realize that if you've not gotten a response, that's information. To me, it's all information.

LAURA: Yes.

BRIAN: You can't do this every time, but I like to sit down, if I'm actually the one negotiating an engagement or something, to bring to their attention things that I don't want to assume they've read. I tell my class, you don't want to be condescending, but always assume the other person you're dealing with is an idiot. Do not assume that because they've been there for 30 years, they know what they're doing. Do not assume that they've read it.

People are afraid, especially from a manager's perspective, if they reach out to a venue, and say, hey, I want to make sure you know this that might make you uncomfortable - they're too afraid of losing the date. You know, just like I will say, well, you didn't get that contract back for seven months. Why didn't you follow up? *Well, I assumed everything was fine or they would say something.* No, you were afraid that if you followed up, you'd get the answer you didn't want. Which was that they weren't responding because they decided not to do it. But you'd rather just not ask that question. And that's where we start missing the point.

LAURA: Yeah, we talked about that in the first contracts episode. Basically, if you're not hearing from them, something is wrong.

BRIAN: Silence is not golden.

LAURA: Silence is not a good thing in this business.

BRIAN: Right? That's, oh my God, it is so, so true.

LAURA: Yes, yes. Well, so we're doing our best to be as organized as we can in advance with as much information as we have access to, to get it out and on the table and in front of the presenter, signed off on as early as possible. And then we're working really hard to make sure that their production person gets that information, because there's often a big gap and a hole from the presenter saying, *Oh yeah, sure, we've got that fly space,* when actually they don't, or they don't have that theater size, or they don't have the wing depth, or they don't have a sprung floor.

BRIAN: Right.

LAURA: So, I mean, there are just a million things. And yes, so much can happen on site. Like, Channel 7 wants to just show up and shoot something. Okay, so we

didn't discuss that. That's fine. Let's talk about it. But, we always can't get out ahead in front of everything. But the contract is still critical.

BRIAN: It's the only way of making an effort. Yes. To communicate the wants and not wants. You know, I always tell my artists, tell me your worst experiences, and let's see if we can head them off at the pass.

LAURA: There you go.

BRIAN: Tell me what you liked. A lot of contracts start out with two pages. And then now you zoom ahead 20 years and now they're 20 pages. Because everything that went wrong, oh yeah, we gotta fix that. Because you start figuring out what the good experiences and the bad experiences were.

LAURA: And it goes both ways.

BRIAN: Oh yeah.

LAURA: Let me tell you two things that we're noticing now. When the venue is actually issuing us the contract, we are seeing a lot of punitive language. If the artist does this, you will be charged, if you miss the program copy deadline, if you didn't submit your lighting plot to us and, you know, \$150, lots of these fines. And so after we've reviewed the contract, when we send it to our artists to get their okay on it, we say, Hey, page five, please take note. If you miss the program copy deadline, it's going to cost you 150 bucks. Don't glaze over that. It's right there.

The other thing that we're seeing, and this is literally in the last six months, let's pretend the show is Friday, Saturday. Bad enough I'm not getting paid on Saturday. I always ask for the Monday. Cause I know no one's going to pay me on Saturday. Now they want a net 15 days or net 30. What am I, the cookie salesman? I'm like, no, no, no, no.

BRIAN: No, it's very true. I always say that the arts industry and the restaurant industry are the only fields where you get to eat the product before you pay for it. And it's like anything else, anything else.

LAURA: Anything else.

BRIAN: We went through renovation hell when we were moving apartments a couple years ago. And, you know, no, you did not get the floors down until you paid that deposit. You did not get the paint. You did not get anything. Yet, you know, in our world, you get everything. And then they hand you a check, if you're lucky after



the last performance, or depending upon the venue, they need 15-30 days. This is a good example of making choice. There are some times where I know very well that there are venues that cannot pay on the spot. There is one person who comes in on a Thursday between 2 and 3pm and writes checks. And that only happens every other week. And that's just the way they're set up. So if it's something like that. I'm like, okay, I just deal with it.

