

A FUNNY THING HAPPENED ON THE WAY TO ARBITRATION

**** IMPROVISATION FOR LAWYERS ****

INTRODUCTION

Whenever I teach a workshop in improvisation, I always ask, 'Who has improvised before?' Invariably, people who have taken improv classes raise their hands and those who haven't, don't.

The truth is that everybody is always improvising every minute of the day. We are all constantly making things up as we go along because nobody knows everything that is going to happen to them on any given day before it happens. You may think you have an idea of how your day is going to play out, but that may change as the day goes on and you also don't know every word that is going to come out of your mouth (or anyone else's) at any given point.

As human beings, we must remain flexible in order to navigate through our lives and achieve our goals. For example, if you need to get to work and your car doesn't start, you need to find another way to get there. Of course, you can make a choice to stay home but if you really need to get to work, you'd better find another way to do it. That is improvisation. Making things up as we go along. The root of improvisation actually stems from the Latin word *improvisus*, which means 'unforeseen'.

Unless you are psychic and have the advantage of planning out every move you're going to make in advance, you are someone who can benefit from the communication skills learned in improvisation.

Improvisational skills are essentially life skills because they are important for anyone who needs to think quickly, be in the moment, listen well and be positive. Being able to stay present yet open to the unexpected is beneficial for anyone. However, it is particularly essential for those in the legal profession not only for the reasons stated above but because it aids in problem-solving in that improvisation helps you to think outside of the box and examine a problem from different angles.

According to Gwen Roseman Stern, Director of Trial Advocacy and Professor at the Earle Mack School of Law at Drexel University, "Improvisation training will improve your ability to 'think on your feet' and to quickly respond in a creative and effective manner to just about any situation. I strongly encourage every lawyer, especially trial lawyers, to study improv."

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A joke is a highly stylized form of communication intended to arouse a particular response- a grin, a chuckle, a guffaw. In other words, humor is persuasion. A good joke makes you 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).*

People often refer to improvisation as 'flying without a net'. While it is true that with improvisation, there is no script involved, that doesn't mean there is no net. Just as laws provide a structure within which to operate and conduct our lives, there is a definite structure to the 'laws' of improvisation.**

Is there any lawyer (or any person at all, for that matter) who doesn't want to think more quickly on their feet? Or be more creative? Or sharpen their speaking skills? Or be able to deal with the unexpected in a confident way? How about honing your leadership skills or increasing your self-esteem and becoming more engaging?

One client of mine who worked in middle management told me that she never realized how negative she was being in meetings until she took an improv class. After studying about how improvisation forces you to make positive choices, it suddenly dawned on her that she was constantly shutting people down in board meetings and negating their ideas. She was continually saying 'no' without ever using the word.

According to Holly Loy, an asbestos, civil rights and government defense litigator, "(Improv) is wonderful for anyone who does trial work or goes to court and thinks on their feet. It's a mental exercise." **

Whether you're interested in developing a rapport with a client, convincing the jury of your facts, evoking a moving, intelligent closing argument, or just want to start thinking more positively, improvisational skills can help you communicate in a more clear and confident way.

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* Truth in Comedy: How Improv Comedy Can Help Lawyers Get Some Chops" by Steven Lubet

** Lawyers Weekly USA on Improv, "Improv Training Can Improve Your Trial Skills"
by Amy Johnson Conner

DEALING WITH THE UNEXPECTED

Things happen. Things we don't always plan on. Whether it's a flat tire or a judge's ruling, sometimes life catches us off guard and we have to make a decision about how to respond to the unexpected. Fortunately, improv can help litigators improve their court room presence and sharpen their ability to deal with the unexpected. *

It would be great if you could go through life and never make a mistake. However, I've yet to meet anyone who can do this.

A classic rule of improvisation is that you have to go with the flow. In other words, mistakes are going to happen – on that you can depend. Things will not always go the way you want and the unexpected will most assuredly occur.

How do you respond when the unpredictable happens? Do you roll with the punches and make the best of things or do you let a mistake stop you in your tracks? Improvisation teaches lawyers to size up the situation quickly and to keep on going. You might have to change tactics in mid-stream. Improvisation helps you to think on your feet and do just that. It makes you aware that if one line of defense is not working, it may be prudent to offer another. It helps you to process how a different approach might work once you realize that what you had planned to do is just not cutting it.

