GREAT STORIES ARE ALWAYS TOLD FOLLOWING A CAREFULLY CHOSEN PLOT

A proficient storyteller carefully considers and chooses his story’s plot. When I use the word “plot,” I mean not just what happens but, more importantly, the order in which the storyteller reveals what happens.

Most stories are told chronologically; that is, the facts are revealed in opening statement in the exact sequence in which they occurred. Chronological stories are often the easiest to assemble. Chronological stories, however, are not always the most interesting.

In fact, strict chronological order can bore the hell out of the listener, particularly when it is coupled with too much detail. For example, when my younger son Erich was in kindergarten, his teacher had him keep a journal for a week. Since Erich could not yet write, this process consisted of his dictating a description of his day to me, which I would faithfully write out word for word. Since he was a stickler for accuracy, Erich’s story would go something like this: “First I got to school. Then I took off my coat. Next I hung my coat up in the closet. Then Mrs. Cooper told us to sit down. Then I sat down. Next she told us . . .” You get the picture. As cute as some of these overly detailed chronological stories were, they got to be overwhelming. And I say this as an adoring parent—imagine the effect of such stories on the jurors, who may not even like you.
Chapter 4: The Importance of Your Story

Because of this, some of the most interesting and gripping stories are not told in strict chronological order. For example, Quentin Tarantino did not tell the story in *Pulp Fiction* in chronological order. In fact, I still do not know exactly what that order was. Yet, when I saw the movie, people in the audience were generally riveted to their seats, partly because of the order in which Tarantino chose to reveal what happened. Likewise, William Styron’s novel *Sophie’s Choice* plays fast and loose with chronological order; yet I am not sure that there was any better way to present this haunting story.

As a general rule, the more complex a case is, the less of an opportunity there is for the lawyer to tell the story strictly in chronological order. In order to make complex cases understandable, lawyers often interrupt the chronological flow of the story to explain key concepts to the jury. Without these diversions, most jurors could not remain interested in, let alone understand, the story’s plot. The challenge to the trial lawyer is to keep the juror’s attention during these necessary and sometimes difficult side trips and to determine where in the story these diversions need to be placed.

Evan S. Connell, in his book *Son of the Morning Star*, provides a wonderful example of how this is possible. Connell’s book traces the events leading up to the defeat of General George Armstrong Custer at Little Big Horn. Because the subject is essentially historical, the overall structure of the book must be chronological. But, as is the case of any complex story told in strict chronological order, the listener/reader/juror can easily miss supporting details that are important and interesting. So, instead of telling the story in chronological order, Connell digresses whenever he feels that the reader needs additional background or when he has material that is likely to increase the reader’s interest. For example, Connell starts a chapter by writing about the horse that Custer was riding when the battle started. Instead of moving to the next moment of the battle, the author writes about how horses were generally supplied to the cavalry and how the government often paid too much for its military supplies. This additional information not only keeps the reader’s attention, but it also explains facts that the reader will eventually need to understand why certain events happened.

Good storytellers like Connell allow these digressions to punctuate the strict order of “first event, second event, and third event.” They understand that branches of the story occasionally need to diverge from the main trunk. So, the story Connell tells may go something like this: “first event, second event, the story of the cavalry man who got drunk and unwittingly married a transvestite tavern owner, third event,” and so forth. (If that does not convince you to at least look at Connell’s book, nothing will.) Here, diversions do not distract; they inform and ultimately increase the listener’s interest in, and commitment to, the main story. Learn to tell your stories this way and you too will keep your jury interested, informed, and persuaded.

**EXAMPLES OF ALTERNATIVE WAYS TO TELL YOUR STORY**

When you consider the plot for your next case, what format should you use? There is no automatic answer. The important point is that you have options and should tell the story in the order that makes the most sense for your case and your jurors.
While there is no absolute right way to tell the story, some ways tend to be more effective than others. Before you default to telling the story sequentially, ask yourself if there is a better way. There usually is.

Let me illustrate this last point with four examples of different ways to tell your story in opening statement.

**Example 1: In Media Res—Starting Somewhere in the Middle**

One of my absolute favorite stories of all time is Homer’s *Odyssey*, which deals with the decade-long struggle of Odysseus to make his way home to his family in Ithaca after the Trojan War. It frightens me to think about how a typical lawyer would tell this tale. I suspect it would be told straight from Odysseus loading up his ship with Trojan plunder through his killing the suitors at his home in Ithaca. Told this way, it would be a good story, but not a great one.

Because Homer is a much better storyteller than the typical commercial litigator, he knows better than to tell his story in chronological order. Instead, Homer uses a technique that his later Roman fans later called *in media res*, or “in the midst of things,” or “in the middle of all the action.”