LAURA: And this is the part where we have to get ahead of that.

BRIAN: Right.

LAURA: So that the contract is executed in time so that you do get into the cycle of checks that's being cut.

BRIAN: Or you realize that sometimes they won't cut the check until after the last show anyway. But, more importantly for me, is to make sure that my artist or my client has not leveraged themselves. If I know that Carnegie Hall or this venue needs 30 days, my job is to make sure just like with your artist. Okay, So, make sure you've got a cash flow to cover the travel and the hotel.

What happens sometimes is you'll get that one big anchor date and all of that's covering the expenses. And if that got yanked, you're screwed. So, it's about educating, what am I working with? Okay, what are my obstacles? They're not going to pay for 30 days, so how do I move this money?

LAURA: One of the ways I'm mitigating this when I see this is first of all, I try to get them to pay me on the Monday, dammit, and not 15 or 30 days later. And let's pretend I get them talked down to five days. They're going to issue me the check five days later. They got a FedEx it. And the other thing is then I will renegotiate the payment schedule to front load it.

BRIAN: Well, that's, that's exactly right. Let me have my deposit up front so that I can use that to cover the out of pocket costs I love deposits. Because they can be used in so many different ways. They can solve a force majeure problem. They can solve a cancellation problem. They can say, okay, we've got a deposit to play with. Who keeps it? Who loses it? Who refunds it? I think it's great for everybody. On both sides. I'm a big deposit person.

LAURA: I wanted to talk about the equitable contracting efforts that have been afoot. Very much instigated by the pandemic and so many artists having so much money just disappear. They never got that first payment.

BRIAN: Right

LAURA: Losing engagements and having absolutely no income, but also in the aftermath of George Floyd's murder, the effort of equitable contracting which, dear listener, I will point again to the tab for equitable contracting on our website. You will see three different documents there. One was put out, it's essentially a white paper, advocating for best behavior by a wonderful consortia of presenters, managers, and artists, that was spearheaded by APAP, the Association of Performing Arts Professionals. There's another, essentially, white document advocating for best practices by Dance/USA, which is our national service organization for dance. And then the third document up there is Creating New Futures, which was an artist-led effort that published a 100 page document which very much documents what happened in that moment in March, April, May of 2020 and what artists were experiencing and feeling. And it's very much a voicing of how they don't feel that it's an even playing field. That, really it's just jerry-rigged against them, for them to find themselves in such positions of harm, and how the pandemic revealed that.

The section I contributed to is about contracting, and in that section on contracting, I wrote about the power of being able to say no, and being ready to walk away. And this is probably the most powerful lesson you have taught me and that I understand and that I speak about to the artists we represent regularly. You wrote to me in an email and you said: the power of just saying no works better than any contract.

BRIAN: That's true.

LAURA: And you have guided me through moments where you have counseled me to learn how to say no. Because, first of all, women are not taught how to say no. We're just not. This has been a gigantic lesson for me as a female, but also for me leading an all-female team of learning how to say no and like in a very professional, lovely, charming way.

BRIAN: There's learning to say no, and then there's also making people respect when you say no.

LAURA: Correct.

BRIAN: I'm breaking this into three different areas, there's the equitable movement as you talk about. There's an equitable social movement, an equitable playing field in terms of inherent social issues: sex and discrimination and demographics and all that kind of stuff. There is making sure that contracts work for everybody so that

the show gets on, And then there's the third one, which is best practices and ethical behavior. And that's always great, but unenforceable.

I remember APAP itself years ago embarked on an idea of having an ethics committee and rules of professional behavior, but it all kind of fell apart because a lot of people on the committee were using it not in terms of professional standards, but as a way of enforcing other parties to do contracts the way they want. For example, they suggest that it's unethical to cancel without a reason. But it's just contract law. You're just restating contract law. Really what they wanted was, a way of enforcing a contract without going to court. Court is expensive. And in our industry, rarely worth it. So they were hoping that APAP would step up and provide a free enforcement service by issuing penalties.