If a lawyer senses during an opening or closing argument that he is losing the jury, he can draw on previous improv training to throw away the prepared speech and try a new approach on the fly.* According to Jeff Menkin, a Department of Justice prosecutor and veteran improv instructor, "In a courtroom situation in front of a jury, things can go wrong and you never want to let them see you sweat."

When mistakes occur or the unexpected happens, how we respond can be crucial not only in that moment, but to the overall outcome of a case. Improvisation can help lawyers to think on their feet and respond without getting thrown off track even when things don't go exactly as you expected.

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* Lawyers Weekly USA on improv, "Improv Training Can Improve Your Trial Skills" by Amy Johnson Conner

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According to William O’Neill, a civil litigator, “(In oral argument), if the judge goes off in a direction you wouldn’t think he would go, you’ve got to listen, begin formulating a response, and simultaneously think, “If I take this position, where does it get me down the road?” all in a very short period of time. “Improv hones those skills.”*

“I always hated doing oral argument and standing there saying ‘uh,’ and ‘oh,’ “ Atlanta litigator Holly Loy recalled. With improv, you don’t go there because you’re so used to having to think rapidly that even when you’re stuck you can think of something.”*

Kasey Christie, an intellectual property lawyer, finds his improv background useful in the give and take involved in patent applications.* Part of his job involves arguing with patent examiners and he said that his improv training helps in “having to think on my feet and respond.”*

EXERCISE

Just about all improvisational exercises work on the same basic tenets: thinking more quickly on one’s feet, going with the flow, accepting the offer (not negating) and being in the moment. Because improv is a team effort and all about supporting the other person, most improvisational exercises cannot be done alone. They require at least one other person which is why improv is such a direct parallel for cooperation and team work, especially in the work place.

This exercise, Two-Headed Monster, requires two people. It is important to connect with each other physically. The preferred method is linking arms at the elbow (so that your stance resembles a couple on a wedding cake). If you would rather stand next to someone without linking arms, that would work as well. The important thing is to connect.

Try creating sentences with each person using one word at a time. In other words, alternate words to create a sentence that makes sense. It doesn’t have to be true, it just has to be grammatically correct, i.e., “Every time it rains, the sky turns pink.” While that may not be a true statement, it certainly is a grammatically correct sentence with the noun and verb in the right place.

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Alternate who begins each sentence. The sentences should not be related. So, the first sentence may be, "My dog is brown," and the next one might be, "I need to go to the store and buy milk."

The two people should think of themselves as one, as a unit, not as two separate entities. So, they should never use the word, "we" but instead, use the word "I."

As you perform "Two-Headed Monster," be aware if your sentences are created with a lot of difficulty or if they flow. Is it a challenge and a struggle or do the two of you seem to speak as one as though you've known each other forever?

The important thing to keep in mind is that while you may have an idea of how you want the sentence to proceed, you might have to give up that idea and change your pre-conceived word in mid-stream because you obviously have no control over what the other person is going to say. While the primary goal of the exercise is to create a sentence, the overall and more important objective is to 'go with the flow.' This means listening and giving up control so that the two of you can successfully work together to accomplish that objective.

Another exercise which is definitely more challenging is called Pro/Con. One person stands and begins talking positively (pro) about a pre-chosen subject, i.e., 'Cruising on the High Seas.' At some point, a second person claps their hands and the speaker must change to the con side of the argument without changing what he is saying, only his attitude. When the person claps again, they go back to positive and continues to alternate back and forth at the sound of the clap.

For example, suppose the person is saying "I really love cruising because what's better than being out in the fresh air on the high seas watching the beautiful water..." **CLAP!** "and realizing that you're getting sea sick and you're going to throw up at any minute..." **CLAP!** "which is a great thing because it gives you the chance to rid your body of all those impurities".

You're arguing both sides of the issue (pro/con) and finding a justification to support each. Two things help with this exercise: Always start out in the pro by saying, "I really love (whatever the topic is) and make sure you talk about the details of the subject. For instance, if you really love children, don't stay on the general premise of "Kids are great. I really like children," because that gives you very little to expound upon. Instead, talk about the specifics, i.e., getting them up in the morning for school, preparing breakfast for them, helping them with their home work, and find the pro and con in each of these sub-topics everytime your partner claps.

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TEAMWORK

Improvisation is all about looking out for your teammate. In other words, you have to have their back and support them. Sometimes you will shine; sometimes, someone e/se will.

When people think about improvisation, especially comedy improvisation, they often ask if you have to be funny to do comedy improv. I always say that with anything in life, a sense of humor certainly helps, but actually, some of the worst improvisers I've seen are stand-up comedians because they always want to go for the 'pay-off' or the punch line at the expense of learning about the structure or objective of the scene.

