

**In Facetiis Veritas:  
How Improvisational Comedy Can Help Trial Lawyers Get Some Chops**

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**Prologue**

A physicist, a biologist, and a mathematician are sitting in an outdoor café and observing a vacant house. After an hour, two people walk into the house. A little while later, three people walk out.

“There must have been a measurement error,” says the physicist.

“They obviously reproduced,” says the biologist.

“If another person goes in,” says the mathematician, “that house will be empty again.”

**I. Introduction**

As a reader of this journal, chances are good that you thought that joke was pretty funny, though you probably wondered what it had to do with law. It will take a little explaining (which, of course, will ruin the joke), but there is actually a close relationship between certain forms of humor and certain aspects of law practice. As we will show, the principles of improvisational comedy can provide important insights for trial lawyers. But first, back to the empty house.

If you found the introductory joke funny, it is because it appeals to your intellect, or at least to your education. In order to appreciate it, you need to have a grasp of

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negative numbers, and to recognize how they are used in equations. It works even better if you have experienced the company of academics or professionals, and if you understand how they over-intellectualize every experience. Depending on how well you remember your last math class, you might have had to pause for a moment after the punch line, eventually putting the two parts together before recognizing the joke – mathematicians view the world in terms of abstract numbers rather than real people. Thus, they are comfortable with the idea that a house might hold a negative person (more people left than entered) so that the addition of an actual person would result in an empty house (negative one plus one equals zero). Pretty smart. And if you get it, that means you're smart – which ought to cause you at least a smile of approval.

A joke is a highly stylized form of communication that is intended to arouse a particular response – a grin, a chuckle, a guffaw. In other words, humor is persuasion. A good joke makes you to laugh because it convinces you (sometimes instantaneously, sometimes following reflection) that something is funny. A joke, therefore, is somewhat comparable to a legal argument or cross examination question, each of which is also intended to evoke a specific belief (or disbelief).

To pursue the trial analogy, we can divide humor into two broad categories. One type of humor operates almost reflexively, jerking the laugh reaction, usually in response to someone else's misfortune. Slapstick is the prime example of this sort of humor, but it also comprises a good part of standup comedy, with its emphasis on outrageousness, embarrassing stories and putdowns. One successful writer has defined this aspect of humor as "truth plus pain." Trial lawyers occasionally trade in similar goods, attempting to create reactions to witnesses ranging from awe to revulsion. But that is the smaller and

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lesser part of the lawyers' arsenal – useful in the short term but unlikely to bring long run success.

There is another sort of humor, however, that does not depend merely on the audience's impulsive reactions. Rather, it emphasizes discovery, or even revelation. It is funny because you have to dig for deeper meanings, which of course makes you feel smart. And that makes you laugh. We are talking about the improvisational theater and sketch comedy, where the ideal is to cause you to laugh not in shock, but in delight.

So here's our point: Lawyers can learn a lot from improvisation theory, and it isn't just a matter of thinking on your feet. As we will explain, the key concept in both disciplines is the creation of a new, temporary reality. In improvisation, the cast must draw the audience into sharing the constructed reality of the stage, such that they can actually "see" the objects and characters portrayed, without the use of props or costumes. In trial, the lawyer must draw the jury into sharing the re-constructed reality of past events, such that they "see" what happened, even though they were not present to witness the original actions. Improvisation theorists and teachers have developed principles that guide performers in creating and maintaining a constructed reality in which the audience participates. And these principles of improv – especially the version known as "long form" – can be of great use to lawyers.

## **II. What is Long Form Improvisation?**

Not all improvisation skills will help at trial. Faking foreign accents, rhyming spontaneously, and inventing witty puns all have their place in "short form" improvisational comedy – but in court, not so much. "Long form" improvisations,

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however, relies much more on the relationship among characters and location, often consisting of a series of scenes that can last anywhere from twenty minutes to an hour. It is less about being clever, and more about presenting realistic interactions between characters. Long form improvisers trust that much humor will come from honestly portraying their characters' emotional reactions to the improvised situations. Most importantly, and perhaps counterintuitively, *long form improvisation is not primarily about being funny*.