You want to have an industry that respects each other, but unlike, selling widgets or iPhones, it's something that everybody feels passionate about on all sides. The artists take it personally, the venues take it personally, the managers take it personally, everyone takes it personally, personally, personally. Everything, every slight is seen as an intent. Every "no" is seen as someone being unreasonable.

There's just so many different things that come to the table, that bring us together and also keep us apart. As much as it's a business, it's also about stepping back sometimes and taking ourselves out of it to see the bigger picture. To understand the motivation of the other person we're dealing with and why they may be freaked out or under pressure. Or their boss is a pain in the ass and you've caught them on the wrong day and it's not about you. All of that stuff comes into play.

LAURA: Yeah, well, it's interesting because it does ultimately, get down to best practices and people behaving better.

BRIAN: Yep.

LAURA: And us modeling best practice and best behavior. And I, thankfully, have been alive long enough to see a generational change.

BRIAN: That's a big deal.

LAURA: And there's a whole new generation of presenters and artswokers coming online. And they are, let's just say they're thresholds are really powerful to me to experience. It's very encouraging and positive

BRIAN: I work on all of these different adjunct faculties for arts management and it's a program and a degree and a training that never really was there before. Most

people in our business, myself included, have backgrounds in the arts, you're a dancer, I'm a theater person, Robyn is classical music, my wife is a violist. I mean, everybody's in it. But we all got thrust into the business without any business degrees, without any idea of how the business works. And we're making it all up from whoever taught us.

So now this new generation is actually learning both from past mistakes and positive experiences. How to now take us into what will hopefully be a more stable future because you've got this new generation who you don't want to ignore the past, but you want to say, wow, that's really an old way of doing that. We need to think new and they're open to understanding capitalization and budgets. And *well, maybe we don't always have to be a nonprofit. Maybe that's not really the best way to go. And maybe I don't want a board that is going to be dysfunctional and make me want to bang my head against the wall. Maybe we can figure out a different way to do a business plan. Maybe we don't need to always have a commission-based arts management. Maybe we can do retainers and hourlies* and all kinds of new ways of thinking. I agree. I'm seeing it. It's slow. Because sometimes, you know, moving people who've been in a position for 30, 40 years, you gotta wait till you drag them out by their feet.

LAURA: Indeed. I am grateful to our service organizations in the fields that are providing, place and space to at least voice and to say for the artists and for the artist managers and also for the presenters to say out loud, this is not working anymore. Let's do something about it.

We at Elsie work with a lot of university presenters who love to tell us: *Oh no, I can't get you a first payment ever. We never issued first payments.* And I'm at the point now where I'm like, then we don't have a gig.

BRIAN: Right.

LAURA: We don't have a gig. So first of all, I'm trying to get that first payment out of my mouth at the point of negotiation, the second the programmer says to me, I want to book this show and aside from the housing and the ground transportation and the freight and all the other stuff and the size of the fly space and all of it, I've got to get out: I absolutely have to have a first payment.

BRIAN: Right, right, right.

LAURA: I'm doing my damndest to get that out and then countering the, *Oh, we're a university hard stop, there will be no first payment.* So this is why I put these documents on my website, frankly, Brian, because, it depends on what the window

is. If the window is four months and this presenter absolutely is not going to be able to get a first payment, we don't have a gig. We really do not have a gig. If it's a year in advance, that's when I will say, *so you know this thing is going on around equitable contracting. If you go to my website, you'll see these documents. Would you please run this up the ladder to whoever it is in the room that is saying absolutely no first payments.* But I also, I say, *there are many other ways that I could give you an invoice for all the airfares. I can give you an invoice for the cost of the visas. We can document these advance expenses. What can I give you to get you to give me this first payment?*