Whereas in stand-up comedy one person gets the blame or praise for their work, in improvisation, people are working together to make each other look good. This 'teamwork' approach is why improvisational skills are such a natural parallel for good communication in the work place and even good communication at home.

Anytime you are part of a team, whether it's a professional team or a personal team, mastering improvisational skills can help you be a better communicator. Improvisational skills will also help you develop a sense of trust and support with those whom you work and will aide in developing the concentration and cooperation you need to succeed. For those wishing to think more decisively and more quickly on their feet, improvisation can help with that as well.

Part of improvisation is about letting go of the control. When you realize that you have the support of your team, it's much less scary to make a mistake. And when you realize that mistakes can happen and it's all in your attitude about how you deal with that mistake, it takes the onus off of you for having to be correct and/or perfect 100% of the time.

EXERCISE

This exercise, Spelling Bee, is similar to Two-Headed Monster in that it works on parallel skills but it is a little more challenging because you are dealing with a larger team and more brain power.

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Four people stand in a straight line with their shoulders touching. Again, the four should think of themselves as a single unit, as one person, not four individuals. A word is proposed, i.e., 'legal'. The group should say the word together, "Legal," without any echo. They should all be operating on the same plane at the same time. After saying the word, they should spell the word (each person takes one letter at a time). "L – E – G – A – L " and then once again, the group says the word, "Legal." Then they use it in a sentence one word at a time, i.e., "Whenever I want to do something in public, I have to think about whether it is legal." Then, the group once again says the word, "Legal."

Spelling Bee is not really about spelling although surely that is a component. It is, rather, about team work and cooperation. You may have an idea of how you want the sentence to go but since you are working with 3 additional people (and brains), that idea might change. This exercise works on being in the moment, accepting the offer and going with the flow.

BODY LANGUAGE

Try watching television without the sound.

Actors who are really grounded in their talent can evoke emotion without words.

If you are watching a really solid actor, you should be able to tell what's happening in a scene without the use of words.

We constantly send out signals to people through our body language.

Eye contact, arms folded across our chest and overall body posture go a long way in discovering what people are really thinking despite what actually comes out of their mouth. According to Milo Shapiro of Improventures, "A big part of law is sales, getting that client. 92% of the communication conveyed between people is coming not from words, but from body language, vocal tones and facial expressions."*

What non-verbal messages are you sending out to juries, judges and clients?

Understanding body language can make you more effective as an attorney not only in how you present yourself but also in reading the clues that people are providing to you.

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* changingminds.org "Why People Do Not Listen"

CLOSED BODY LANGUAGE

Knowing how to interpret gestures goes a long way in determining whether a person is listening to you, displaying aggression or just plain bored. One of the most common stances is when a person crosses their arms across their chest. Usually, this means that they are defensive and putting up a type of barrier. Of course, it could also mean that the temperature in the room has dropped and they're just plain cold. Needless to say, everything has to be weighed in context.

If the situation is non-threatening, arms across the chest could mean that the person is considering the topic of conversation and whatever is being proposed at the given moment. However, in a serious discussion, arms across the chest usually expresses defensiveness and hostility, especially if the facial look is a blank stare.

In closed body language, legs are crossed either at the knee or ankle and sometimes, they are wrapped around the leg of the chair. It is almost as if one is trying to make their body as small as possible with the chin tucked down in an effort to hide one's throat in the event of an attack.

EYE CONTACT

Direct eye contact is usually the sign of a high-status, confident person. It is also usually the sign of someone who is telling the truth. People who lie tend to dart their eyes away or shift from left to right almost as if to avoid confrontation while misleading the questioner. Another reason people might not look you in the eye might be because they have a physical problem or a medical disorder, which prevents them from doing so. Finally, people from different cultures obviously have different customs about body language and personal space. That is why it is important to keep in mind that this entire section on body language needs to be weighed in the context of the situation at hand.

With that in mind, if a person's gaze is fixed on you for an extended period of time, it might mean that the listener is interested in what you have to say. Of course, it could also mean that they don't trust you long enough to take their eyes off of you.

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Another reason someone might divert their eyes is if they don't believe what you're saying. If you are not doing a good job of convincing them of something, their attention might wander and they may begin touching their chin or ear.

If someone is bored, they might yawn (always a great indicator) and lean their head to one side or hold their head in one hand.