### A. Wait, Are You Serious?

What? Long form improvisation is not primarily about being funny? How can that be? To be sure, “improvisational theater” has become almost synonymous with “improvisational comedy.” And needless to say, long form improvisation *is* funny—often hilarious, in fact. Nonetheless, it is not *primarily about* being funny.

Chicago's Del Close is usually considered one of the inventors of long form improvisation. In his seminal book, aptly titled *Truth in Comedy*, Close explains, “To assume that making the audience laugh is the goal of improvisation is . . . just not true. Still, they laugh. It is a side-effect of attempting to achieve something more beautiful, honest, and truthful, something that . . . puts your attention on what is important about being a human in a community.”<sup>2</sup> Mick Napier, a founder of the Annoyance Theater, agrees with Close that laughter is a “side effect,” explaining that when “the improvisers are playing the scene for real and keeping the stakes and what the scene is about intact,

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<sup>2</sup> DEL CLOSE, CHARNA HALPERN, AND KIM JOHNSON, TRUTH IN COMEDY 24-25 (1994) [*hereinafter* Truth in Comedy].

the laughs are more organic to character and relationship. They are not cheap laughs, but more intelligent, richer laughs: better laughs.”<sup>3</sup>

It may seem odd that the gurus of improvisational comedy speak so glowingly of not trying to be funny. If long form improvisation is not about being funny, what makes the audience laugh? Del Close had an answer: “Is what we’re doing comedy? Probably not. Is it funny? Probably yes. Where do the really best laughs come from? Terrific connections made intellectually, or terrific revelations made emotionally.”<sup>4</sup>

### **B. Revelation!!!**

The concept of “revelation” originated in the work of Viola Spolin, who is America’s first and most prolific theorist of improvisation. Concentrating on neither long form nor short form, she primarily uses improvisational workshops to teach actors. In the introduction to Spolin’s book *Improvisation for the Theater*, her son writes, “One of Viola’s sayings is ‘With intuitive awareness comes certainty.’ The sense of self is intuitive, relation is intuitive, and when they occur: certainty.”<sup>5</sup> Another of Spolin’s sayings is, “Involve the audience as a fellow player; together hand in hand,”<sup>6</sup> meaning that an audience can achieve intuitive awareness, just as the participants in her workshop can. To Spolin, the “intuitive” is, among other things, “unhampered knowledge beyond the sensory equipment . . . the area of revelation.”<sup>7</sup> Improvisation, therefore, is an

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<sup>3</sup> MICK NAPIER, *IMPROVISE: SCENE FROM THE INSIDE OUT* 87 (2004).

<sup>4</sup> Truth in Comedy, *supra* note 13, at 25.

<sup>5</sup> VIOLA SPOLIN, *IMPROVISATION FOR THE THEATER* x (3rd Ed. 1999). Incidentally, Viola Spolin’s son is Paul Sills, himself a driving force behind the formation of Second City and an innovator in the field of improvisation.

<sup>6</sup> *Id.* at xiv. The full text of this axiom is actually, “Involve the audience as a fellow player; together hand in hand (one body).” *Id.* The “one body” parenthetical can be placed in context with another of her axioms, “I’m changing mind to body. Body includes mind.” *Id.* Here, Ms. Spolin’s work anticipates the teachings of many modern improvisers who speak of “group mind” and “group consciousness,” which includes both the performers and the audience of a long form improvisational show.

<sup>7</sup> *Id.* at 362.

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experience where the performers and audience understand something with preternatural certainty, beyond their actual senses.

For example, consider the following sequence from a long form improvisational show at IO Theater in Chicago.

Early in the show, a character named “Gary” told his friend that he had dropped an antique vase. Gary was established as an unlucky klutz, but the scene went on from there, having very little to do with the vase.

Forty minutes later in the show, a seemingly unrelated scene was happening in an apartment. In that scene, an earthquake started, and the characters inside the apartment reacted. Just then, “Gary” made an entrance, as if he were walking past the apartment building. He was carrying something in both hands. The earthquake tripped him up, and he dropped whatever he was holding and cursed. Then he continued across the stage without saying anything else.