BRIAN: To play devil's advocate because I've been in this position. A lot of times that's an issue of state law. And they cannot issue it. My heart in many ways goes out to university-based presenters. Imagine like Kennedy Center or Carnegie Hall or New York City Center, but stuck in the middle of an oil company that is making all of your legal decisions for you. So they have no idea how your business works, but you are owned and controlled by Texaco. That's kind of how university-based presenters are, which is, by state law, you cannot pay in advance because it's the University of California, it's the state of Virginia, or whatever. *This is how our state works and we are a state institution.* Okay. Then you've got others. You've got somebody in an accounting department who just doesn't understand and they, we battle with that, on the other hand. Sometimes this goes back to, if that is untenable, then you say no.

LAURA: Then you say no.

BRIAN: And sometimes it's like, okay, we just won't be able to work at these institutions and that's okay. That's totally fine. Other times you're like, no, it's too big of a venue. It's too big of a fee. We're gonna have to take that risk but mitigate it some other way. It's both valuable information and there's no right or wrong answer to it.

LAURA: So let's talk about the power of no. And the basic advice that you, I'm sure, give to artists on a regular basis on saying no, and also to people in my position. I'm just thinking of the many times I have gone to you for counsel on moments of no.

BRIAN: Well, there's lots of reasons to take a bad deal. There are a lot of artists, they'll come to me and they'll say, *you know, I just got this recording contract. Will you take a look at it?* And I'll say why. *Well, I want to know, if it's a good deal or not.* Are you going to do it anyway? Yes. Well, so why are you paying me to look at it? Really what they want is me to look at it and say, *Oh, this is great, nothing can go wrong.* But, you know, what I like to do is to look at it and say, *Okay, this is a*

*horrible recording contract. Why? Because it's a recording contract. And they're all horrible. But, you're going to do it anyway. And here's what you need to know.* Because there are lots of reasons to take a bad deal. You know, you may need that first recording contract. You're not going to get any money. But you're going to get that recording out of it.

*It might be, look, you're being underpaid. This is a horrible deal, but this gets you a chance to try out a repertoire that you've never done before. Or it'll get you a chance to be in a city you've never done. So you're gonna lose money, but it's okay. Or, okay, there's a risk that they might not pay you, but that's okay because you've got enough money from this other thing. So, other times, you get to that issue, and it's like, no, that's too big of a risk.*

Sometimes it's like, no, I cannot make this work. It could be a financial decision. Could be because I don't want to work with this person because I know how they've treated others and I know what they're going to do and they say this but don't do that thing. At the end of the day, as arts are a commodity like anything else, if you don't want to sell your product, you don't have to. If somebody is offering you crap for what you have just made or offered, do not sell it to them. If you do, then that just reiterates the cycle all over again. And that's the other sad part about our industry. It's also a very opportunistic industry.

LAURA: Exactly. This is the problem in accepting that low fee because the presenter, not only do they have a record of that low fee, they're never going to forget they paid you so little and the next time they come around to you, they'll come back and even though that was a one time confidential fee you negotiated, it's all they can do to increase it by 10 percent the second time.

And then sometimes you just have to say no, because you might be having a head on collision with a presenter who has their mind made up about a very specific thing and you understand something completely different and you are doing your best to represent the spirit of the contract.

BRIAN: Right.

LAURA: And they absolutely do not agree with you and they have made it very clear that they think you are just the worst person on the planet. And you have a moment where you realize, okay, I could continue in my position and dig my heels in. And this will be the very last engagement I ever have with this presenter.

You and I have been in a couple of spots where you have counseled and guided me through that. And I remember having a moment, the first time where I said to you,

*I can't lose this presenter, Brian. And you said, Yeah, you can, and you asked me, thank God you asked me, and you said, why, after all the names he called you, after all the histrionics, after, but more importantly, all the horrible things he accused you of, why would you ever want to work with this person again? And I'm so grateful for that lesson, and learning how to say no, which in that instance was learning to stand my ground, if you will.*

BRIAN: Also there's different ways to stand ground.