Blinking is quite an interesting phenomenon and a lot of information has been written about it. Some experts feel that excessive blinking means that someone is lying. Recently, there have been reports that if a person doesn't blink at all, that is a good indicator of lying.

DEFENSIVE BODY LANGUAGE

If a person feels threatened, they will take on certain body language that looks like they are trying to ward off an attack, whether it be verbal or physical. For instance, they may cross their legs or use their hands to 'protect' their vulnerable areas, i.e., groin. If their legs are not crossed, they will probably bring their knees together and perhaps fold their arms across their chest.

Another thing that we do when we feel like we are being attacked is tense our muscles. In making our body rigid and moving as little as possible, it is almost as if we are hoping not to be noticed. Often, the head is down and the chin is tucked under.

OPEN BODY LANGUAGE

When someone is open to what you are proposing, their arms and legs will usually not be crossed. Often the legs will be parallel and even a little open. The palms of one's hands will be open as well.

If the body is open and casual, the person is usually relaxed and comfortable and they probably will not feel the need to put any kind of a barrier between themselves and you, i.e., a table, a chair, etc.

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HIGH STATUS VS. LOW STATUS

When we think of high status professions, what comes to mind besides lawyers? Doctors? CEO's? The President of the United States? We associate high status professions with confidence. And what constitutes confidence? People who have direct eye contact project a strong, confident image. And what makes a confident image? When a person diverts their eyes, they look like they're hiding something or not telling the truth. When they shift their eyes, they look exactly like that - shifty. Untrustworthy. Nervous.

If we want to project an air of confidence, we definitely want to look people in the eye, not look like we just robbed a bank by avoiding eye contact. Along the same lines, when someone slouches, it gives the impression that either they are sloppy in their appearance or they just don't take a lot of pride in the way they look. Worse yet, perhaps they are not even aware that they are slouching. We constantly send out messages about who we are without ever opening our mouth.

When you are meeting a client for the first time or even a prospective employer, what impression do you give off? Do you look angry without even saying anything? Do you seem like someone could steamroll right over you before you even open your mouth?

Start noticing people as you walk down the street. Look at the way they dress, take note of their body posture. Are they dressed sloppily or do they take pride in their appearance? Do they walk with hunched shoulders and downcast eyes or with shoulders back and direct eye contact? Undoubtedly, just because a person is dressed slovenly, it doesn't mean they are low status in personality or in their station in life. But what we're talking about here are generalities and the impression that one gives before you even meet them.

First impressions count for a lot. 'You don't get a second chance to make a first impression' is not just a clever saying; it's often true. Even if you are a good person with a kind personality, if you are giving off the wrong signals before someone even hears you speak, you might be shutting down opportunities without even realizing it.

ATTENTIVE BODY LANGUAGE

You know when someone is being attentive to you. They listen to you, they don't interrupt and they don't take phone calls. They lean forward or lean in towards you so that they don't miss anything that you have to say. They will not take their eyes off of you and they may blink less so as not to avoid 'losing' you. Their body language is open (arms are not crossed across the chest) and they make direct eye contact with you.

JUDGING LANGUAGE

When someone is evaluating you, their hands may be flat together, as in a praying mode, or the fingers may be cupped together with the index finger pointing upwards, perhaps even touching the lips. If someone is stroking their chin, that shows that they are evaluating you or trying to make an important decision.*

FAKING CONFIDENCE

There is an acting technique called Alba Emoting. It was developed by neuroscientist Dr. Susana Bloch as a safe, purely physical alternative to emotion memory and other psychological techniques for releasing, maintaining and controlling emotional states on stage.**

In a nutshell, it basically states that if we have to cry on stage but we cannot bring tears to our eyes, instead of relying on personal memories, sensory stimuli or images, we should just mimic the physical things that happen when we cry, i.e., change our breathing, turn the corners of your mouth down and think sad thoughts. In a few minutes, you may not be able to bring tears to your eyes, but you will definitely start to feel sad.

The same technique works if we want to feel happy. At first, we fake the smile and the laughter but pretty soon, we actually start to feel happier!

I always say the next best thing to having confidence is knowing how to fake it. If one does not exude an air of confidence (direct eye contact, erect body posture), sometimes it is worthwhile to mimic the physical attributes that go along with being confident because eventually, people will start to perceive you in that light and you will actually start to feel that way and, as Martha Stewart would say, "That's a good thing!"