In that moment, the audience recognized the character. They realized, even though no performers said anything about it, that they had just witnessed the moment when Gary dropped his antique vase. The entire audience laughed and applauded. Why? Because they recognized for themselves an element of the performers’ constructed reality. Through an intellectual connection to the earlier scene, they recognized “Gary” and figured out what he must have dropped, even though no one in the earthquake scene named him or said the word “vase.” The audience realized that they now understood why he dropped the vase—because of the earthquake. Because the performers allowed the audience to make the connection, the event itself was enough to get a huge reaction. No clever jokes or silliness required. When the audience, by itself, identifies what must have

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happened with intuitive certainty, the desired effect – in this case gales of laughter – is sure to follow.

Of course, it only works when the audience has become part of the constructed reality. If instead they perceive the performers as pretending or inventing, they will not enjoy the same moment of recognition or revelation. For the same reason, the description probably was not especially funny to read. Improvised scenes are rarely entertaining when someone tells you about them. You have to experience the scene itself, entering the constructed world and sharing its premises, to understand how wonderful and amazing it was to watch that vase fall to the ground.

There is one more thing to learn from this example. Once an audience member has embraced the constructed reality, the events presented on stage will always be filtered through that reality. Imagine if, after the vase broke in the scene discussed above, another character came out and told a story about how Gary's vase broke when a bike collided with him. The audience will experience this story as one of three things: a lie, a joke, or a mistake. They *saw* the vase break, and they *know*—with intuitive certainty—that it was the result of an earthquake, not a bicycle accident. Though improvisers have the substantial power to create whatever reality they want, they are always stuck with whatever they create. Here, we can begin to see how the theory of revelation in improvisational theater connects to trials.

### **C. Story and Frame**

Improvisation, of course, is a deliberate form of storytelling, but storytelling for lawyers is not merely an optional technique. In fact, stories at trial are unavoidable, and so is constructed reality. Jurors bring their own frames of reference to the courtroom, and

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will fit new information into a storyline no matter what the lawyers do. It is a mistake to think that jurors accumulate facts, one after another, in order to arrive at a conclusion. Rather, they begin to imagine a story almost immediately, interpreting subsequent facts to fit into a familiar framework. Effective trial advocacy therefore requires tapping this narrative instinct by suggesting a powerful story at the very outset. If your story rings true to the jurors, and influences their frame of reference, they will interpret the evidence to fit your case.

The jury's frame of reference, then, can be all-important to the outcome of a case. A trial lawyer must be able to address disparate jurors, with their own experiences and frames of reference, and create a story that will impart a single perspective to the entire jury, a narrative framework in which to view the evidence.

If the trial lawyer is successful, the jurors will not feel like they have been convinced or persuaded — rather, they will feel as if something has been *revealed* to them. A persuasive argument may make the jurors say “Okay” or “You win,” but a powerful story makes them say “Of course,” or better yet, “I knew it!” The combination of evidence and story line forms what Del Close called “[t]errific connections made intellectually, or terrific revelations made emotionally,”<sup>8</sup> which lead the audience to the desired conclusion. In other words, trial lawyers seek the same type of revelation that Del Close and Viola Spolin posit as the goal of improvisation.

Not surprisingly, then, Spolin discusses improvisation in language that might be easily applied to storytelling at trial. “[S]pontaneity . . . creates an explosion that for the moment frees us from handed-down frames of reference.”<sup>9</sup> Jurors, like all audiences, are

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<sup>8</sup> Truth in Comedy, *supra* note 13, at 25.

<sup>9</sup> Spolin, *supra* note 19, at 4.

not fresh canvasses on which trial lawyers can paint. They arrive at the courtroom with expectations and “handed-down frames of reference.” The principles of improvisation work to untether the audience, at least in part, from the past, while bringing them into a new frame of reference, sometimes called a “group mind” or “group consciousness.”<sup>10</sup>

“Group mind” is the improviser’s word for the collective consciousness that the performers and the audience share during an improvisational show. Group mind allows everyone in the theater to simultaneously “see” a dragon, a spaceship, or anything else on the stage, even though there are no props or special effects to make the stage-reality actually visible.

