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## The 'Pulp Fiction' approach to trying cases

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I like movies. Before my wife and I had children, we saw all the new releases, from blockbusters to independent films. With two kids, one in elementary school and one a toddler, those days of seeing action-packed or thought-provoking movies seem like eons ago. In fact, the last time that I saw a movie in a theater feels like "Pulp Fiction." (Truth be told, it was "The Hangover").

Speaking of "Pulp Fiction," (how about that for a transition) do you remember how that film opened? Honey Bunny and her boyfriend Pumpkin hold up a coffee shop. (Sort of sounds like a bad children's movie.) From there, Quentin Tarantino takes us on the very violent and sexy journey of his motley crew of characters, culminating in Vincent (John Travolta) and Jules (Samuel L. Jackson) rejoining the first scene with Honey Bunny and Pumpkin, but now at the end of the movie. Somewhat full circle, but we know that Vincent actually died in a scene, which we viewed a few moments early, but which actually happened at some point after the end of the movie. A bit confusing, yes.

"Pulp Fiction" plays out through a series of vignettes, which follows a number of seemingly disjointed story lines that together provide us with a sense of the whole. We have seen the model many times. In fact, trial lawyers should be pretty familiar with this manner of storytelling. We use it in every case we try.

In a perfect world, putting on trials would be extremely organized. We would have the ability to call each witness to testify in an order that tells our client's story as we want it to be told. All of our live witnesses would sit quietly just outside the courtroom, waiting to be called to testify at the appropriate time to maintain the story's order. They would never complain about sitting or waiting. The plaintiff would start things off; then, she would be dismissed for a bit. Another witness would take the stand to discuss the events of the incident where the plaintiff left off. The plaintiff would be recalled to testify to fill in important details when necessary. This pattern would continue for the duration of the trial. Ah, yes, a linear story line that the members of the jury could easily follow and comprehend.

Unfortunately, putting on a trial is often anything but chronological. More often than not, when I'm trying a case I feel like Tarantino, jumping back and forth between scenes. Thankfully, to some degree the nonlinear structure works because it mimics the structure and recall of human memory, which is also disjointed and unorganized much of the time. (Why can I remember my first-grade teacher's name, but not to unload the dishwasher?)

The effective use of nonlinear structure is not easy. Films, like "Pulp Fiction," and television shows, like "Lost," have made it look easy. But, something tells me that many readers understand that the budget available for trying most cases is drastically smaller than the average Hollywood production team's coffers.

It is the inevitability of the nonlinear structure of trials that makes the opening statement so important. The opening statement is the one time where you can present your client's story in a succinct and chronological manner. You can prepare and practice your presentation in advance, testing out its effectiveness on everyone in your house and office. You can videotape yourself, save it to your external hard drive and consign it to posterity, if you like. In other words, to each his own.

By the time you make it to opening statements, you most likely have been living with the facts, issues and problems with the case for years. While you may not win your case with an effective opening statement, I promise you, if you fail to invest quality time preparing and deliver a messy opening statement unsupported by the facts of your case, you will lose.

Why is it important to deliver a spot-on opening statement? On the day of trial (or several days before depending on the length of voir dire), jurors come to the courthouse without knowledge or concern about your particular case. Most do not want to be there. Yes, they may have been in a fender bender before or, they might know something minor about medical mistakes, but most likely the facts of your case are absolutely foreign to them. Many think lawyers are sneaky, that lawsuits are frivolous and they wish they were at home watching reality television or at work making money instead of listening to an attorney babble. Tough crowd? Yes.

I, unfortunately, do not have a recipe or a patented scientific equation for creating a great opening statement. But frame of mind is important and the most successful frame of mind to be in when opening a case is one that is persuasive and confident.

"Your opening statement must be persuasive," said my trial advocacy teacher. But what does that mean really? Probably the easiest way to sum it up is that your opening statement should tell a story. A good story. "Good stories have more than a point of view; they have a message. As such, they are tools of persuasion," John Baldoni, Harvard Business Review, March 24, 2011. Present factual details, use humor, appeal to the jurors' passions, even employ an occasional gesture. Discuss both liability and damages, at length.

The opening statement might be one of the most difficult parts of a trial. You cannot argue, exaggerate or over promise. By the book, the "purpose of an opening statement is to inform the jury about the facts the parties intend to prove and not to instruct the jury on

questions of law." *Northern Trust Company v. St. Francis Hospital* , 168 Ill. App. 3d 270, 280 (1st Dist. 1988).

Inexperienced lawyers take this to mean that they must be devoid of emotion. The opposite is true. As a plaintiff's attorney, I know that my opening statement will set the tone for the trial. The hope is that my opponent will be less dynamic, more offending and generally disorganized. Of course, this isn't a perfect world, so that doesn't always happen. In any event, my opening statement must be persuasive, regardless of what my opponents choose to do.

Some other useful tips: No matter how good the story of your client's case is, if you read it word for word from a notepad or a computer, the jury will be put off. Reading notes makes the attorney appear unprepared. Instead of notes, use themes and exhibits as a guide. "Pulp Fiction" made great use of themes and "demonstrative aids" — the infamous suitcase, the gold watch, the hypodermic needle, the gimp. Demonstrative aids create reference points for the jurors.

The opening statement is your trial's primer. None of us can get around the reality of having to present evidence out of chronological sequence. By creating a point of reference through the use of themes and demonstrative evidence during the opening statement, you will better guide juries to a verdict in your client's favor.

Then there are the "Pulp Fiction" characters themselves. Imagine having to prepare and present them as witnesses at trial ... well, that's a topic for another article.

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