For example, if one is asked "How does the new swimsuit line from Denmark this year differ from last year's fashion?", you should be able to answer that with authority and confidence. In improvisation, the answer is never "I don't know" or "I'm not sure." Always 'own the answer', speak with authority and offer detail. In law, you obviously cannot knowingly say things that are not true, but we can still take a lesson from the physical appearance and speech pattern of 'faking confidence' which goes a long way in projecting an air of certainty and trust.

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* changingminds.org "Why People Do Not Listen"

** "Acting and Emotion: Introducing Alba Emoting"
www.albaemotingna.org

VISUALIZING

Visualization is a useful tool for everyone.

Many Olympic athletes who brought home the gold will tell you that they imagined themselves at the Olympics long before they ever received an invitation to participate.

Picturing how we will do in a presentation goes a long way in helping us.

Imagining a successful outcome and even how others in the room will respond to you greatly increases your chances of doing well because it mentally prepares you to succeed.

Visualization is also useful if you want your 'audience' or jury to picture something in a certain way. For instance, if I said, "I had dessert last night", that could mean 12 different things to 12 different people. But if I say, "I had an Entemann's cherry cheese cake for dessert last night," I am forcing you to visualize the blue and white box (or the green and white, if it's fat-free), and the actual cherry cheese cake.

The more detail and description you can provide someone, the better they can 'see' what you're talking about. For instance, if I describe the day I went apple-picking, I should be able to tell the listener what kind of a day it was (sunny or cloudy), where I picked apples (private orchard or back yard), how did I reach the apples (ladder, stool), what kind of apples I was picking (green Granny Smith, Red Delicious, etc.), who was with me, what I was wearing (not 'jeans and a T-shirt' but 'black jeans and a red T-shirt with a white logo on it in the right-hand corner'). A classic rule in acting and improv is if you can't see it, the audience (or jury) can't see it.

When you are speaking to a jury, you are re-constructing events that took place. Hopefully, you are doing it in such a way that the jury is visualizing the situation even though they were not there to witness it first-hand. If you are using vivid description and detail in your recounting of the events, you are probably assisting them greatly helping to re-construct and 'see' what actually happened.

As we all know, the three most important things in real estate are location, location, and location. Three of the most important things in improvisation are description, description and description or detail, detail, and detail.

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If you are telling a story and you want to convince a jury or a judge about something that occurred, it is important to describe, describe and describe using lots of detail. The more detail you can provide, the more truthful your account will seem and the easier it will be for the judge or the jury to follow and believe what you are saying.

Improvisation is a deliberate form of storytelling. Stories at trial are unavoidable and so is the constructed reality an improviser uses on stage to create a scene. Jurors bring their own frames of reference to the courtroom. 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. 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.*

Improv skills also translate well into depositions, particularly the ability to size up your audience, according to Loy, the Atlanta litigator.**

EXERCISE

This game is called “Word Ball”. Stand in a circle with 3 or more people and ‘throw’ words at each other, one at a time. The way to ‘throw’ is to pretend you’re throwing a big volley ball at someone. For example, if I throw the word ‘summer’, what is the first word you think of when you hear it? It may be ‘sun’ or ‘beach’ or ‘hot’. There is no right or wrong answer. The important thing is to not censor yourself while you try to think of something ‘good’, i.e., clever, funny. This is not about saying a brilliant answer; this is about free association and saying the first thing that pops into your mind (excluding, of course, foul language). Also, don’t fall into the trap of expressing opinions. In other words, if someone says ‘pizza’, instead of saying ‘like’ or ‘hate’, try to visualize the pizza and respond with something you see).

It is important to visualize every word that is thrown even if it’s not coming to you. Although you will verbally respond out loud only to the word thrown to you, you can still silently play every word in the game. Think to yourself, “What would I say if someone said the word ‘summer’ to me?”

When you visualize the word, you will quicken your response time and think more quickly on your feet. For example, if I say the word ‘orange’, do you think of the fruit or an orange-colored wall? It doesn’t really matter – the important thing is that you visualize something. If you can ‘see’ it, it will help you respond more quickly.

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The jury's frame of reference 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 makes 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 (one of the inventors of long form improvisation) called “terrific connections made intellectually, or terrific revelations made emotionally,” which lead the audience (or jury) to the desired conclusion.*

...”Jurors, like all audiences, are 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 part, while bringing them into a new frame of reference, sometimes called a “group mind” or “group consciousness.”*

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

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There is a concept in improvisation called “Yes And”. Basically, it means you accept the offer and add something. For instance, if your partner says, “Let’s go to the movies,” you would ‘yes and’ your partner by saying, “Yes, and then we can get ice cream afterwards.” When first learning this exercise, it’s always good to say the actual words, “yes, and”, although after you’ve mastered the concept, you can always cut to the chase by saying, “That sounds like a great idea. Afterwards, we can get ice cream.”