LAURA: Yes.

BRIAN: And no is a way of standing ground.

LAURA: Yes.

BRIAN: I'm sure I've mentioned this to you before, and it's one of my favorite sort of trite sayings, which is never play chess with a pigeon. Because no matter how well you play the game, no matter how all of your moves are, the pigeon is just gonna knock over all the pieces, shit on the board, and claim they won.

People will say, Brian, if you just write them this letter, what's going to happen with this letter? *Well, just explain to them, in a legal way, like, okay, that just means over complicated, but okay, fine.* There's this idea that if you present someone with a mirror, they will go: *you're right! I've been an asshole!* They will never do that. A lot of times it's getting people out of their own way. *I can't let them think this.* Why? Who cares? Let them think it.

LAURA: That last circumstance that you and I had with one of my engagements, that was a straight up cancellation, 26 days or whatever it was before show. In that instance, the artist had gone from being this presenter's just shining star on his season to suddenly garbage. They were no longer worthy.

BRIAN: Right.

LAURA: And it was something that was a total shock, not only to the artist, but to me. And, you and I had a moment there where we had to decide what we were going to do.

BRIAN: I remember that, and that's hard, it's not to focus any one particular party in any of these negotiations because it cuts all the ways from the managers to the artists to the presenters. Nobody wants to be disliked. And everybody thinks that

whatever decision they've made is the ethical decision, even though to the outside world it may be completely not.

This is like one of the things that irritated me in your scenario was that not only was this particular person being an idiot, but that's your classic pigeon. So there's no way you're going to be able to get through that. You have to decide, okay, am I ever going to be able to change that perception? No. Is it worth it to go grovel? No, they still won't change their opinion.

LAURA: No, they won't change their opinion. And I had to speak to that artist and say, they are never going to come around on this. I know this was a 10, 15 year relationship and this is agonizing, but there's no clean up that's gonna happen here that's gonna satisfy anybody. Yeah. That was hell. And also for us at Elsie Management, it was another one of those relationship-ending moments.

BRIAN: But what's interesting in our industry too is that because it's so, give it another couple of years. Give it another couple of years, they'll be back at a bar laughing together. That's how it kind of works.

LAURA: I wanted to go back to representation agreements. The importance of representation is that the spirit of this document is meant for us to just get this codified, get this documented now so that we can just automatically renew, we can make changes and amendments, but this is just for us to go through all this work now so that we don't have to deal with this as we do our work, it's all set forth.

BRIAN: I do know with representation agreements that's an interesting topic because you really find out who you're about to get in bed with with those because I had a manager couple months ago was taking on a new artist and they had this. *Oh my god. I love you, it'll be great all these great things together. Oh my god, This will be great. Kiss kiss kiss love love love. So I'm gonna send you the agreement so we can go over it* and his head exploded.

LAURA: The representation agreement?

BRIAN: The representation agreement, the artist management agreement.

LAURA: Okay

BRIAN: His head exploded. Why? *Well, I didn't expect anything in writing.*

LAURA: The artists didn't expect anything in writing?



BRIAN: Right. And he said, *this is not in the spirit of collaboration that I thought we talked about*. First of all, he didn't like the tone. He said the tone was not nice. He used the word nice.

LAURA: I'm so sorry.

BRIAN: He said *it makes it sound like we're in a business together and not having an artistic collaboration*. And I'm like, oh geez, run away, run away now.

LAURA: Right now.

BRIAN: But the manager said *oh but he's a great artist. Can you simplify it? I just need him to sign it*. I could, but I won't. This is a experience staring you in the face.

LAURA: You just got a huge lesson right there.

BRIAN: One of the things he didn't like was the exclusivity. *It sounds like I can't leave whenever I want*. You can't. But the beauty of it in a sense was pulling out the unsaid, the assumptions, the things that people are taking into a relationship that they don't want to talk about. And that's brilliant. That's the point.