A trial lawyer shares the goal of an improviser: she wants to bring the jury into a group frame of reference that matches her story, her theory of the case. If she is successful, the jury will feel like they have “seen” the events in question at the trial, even though those events were re-constructed through testimony, not actually present in the courtroom. By exploring the principles that long form improvisers use to create and maintain group mind, we can give lawyers some new ideas about trial practice

#### **IV. The Principles of the Thing**

##### **A. Discoveries vs. Inventions**

When we ask someone to imagine something, we are asking them to go into their own frame of reference, which might be limited. When we ask them to *see*, we are placing them in an objective situation . . . in which further awareness is possible.<sup>11</sup>

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<sup>10</sup> *See Id.* at 24 (“For both players and audience the gap between watching and participating closes up as subjectivity gives way to communication and becomes objectivity . . . . Here old frames of reference topple over as the new structure (growth) pushes its way upwards.”); see also Truth in Comedy, *supra* note 13, at 48, 92-93 (discussing group consciousness and group mind).

<sup>11</sup> Spolin, *supra* note 19, at 42 (emphasis added).

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Improvisers invite their audiences to see what is being created on stage. They draw the audience into a group consciousness, where mimed props and costumes are perceived directly. When everyone, including the performers and the audience, is part of the group consciousness (the same frame of reference), then details that the performers create seem to spring naturally out of the context of the piece, creating what we may call “Of course!” moments. “Of course!” moments occur when created details are experienced by the audience as *revelation*, not creation. It seems to everyone that the detail pre-existed its first appearance in the scene, and the performers simply “pointed it out” or “found it.”

In this context, we use “details” as an umbrella term for specific scenic elements. A line of dialogue can reveal a detail. For instance, if a performer says “That’s the tallest crane I’ve ever seen,” then the crane is a detail in the scene. Performers’ movements can also reveal details. For instance, if one performer makes a kicking motion, and the other performer “catches” an oblong object and tucks it under his arm, then a football is a detail in the scene.

A detail achieves a certain solidity or certainty when more than one performer acknowledges it in the same way. In the football example, both performers treated the object as a football. If the second performer, however, had simply ignored the kicked object, its nature would be unclear. But if the second performer had screamed, “No! My baby!” then the kicked object becomes something—in this case, *someone*—entirely different. Note that there is tremendous power vested in the second performer, even though the first performer is the one who introduces the detail. Even if the kicker says aloud, “Catch this football I am kicking to you,” the second performer still has the power

to determine the force or accuracy of the kick (which could sail over her head or dribble on the ground).

When a scene is going well, improvisation teachers often call the details of a scene “discoveries.” Interestingly, in the language of improvisational study, the opposite of a “discovery” is an “invention, which is understood as a pejorative. Clever details that come out of nowhere may get a small, surprised laugh from the audience, but these “inventions” confound the goal of achieving group consciousness because the audience experiences them as being created, rather than revealed. The reaction is not “Of course!” but rather “How clever!”

The bottom line is that a discovery is experienced as revealed, while an invention is experienced as created. Needless to say, trial lawyers want the jury to experience the evidence as revealed. Since long form improvisers and trial lawyers share the same goal of revealing details and connections through a group frame of reference, we now turn to the basic principles of long form improvisation .

## **B. “Yes And”**

### **1. Constructing Reality Through Agreement**

The acceptance of each other’s ideas brings the players together, and engenders a “group mind.” Denying the reality that is created on stage ends the progression of the scene, and destroys any chance of achieving a group consciousness.<sup>12</sup>

The group consciousness created in long form improvisation is built on agreement, a principle that improvisation teachers often call “Yes And.” “Yes And” is the Golden Rule of improvisation, essential to both study and performance

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<sup>12</sup> Truth in Comedy, *supra* note 13, at 48.