The reason “Yes And” is so important is this: Saying anything other than ‘yes’ shuts down possibilities and saying ‘yes’ opens up possibilities. If I say, ‘no’, then the scene stops right there. A negative pall is thrown over the entire exchange and it becomes more difficult to get back on track.

Picture a trial about a traffic accident at an intersection. The plaintiff testifies that the defendant ran a red light and hit him at 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.*

Trial lawyers cannot take the jury to the actual events to settle inconsistencies in testimony. “No But” denials, therefore, may snap the jury 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.*

EXERCISE

Try doing the “Yes And” exercise by saying a simple sentence like “Let’s go to dinner.” Your partner should respond positively and build on the initial idea. “Yes, and then we can go to the movies.” You, in turn, add on to that suggestion, i.e., “Yes and we can get some great popcorn there,” etc.

The important thing to remember is never to negate someone’s idea but rather to accept the offer and build.

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QUESTIONS, QUESTIONS, QUESTIONS

You wouldn't go to a gym and after one work-out and complain that your muscles are no bigger than when you first came in a few hours ago.

The brain is a muscle, too. It has to be trained to think and respond in a certain way. If you've spent your entire life being negative and shutting down opportunities, improvisation will re-train your brain to respond differently and think in a more positive way. It may not happen overnight, but with enough practice, you will begin to view things differently. Remember that client in middle management who negated people and ideas without ever using the word 'no'?

You can also re-train yourself to approach problems differently.

There are several improvisational games that involve asking questions. These games force you to think outside of the box because they make you view a problem in a different light. In other words, if I suspect that my 16-year old daughter is pregnant but she hasn't confided in me that she is, I could make a choice to say, "Are you pregnant?" but I probably wouldn't get a truthful answer. If, however, I choose to ask other things that help me to build up to the topic, I might be more successful in getting the answer I'm looking for.

For example, "How did your math test go today? Did you put enough time into studying for it? You look a little tired today - are you feeling okay? I noticed the last few days you seem a low energy...is everything all right? Do you want something special for dinner tonight? Does it seem like your appetite is a little off? Hey, weren't you going out with that boy Jimmy for a little while - how is he doing?"

Of course, I am not suggesting barraging your daughter with a litany of questions, but notice that I just asked 8 different questions that started in 7 different ways: How, Did, Are, Is, Do, Does, Weren't.

There are many different ways to start a question - who, what, where, when, why, how, didn't, shouldn't, couldn't, etc. Sometimes if we can't get the answer we're looking for by repeatedly asking the same question, it is helpful to approach the subject from a different angle. In improvisation, the trick is to further the scene while only asking questions. In the legal world, the objective is to ask questions to ascertain the truth about what happened and move the 'story' along.*

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* Lawyers Weekly USA on improv, "Improv Training Can Improve Your Trial Skills" by Amy Johnson Conner

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EXERCISE

There are two exercises you can do to sharpen your questioning skills. The first focuses on answering questions; the second on asking questions.

The first game is called 'Questionnaire'. This one can be done solo or with someone else. If you are doing this alone, write down a series of questions that you could not possibly know the answer to, i.e., "Why is the sky blue?" "What do you think of Greece's new president?"

The answer is never "I don't know" or "I'm not sure". The idea is to speak with authority and detail in answering the questions. Make sure your questions are questions you could not possibly know the exact answer to. The idea is to speak with authority and description; in other words, assume a high status stance and project confidence.

The second game is called "Questions." In this exercise, which involves two people, the idea is to create a scene in which only questions can be asked. No sentences and no statements are acceptable – only questions. The trick here is to move the scene along so that something develops and so that you don't get stuck in one place. It is important to alternate the way you start each question so that you don't fall into the trap of beginning every sentence with "What...?"

Both of these games will, in the short run, help you to think outside of the box and in the long run, approach problem solving from different angles.

SUBTEXT

Wouldn't it be great if we could read people's minds? Then we would always know what they were thinking and who was telling the truth. Because most of us do not possess that power, it is helpful to understand the subtext – what a person thinks but doesn't say.

The quintessential subtext scene is a blind date. The girl opens the door. She may say, "Hi, Mark, it's nice to meet you." What she may be thinking is a whole other story.