LAURA: Which is why when we send our representation agreements out, typically in the first phone conversation I'll say things like, *Oh, by the way, we work with exclusivity. We don't have a representation agreement with you without that. That's a deal breaker*. Done. Right. This is not an open negotiation. We do our best again in advance. So when they get the 14 page representation agreement They're not too shocked because hopefully we've walked them through all the clauses.

BRIAN: I tell the venues, if you want it, specify it. The rule to everybody is do not assume. Do not assume that because you're engaging the Paul Taylor Dance Company, God rest his soul, that Paul Taylor's going to show up.

LAURA: Yeah, because he's dead now people.

BRIAN: Because he is dead, which is why I can mention it. So everyone has got the job to nicely educate the other side.

BRIAN: When a ball gets dropped, everyone drops it. We had a classical pianist who won a major classical Competition, won the prize of which was performing here at a major venue. And nobody got him a visa because everyone thought everyone else was doing it. The Competition thought the manager was doing it. The manager

thought the Competition was doing it. The artist assumed someone was doing it. And nobody did it.

LAURA: Oh, boy.

BRIAN: Now, did any one person fail on that? No, they all dropped the same ball. But they all dropped it by assuming someone else had it. But, you know, it worked out. This is a business that is based on relationships. It's based on listening. I have a lecture I do, which is everything I need to know in life I learn in the theater. Which is role playing. Which is listening. Which is knowing the other person's lines as well as your own. Knowing how to read the room.

The legal tools are just one more tool, but no more important than anything else in this process. If anything, it's a very unimportant one because it's not an industry based on lawsuits. It just doesn't have the economy to support that unless we're dealing with an 80 million dollar Broadway show or something. So it's really based on just like illuminating the stage with lights. You're using words and contracts to illuminate what you're getting into.

And, you know, I always tell people, too, that a contract can be a piece of paper that says, one, two, three, four, five, six. It doesn't have to have legalese. I hate that word. There's one thing that makes my head explode more than anything else it's legalese. Or someone will say, Brian, *this person and I are going to do a collaboration. We have an agreement. Can you "lawyer it up" for us?* I'm like, what? *Well, we just need to make it all legal.* Okay, so you want me to take something that is quite clear and make it worse. You can come up with exclusivity language. For example, that says you're not going to work with anyone other than me for the next three years. It doesn't have to be complex.

And this part of the business just requires the same amount of creativity, it's just a less fun part of it. But it's still creative. You're still thinking outside the box. Listening to people's emotions, you're getting in touch with yourself and with others. Sometimes you want to say yes, even though you really want to say no. Other times you want to say yes, but you literally say no and that's a good role for the manager to play. And that's a role I find myself in a lot of times, is being the adult in the room who has to say, *no, you're being stupid. And let me tell you why.* Basically don't make assumptions. Listen, be willing to educate each other. And realize that the end of the day, only you can protect you.

LAURA: Right. I love the part about knowing all the lines. Knowing your lines and knowing everybody else's lines. It's so good.

You don't have to accept the contract the way it is. You can also write back and say, Oh, this clause actually isn't relevant to me, right?

BRIAN: Right. Or, you know, can we waive the insurance?

LAURA: Can we waive the insurance?

BRIAN: Because this is a, you know, I've got a, you've got a 2 million requirement on a flutist, and they couldn't do 2 million of damages if they set the flute on fire and attack someone with it.

LAURA: I'm going to say thank you, Brian. I really appreciate this time and for sharing your wisdom with us through this episode, I greatly appreciate it.

BRIAN: It was my pleasure.

LAURA: Dear listener, you know what I'm going to say. Go see a live show. I don't care what it is. Go see a live show.

BRIAN: You might just like it.

LAURA: You might just like it. And even if you don't, please go and share your experience with us. You know how to find me. Until next time.

(Fade out with jazz music by Manual Cinema)