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([www.Yesand.com](http://www.Yesand.com) is a popular improv website.) For long form improvisation, “Yes And” is all Ten Commandments plus Hammurabi’s Code and the Magna Carta to boot.

“Yes” and “And” are of equal importance. “Yes” means that an improviser confirms her scene partner’s discoveries. “And” means that an improviser adds to her scene partner’s discoveries. The best “And” is typically a discovery that flows naturally out of the other performers’ offering, while supplying another aspect of the constructed reality. For instance, one improviser may offer the line, “I hate these huge new home-improvement stores.” A second improviser might then say, “Honestly! This place carries fifteen different brands of shovels, but they couldn’t make a decent cappuccino if their life depended on it.” In other words, “Yes,” huge home-improvement stores are bad, “And” one reason is that they are too ambitious. The second performer has made the choice to agree and add something.

“Yes And” can also progress from scene to scene. Picture an early scene in a long form improvisation that includes the line, “Oh my! Gravity just isn’t the same today.” If, in the middle of a later scene, a performer casually sets her coffee cup on a table, and then grabs it as it starts to float upward, she has “Yes Anded” the earlier discovery that gravity is acting strangely in the constructed stage reality. “Yes,” gravity is not the same today, “And” gravity’s specific strange behavior is that certain objects now rise inexplicably.

In addition, “Yes And” can apply to thematic content. Imagine that early in a piece, a performer says, “No one in this world ever gets what they deserve.” If, for the rest of the show, there is a character who steals from everyone and never gets caught, the

thematic statement has been “Yes Anded”. “Yes,” karma is inoperative in this world, “And” one way karma fails is that thieves get away with their crimes.

“Yes And” is the basic principle that allows formation of a “group mind.” Improvisers create group consciousness by adhering to a constructed reality on the stage, but because there is no actual physical reality, improvisers cannot solve disagreements by going to “the facts.” If one scene partner says that a chair is blue, and another says it is red, the audience cannot resolve the argument by looking at the chair. Consequently, the audience witnesses the disagreement and finds itself outside the constructed reality because there is no shared frame of reference and therefore no possibility of revelation. And even if the scene partners finally settle on a color for the chair, the audience will probably perceive the color as invented, rather than revealed.

## **2. “Yes And” for Trials**

At first, “Yes And” may seem problematic for trial lawyers. After all, trials are about disagreement, so lawyers instinctively react to their adversaries by saying “No But.” There is a more sophisticated “Yes And” dialectic, however, that speaks directly to trial work: long-form improvisers often agree by disagreeing.

In long form improvisation, the principle of “Yes And” does not mean that a performer must lap up every detail offered by her scene partner. Improvisers agree to the broader constructed reality, not to the subjective viewpoint of each character.

For a basic example of agreeing by disagreeing, we can re-arrange the scene about the home-improvement store discussed above. Take the same first line: “I hate these huge new home-improvement stores.” The second improviser could respond, “Honey, if you truly love me, you will give me five more minutes with these glorious wood chippers.”

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Though the two characters disagree on the merits of the store, they agree that they are present in the same store, in the same constructed reality. They just have different viewpoints. Note that the “And” of the response is very rich because it answers many questions inherent in the first performer’s line. Why is the first performer talking about home-improvement stores? Because she is in one. Why would she hang out in a store she hates? Because she loves someone who loves the store. The disagreement is wrapped in a broader form of agreement, and the constructed reality is firmly intact.

For a more complicated example, take the following. Two members of an improvisation group were doing a scene in which they play co-ed roommates. One of the roommates, “Jim,” thought that they were starting to date. The other one, “Sandra,” had the perspective that they were just roommates and nothing more.

Jim, acting like a love-sick puppy, says “I’m so glad we moved in together, sweetie.” Sandra replies, “Um, yeah man. I really needed to save some money on rent.” She acts awkward, acknowledging through her emotional reaction that Jim had called her “sweetie,” but not directly addressing it. Jim says that he was so happy when they bought a loveseat together for their apartment, stressing the word “*loveseat*.” Sandra says, matter-of-factly, “Yes, the apartment didn’t have enough furniture before.”