So, for example, Homer starts his story ten years after the Trojan War; eventually he works the story’s narrative back to the war, and he bounces the story back and forth between then and now, before (thousands of lines later) ultimately bringing it to an end a month or so in real time from where he started the narrative. More specifically, Homer starts *in media res* with an impending crisis at Odysseus’s home, where the unwanted suitors are threatening to kill his son, force his wife to enter into a marriage that she does not want, and wipe out everything that rightfully belongs to him.

And where is Odysseus? Nowhere in sight. In fact, Homer does not even introduce us to him until Chapter 5 (almost 2,500 lines into the epic poem), and when we meet him, there is something wrong. What we see is not *polytropos* Odysseus, the crafty man who engineered the destruction of Troy through the use of a wooden horse. Homer does not introduce us to the man envied and emulated by his peers. Instead, our first vision of Odysseus is that of a beaten man, alone and crying on the beach of a small island, unable to get home, despite the fact that “all the rest who left behind them headlong death in battle or at sea had long ago returned, while he [Odysseus] alone still hungered for home and wife.”

With this contradiction (i.e., what Odysseus should be and what he is) comes the first of a number of mysteries. Something is not right. Homer masterfully captures our attention. He keeps us spellbound for the next several hundred pages, unraveling what happened while we are rooting for Odysseus’s eventual success.

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You, too, can capture your audience’s attention, particularly if you carefully choose the order in which you structure and convey your story to the jury. Whenever possible, consider doing so in *media res*. Telling a story this way is usually not easy (it certainly takes considerable preparation), but it is far more engaging and commands greater sway over jurors than the same facts told by way of a chronological plot.

As an example, we once had a case where a chief financial officer cooked the books so badly that his company eventually had to go back and restate its prior earning by over $1.6 billion. The plaintiffs wanted to tell this story by starting off with a tutorial on various accounting rules. To quote my children when they were younger: “Boooring. . . .!”

Instead, we convinced the client to tell the story *in media res*—more specifically, at the point long after the books had been cooked and when the defendant’s plan started to unravel.

Ladies and Gentlemen, two years ago, Mr. Costa, who works at defendant Waste Disposal Company (WDC), noticed something very strange in his company’s accounting data. For some reason, a thousand very old garbage trucks, which were worth no more than $1,000 each, had been listed as being 25 times as much—that is, each was listed as being worth $25,000. (See Illustration 4-6.)

### What Was Known About Salvage Values

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Illustration 4-6]
Mr. Costa asked Mr. Roberts, his colleague at WDC, to get some support for this pricing, which, if it were true, would have increased the book value of WDC by $25 million. (See Illustration 4-7.)

Illustration 4-7

Mr. Roberts in turn asked another colleague, Mr. McGovern, to get the information. (See Illustration 4-8.)

Illustration 4-8
And Mr. McGovern concluded that “the salvage values were aggressive,” which, in accounting speak, means that someone had improperly increased the value of the company by substantially inflating the value of 1,000 trucks. (See Illustration 4-9.)

Illustration 4-9

Well, word got back to Mr. King, the chief financial officer at WDC, and he got very upset. You see, he was the person who valued those trucks and so increased the value of the company by over $25 million, and he did not want anyone to know this. (See Illustration 4-10.)

Illustration 4-10
So, Mr. King told Mr. Roberts to delete Mr. McGovern’s report. (See Illustration 4-11.)

Illustration 4-11

In fact, he told Mr. Roberts to go to Mr. McGovern’s office and not leave until Mr. Roberts had physically shredded every single hard copy of the report and hit the delete button on his computer to delete the electronic master copy. (See Illustration 4-12.)

Illustration 4-12
But guess what? Mr. McGovern and Mr. King forgot one copy. It was in Mr. Costa’s secretary’s filing cabinet. That is how we know that Mr. King knew the values were wrong and all of the events associated with a $1.6 billion revaluation of WDC. (See Illustration 4-13.)

Illustration 4-13

The listener to this story does not need to know anything about accounting to know that something was wrong here. From the very beginning of the story, the jurors knew that something (other than the garbage trucks) just did not smell right.

Example 2: Telling the Story Backwards

Jurors like mysteries; they like conflict, and they really like mysteries with conflict. As a client of mine once confessed, “Jurors like finding the dead body right at the beginning and then figuring out how it got there. So I give it to them right up front. Fortunately, it is usually not a real body.” Said differently, jurors pay attention when they realize that something is not right. Human nature causes us to wonder why things have gone amiss and what can be done to correct them.

You may notice a contrast between my advice of starting with a major issue (the dead body) and the way most lawyers tell their stories. Rarely do you find much mystery or conflict at the beginning of a story when you tell it in strict chronological order. This, by itself, is a major reason to consider not defaulting to telling your story in chronological order. Remember: you are telling a story, not reading through someone’s appointment calendar.