One way to understand subtext is to look at body language. The following exercise will help you gain a deeper and more interesting understanding of subtext.

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EXERCISE

Two people each sit in a chair across from each other. A third and fourth person each stand behind one of the chairs. The people in the chairs are the 'actors.' They will speak to each other. The people behind the chairs are the subtext people. Each time an actor speaks, before the opposing actor can answer, the person doing their subtext must say what they're really thinking. Then the second actor responds followed by their subtext. Then we return to the first actor. So, the order is always: Actor 1, Subtext 1, Actor 2, Subtext 2.

Look at this example for more clarity:

Actor 1: "I haven't seen you in so long."
Subtext 1: "I can't believe how fat you've gotten."
Actor 2: "It's so good to see you too!"
Subtext 2: "I wonder if she noticed that I've put on a few pounds."

Keep in mind that in this exchange, the actor doing Subtext 2 made a choice to 'hear' what Subtext 1 said. Subtext 2 could have said, "I hope she doesn't remember that I owe her money." Either one is acceptable.

A good rule of thumb for Actors 1 and 2 is to be as 'straight' as possible. In other words, it is better to say, "You're looking well" than "You're looking well for someone who's been sick for the last two weeks." Let your subtext take care of the underlying thought. Also, Actors 1 and 2 should not use expressions like "on the other hand" or "none-the-less". Again, the subtext will take care of the add-on.

The important thing to do in this exercise is to listen intently to what's being said and what the underlying meaning may be.

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LISTENING

Mark Twain said, 'If we were supposed to talk more than listen, we'd be born with two mouths and one ear.'

Mastering improvisational skills help lawyers develop the art of listening. Did you really hear what your client/the judge/the witness said or do you just think you heard?

So many times when people are speaking, we are thinking ahead to what we're going to say when that person gets done talking. Sometimes, we even zone out and think about what we are going to do later that day. Maybe your stomach rumbles and you start thinking about what you're going to have for lunch following this meeting or deposition. Whatever the case, the result is that we miss what's being said at that very moment. If we want to communicate effectively, we truly have to hear what the other guy is saying.

The reason some people find it hard to listen is because they would rather talk. It sounds simple, but when you are talking, you are in control and you are the center of attention. You can also guide the conversation in the direction you want it to go in.

We talk at 200-250 words per minute but listen at 300-350 wpm. When the other person is talking, we get side-tracked by our own thoughts and when we want to respond to the speaker, we stop listening for two reasons: 1) to avoid forgetting what we want to say (we need to keep rehearsing our thoughts and words and so we get lost inside our own heads). 2) to try and listen for a space that will let us interject our point.**

Being present in the moment helps you stay focused and ensures that you will not miss any important information.

What can you, as a speaker, do to ensure that your audience (jury, judge, co-workers) listen to you?

- 1) Speak in an interesting tone, not a flat monotone voice.
- 2) Use easy to understand language so that people can follow your concepts.
- 3) Keep your comments to a minimum. No one wants to hear a monologue that drones on and on, especially in a monotone voice.

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* Lawyers Trained in Improv: Not Just For Laughs by Dick Dahl

** changingminds.org "Why People Do Not Listen"

PUBLIC SPEAKING

It's been said that among Americans, speaking in public is a greater fear than going to the dentist.

Many people feel when they speak before a group that they cannot make a mistake – they have to be perfect. As a result, they read their speech word for word and the audience gets to see a lovely close-up of the crown of their head.

People don't want to see your head – they want to see your eyes. If a jury is going to connect with you, they are going to do it not only through what you are saying but through eye contact.

According to litigator Loy, "Improv helps lawyers become more comfortable speaking in front of a group."*

Improvisation helps people calm their nerves. It helps you deal with the unexpected. It is definitely important to know what you are going to say. I'm all in favor of rehearsing a well-prepared speech over and over, but once you've done your homework of rehearsing (in front of a mirror, preferably), it's time to put the speech down and see if you can give the same speech using only bullet points on a 3 x 5 card.

If you want to be a dynamic speaker, you have to come out from behind the podium and connect with the audience. Instead of hiding behind a barrier (the podium) with your speech, try writing the key points on a piece of paper so that when you glance down, you can easily see your next topic that you want to expound upon. Connecting with the audience will certainly make you a more engaging speaker and if you make a mistake or stumble over a few words....so what? You will know your subject matter so well at that point that you will easily be able to get back on track.