The more obvious Jim makes his romantic intentions, the more awkwardly Sandra reacts. Sandra realizes that Jim has the wrong idea, but she doesn’t want to hurt or embarrass him so she starts over-emphasizing her own perspective.

Jim says, “Your hair smells great today.” Sandra stiffly replies, “It’s a new shampoo, *roomie*. You are such a nice *roommate* to say that.” He says, “We should go see *Love Actually*. It’s supposed to be romantic.” She says, “Maybe I can see it with that

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good looking guy from work. I can see you at the apartment, when I get *back* from my *date*.” He looks hurt, “You mean you want to start seeing other people?”

The audience loved the interplay between the two characters. They could see exactly how the misunderstanding had developed, and they knew that Jim’s perspective was wrong. The audience felt like the two character’s emotions and relationship were directly revealed to them, even though Sandra and Jim, in the scene, disagreed on what the relationship was. The feeling of revelation was possible because the two performers agreed on the “world” they showed the audience, the facts of the situation that they created. At the same time, however, they obviously disagreed on the interpretation of the facts in that world. The “Sandra” character agreed on the broad reality that she and Jim lived together, loveseat and all, but she disagreed on what those things *meant*. Sandra’s reactions conveyed that she was not attracted to Jim. Jim naïvely attributed meaning to Sandra’s words and actions, but she did not argue with him about it. She just acted consistently with her perspective, while he acted consistently with his.

The audience had no doubt at the end that the two were not dating—that Jim was wrong. Sandra’s perspective won out, because her perspective accounted for the facts in a way that Jim’s did not. Most fatal to Jim’s perspective was that it could not explain the way that Sandra reacted to him. Sandra’s perspective—that Jim was well-meaning but confused—fit with all of the facts *and* with Jim’s emotional reactions to the dialogue.

Because the performers agreed on the objective facts of the constructed reality, the audience perceived the scene as a portrait of two *characters* who disagree about their relationship, rather than two *improvisational performers* who disagree on the facts of the

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scene they are making up. Moreover, the audience experienced Sandra's perspective as the "truth" because it was consistent with both characters' actions.

Now the application of the "Yes And" principle to trials becomes apparent. Flat denials ("No But") of the other side's evidence are less effective than saying "Yes" and providing an "And" that either fits your own story or shows why the witness would testify that way.

Picture a trial about a traffic accident at an intersection. The plaintiff testifies that the defendant ran a red light and hit him in a crosswalk. If the cross-examining defense attorney points out that the plaintiff previously brought four similar lawsuits, she is essentially applying the principle of "Yes And." In a sense, the cross-examiner is saying, "Yes, of course you claim that the light was red, *and* that is to be expected, because you always say that when you want money." A cagey cross examiner would not flatly contradict the adverse witness, but rather should expose additional details that explain the place of the witness's testimony within the larger story. The cross-examiner adds details that agree with the reconstruction of the underlying events, but places that reconstructed reality squarely in her client's frame. That is exactly what Sandra did in the "roommate" scene with Jim. She provided a view of reality that explained both her own reactions and Jim's, leading the audience to see her perspective as the true reality of the scene.

Just as improvisers cannot go "to the facts" to settle a disagreement, trial lawyers cannot take the jury to the actual events to settle inconsistencies in testimony. "No But" denials, therefore, may snap the jury, like the audience, out of a shared frame of reference, weakening or destroying group consciousness. In contrast, "Yes And" may

allow the jury to resolve the inconsistent testimony while remaining inside the frame you are using for your story, effectively turning your adversary into an unwitting foil.

### 3. The Contract with the Audience

“In our contract with the audience to make more of the truth we have created, we must sustain our visions and creations regardless of how afraid we feel in the moment.”<sup>13</sup>

The principle of “Yes And” applies both to your fellow improvisers’ offerings and to your own discoveries. It is your own commitment to a detail that makes the audience perceive it as revealed (as opposed to invented). When you “Yes And” your own discovery, you reinforce the constructed reality, allowing the audience to increase its own participation in the group mind. A strong point of view, or story frame, helps improvisers just as it helps trial lawyers.

Imagine that an improviser establishes in a scene that he is a professional ballerina. If he is actually a large, clumsy man, the scene might initially strike the audience as an invented joke. But commitment to this detail over the course of the scene could potentially draw the audience into a reality where they in fact perceive him, for the purposes of the show, as a petite ballet dancer. Perhaps, thirty seconds after mentioning his profession, he tells a short anecdote about his role as a sugar plum fairy in last season’s *Nutcracker*. He could ask his scene partner to hold his heavy dance bag while he practices an arabesque against the practice rail. If he is happy about something, he could rise on his toes and clap excitedly. In a creative pantomime, he could fluff out his tutu. With these confirming details, his ballerina-hood will be established as part of the constructed reality of the scene. If another performer refers to him as a corporate

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<sup>13</sup> Napier, *supra* note 15, at 56.

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executive, the audience will experience it as a mistake, a joke, or a lie, because the consistent details have cemented the ballet-dancer character in their minds.

Conversely, imagine that after he establishes himself as a ballerina he begins acting like a plumber, telling his scene partner how to use a wrench while hiking up his sagging trousers. The audience will likely experience this incongruity without a unified frame of reference. Some will see the character as a ballet dancer who acts strangely. Others will see the character as a plumber who makes ballet jokes. Still others will see no character at all, but rather an improviser who is desperately trying to say funny things. If another performer then calls him an airline pilot, the audience may start looking at their watches or heading for the doors.

The “Yes And” principle speaks to these situations, covering not only agreements among performers, but also agreements between performers and the audience. In a sense, details of a certain type are like a contract with the audience, or a promise. When you discover a detail in a scene, you are promising the audience that you will discover more details that are consistent with it, and that you will not contradict it. As improviser (and later Saturday Night Live performer) Tim Kazurinsky put it, “If you create a dining-room table early in the scene, you can’t just walk through the damn thing later on in the scene.”<sup>14</sup>

If you do not deliver on your promises, the audience will feel cheated, even if they do not realize it, and will begin to withdraw from the group mind. If another, more consistent version of “reality” is available within the show, the audience is likely to attach to it, and to judge your personal performance from within that perspective. If the show does not have a more consistent, competing version of reality, the audience

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<sup>14</sup> *Id.* at 14.

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members will judge the show from whatever individual perspectives they brought with them, and they usually will react negatively to the performance as a whole.

Juries, of course, can also experience details as promises to deliver additional, consistent details. Just as a long form improvisation audience feels cheated when you “drop” an idea, a jury may come to expect a certain type of evidence based on other evidence that has already been presented. If a cross examiner asks the defendant-driver whether he had his brakes checked, she is promising to say something later about the adequacy of his brake maintenance. If he insists that he kept his car in good condition, the “Yes And” principle can point out the absence of repair shop records. In that way, every succeeding detail can draw the jurors more deeply into the group frame of reference, helping them discover more and more facts favorable to the cross examiner’s case.

Juries may not applaud you for fulfilling the promise of presenting consistent details and making emotional and intellectual connections. The reward in trial will come from achieving a group frame of reference, in which the details of your case seem to be revealed instead of invented. The jury, though maintaining proper courtroom decorum, may well be exclaiming “Of course!” to themselves when you follow details you established earlier with details that support the same constructed reality. Better yet, when the opposition presents inconsistent details, the jury will be more likely to experience them as mistakes or lies. In other words, once the jury shares your group frame of reference, it becomes very hard for the opposition to work against you, because their case will be situated outside the group mind.

## **VI. Conclusion**

Applying the improvisation principle of “Yes And” can help to give audiences and juries a sense of intuitive certainty about events that they never actually witnessed. “Yes And” works because it allows an audience to experience details as discoveries—not inventions—and to experience connections between details as revelations of truth—not just possibilities.

When long form improvisers perform a scene and when trial lawyers present evidence, they have the same objective: to make the people watching say to themselves, “That’s so true.” In improvisation, the side-effect of that reaction will be laughter and cheers. In trials, when all goes well, the effect will be a favorable verdict.