Remember – it's not about being perfect. It's about connecting with people and exuding an air of believability and confidence.

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* Lawyers Trained in Improv: Not Just For Laughs by Dick Dahl

SILENCE

Today's world is full of noise pollution. It seems there are sounds everywhere. Whether it's coming from phone conversations, street traffic, the TV or radio, we are constantly surrounded by noise.

Many people feel uncomfortable with silence since it is something we're not used to. However, if you become comfortable with using silence while you speak, it can be quite a powerful tool in getting people to listen to you and emphasizing your point.

Years ago, there used to be a commercial on TV for the investment firm, E.F. Hutton. The tag line for the TV spot was "When E.F. Hutton speaks, everybody listens." The interesting thing in that commercial was not what was heard, but what happened in between the words.

The setting was a busy office with noisy typewriters (before computers came along) and the typical accompanying sounds of a large, noisy work place. All of a sudden, the tag line was heard. "When E.F. Hutton speaks..." That was followed by a large silent pause between the words 'speaks' and 'everybody listens.' I'll never forget that commercial because I was sitting on my sofa in my living room occupied at the time with some paper work and I remember looking up during that silent pause thinking that my TV had either broken or was malfunctioning. A second later, the commercial resumed from its intentional silent pause with the rest of the sentence, "everybody listens."

That commercial alerted me to the power of silence. If you can become comfortable with silence, you can use it to your advantage when speaking in front of others. A pause in the middle of your speech while you maintain strong eye contact reflects a confident person. As we all know, silence can be deafening but I guarantee you that if you pause during the right time, people who are not already looking at you will definitely look up to see why you've stopped speaking.

EMOTING

It is always a good thing to show people that you are human. Even when you have to appear 'high status' and exude confidence, it never hurts to let people know that you have emotion. The trick is not to over-do it. Just as you wouldn't want to use the silent pause too many times in your speech because it would lose its effectiveness, you also wouldn't want to appear too over-emotional because that might send a message that conveys the opposite of what you had in mind.

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It is powerful to show that you have emotion, but in the right place only. While it demonstrates your ability to connect, it also emphasizes that you are in control. One thing that Bill Clinton did while speaking to demonstrate emotion is bite his upper lip. (He did it 15 times in 2 minutes during the Monica Lewinsky 'confession').*

WALKING

When walking with others, be in front of them. When going through doors, if you are going to an audience, go first. If you are leaving an audience, go last as you guide the others through the door first. This shows dominance.*

POSITIONING

Many people who like to be in control prefer to sit on a higher chair. Although you can't always see this on your television at home, this is exactly what talk show host David Letterman did. When you stand over people or wear heels, you are exuding dominance and are, therefore, in a position of control.*

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* changingminds.org – "Power Body Language"

GIVING UP CONTROL

Improvisation can be scary to some people because working with others means giving up control. While working as part of a team has its benefits (the work is delegated among different people), it also has its drawbacks (if the case is successfully won, you have to share the adulation with others).

Giving up control and learning how to work as part of a group is actually a plus in just about every work situation. According to intellectual property lawyer, Kasie Christie, “Even if you are the star, you need people to support you.” * Knowing that somebody will always have your back is indeed a comforting thought. Of course, you must return the favor and so, improvisation is a direct parallel to teamwork and cooperation.

Northwestern University School of Law professor Steven Lubet, contends that effective rebuttal is really a form of good improvisation. “Rebuttal is a form of building. It’s most effective when it entirely consumes the other side’s position and then elaborates or builds on it. If you simply say, “No, no, no” at a trial, it’s not very effective. If you say, ‘Here’s how you really ought to think about what opposing counsel is saying,’ you can be much more persuasive.”*

Hankinson was a student of Lubet’s when the two co-wrote a 2006 research paper titled, “Truth in Humor: How Improvisational Comedy Can Help Lawyers Get Some Chops.”*

“When...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,” the attorneys concluded in the article. “In improvisation, the side effects of that reaction will be laughter and cheers. In trials, when all goes well, the effect will be a favorable verdict.”*

* Lawyers Trained in Improv: Not Just For Laughs by Dick Dahl

For further information on improvisation, please note the articles below.

Lawyers Trained in Improv: Not Just For Laughs
by Dick Dahl

Truth in Comedy: How Improv Comedy Can Help Lawyers Get Some Chops”
by Steven Lubet

Lawyers Weekly USA on improv, “Improv Training Can Improve Your Trial Skills”
by Amy Johnson Conner

changingminds.org – “Power Body Language”

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