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Legal Advocacy as Interactive Storytelling

An advocate employs similar techniques to those used to tell interactive stories in a totally different medium: video games.

By Mark Yohalem

It is by now a familiar adage that an effective litigator must be a skillful storyteller. Like all storytellers, litigators must take the chaotic, tedious, confusing material of life and weave it into a tale well told—thematic, exciting, and clear. The tale needs a compelling beginning, a satisfying ending, and a logical through line running between them. It needs a moral. And it needs a protagonist.

But *who* is the protagonist? For many years, the advice I received was that sometimes the protagonist is one's client (in a traditional heroic story) and sometimes the party on the other side (in an antiheroic story). In this article, I propose that the best protagonist of a legal story is the decision maker: the panel, judge, or jury. The decision makers' act of deciding takes them from outside the story to inside it. Because their decisions drive the story's course and resolve its conflict, the purpose of the story is to give those decisions a context that leads inexorably to the resolution that the advocate wants.

To effectively tell this kind of interactive story, in which the audience is also the protagonist, an advocate employs similar techniques to those used to tell interactive stories in a totally different medium: video games. Examining the parallels can help us hone our legal advocacy.

Law and Video Games: Interactive Narratives

Interactive stories are fluid precisely because the audience is active. The author of a book or screenplay decides how the story proceeds; the audience's only job is to read and watch. But the audience in a legal dispute or a video game is not passive. The audience decides. And each choice changes the trajectory of the story. Said another way, lawyers, or video game writers, act as storytellers for a story that is still unfolding. To bring that story to a

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desired conclusion requires persuading the audience to choose the path that the storyteller prefers.

The act of storytelling is, for me, not only a professional necessity but a passionate hobby: I've spent my life writing fiction, screenplays, and especially video game stories. In the mid-1980s, my grandfather, a National Aeronautics and Space Administration (NASA) engineer, gave my brother and me a computer and taught us how to program it. I fell into making games and never fell out. By college and law school, I was working nights as a freelance writer for various computer game companies. After I became a lawyer, I pursued my own game projects, which to my pleasant surprise found a large and enthusiastic audience. At the heart of all of these projects was an interactive narrative, in which the player was an active participant in rich, thematic stories. Working as a lawyer and a game designer at the same time, I found the parallels between the two roles inescapable.

Constraints and Inducements

When done well, narrative games present players with a host of ethical, tactical, social, and other dilemmas not totally unlike the choices that a decision maker faces in a legal case. The appeal of a narrative game lies in the player's freedom to pick his or her path forward—as in a child's choose-your-own-adventure book, but with fewer dead ends. As a game developer, however, you cannot afford to give the player too many choices or allow each choice to branch out too much, or development costs will grow out of control. A narrative game therefore requires *constrained* choices: the player is allowed to choose but is kept from wandering too far from the developer's desired path.

The art lies in making these constraints feel natural. Players should *want* to make the choices that take them down the right path and should *believe* that the outcomes of choices are logical and reasonable. In an interactive story, narrative magic, like stage magic, depends on drawing the audience into the illusion as a participant: the volunteer must be allowed to choose, but the choices must produce the outcome that the magician wants. In the context of interactive narrative, this allows the player to become the protagonist even though the storyteller has defined the interactions so that all of the choices draw the player toward the storyteller's desired conclusion.

When the interactive storyteller's magic is executed well, the spellbound player emerges satisfied. The ending feels like something that the player chose—and something that was chosen *rightly*. Seen in hindsight, the game's story is no longer interactive, and it must have the features of any other compelling tale: as stated at the outset, it must be thematic, exciting, and clear, with a logical through line and a moral. Effective storytelling techniques

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not only steer the player at the moment of choosing, they lend the choices—as seen in retrospect—an aura of inevitability. Those choices should make logical and thematic sense from the vantage of the story’s ending,

Legal argument—legal *storytelling*—can draw on the techniques that make interactive stories effective. We lawyers do not get to say how the story ends. And the turns that the story takes depend on the choices of the “audience.” A judge may exclude a critical piece of evidence or steer the course of an argument away from where we want to take it. The longer the litigation, the more of these choices the audience will make. But long or short, a case is always an *interactive* story defined by the interplay between the advocate and the decision maker. As storytellers, we must craft a compelling story that accounts for the choices that the decision maker has already made and frames the next choices in a way that brings the story back on track for the conclusion that we want.

If the case is a story and its resolution depends on the decision maker, then that decision maker—judge or jury or panel—is the story’s protagonist. The mess of facts that we have woven into a tale is merely “backstory” that informs the choices that the protagonist must make. The actual *story* is the crisis that has come before the decision maker. It is vivid and immediate. There are other characters in the story, but their role is to humanize and embody the dilemmas that we present to the decision maker. In a game, there are often other characters, but it is the *player’s* character who must save the day or resolve the dilemma; otherwise, the story does not engage the player. The player rescues a hostage, punishes a wrongdoer, lifts up the downtrodden, and so forth. So, too, here. Ultimately, to fully engage decision makers in a story, theirs must be the role of the protagonist, while the parties fade to hostages, wrongdoers, or the downtrodden in need of the decision maker’s intervention.

Just as constraints and inducements are used to guide the choices in a video game’s interactive story, so, too, in litigation. Law, equity, and procedure are the constraints that we storytellers use to delimit the choices. Facts furnish the narrative inducements to encourage the decision maker to prefer one choice over others. As in a game, the constraints work best when they are not arbitrary but a logical and comfortable consequence of the narrative scenario presented to the decision maker. Put in more conventional terms, it helps when law and policy align within the factual context of the case.

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Interactive Stories and the Final Chapter: Justice

Human beings are hardwired for stories. Since ancient times, stories have conveyed not only information but values. They draw us together and give us meaning: the oldest stories answer questions like “Who are we?” or “Why are we here?” or “Why has this happened to us?” By studying the art of storytelling, lawyers learn how to hold the audience’s rapt attention and how to help the audience absorb and process information by formatting it in the way that our brains like to receive it.

When we tell an interactive story, we add another layer of power. The decision maker is no longer just the story’s audience but also its coauthor and protagonist. This takes the hardwiring in the decision maker’s brain and turns the decision maker into an *advocate* for our side. As an audience, the judge or jury wants a good story. If the protagonist’s choices feel whimsical and the story’s conclusion seems arbitrary, then the decision-maker-as-audience is stuck with a story that offends the very purpose of storytelling—as if our foundational myths merely answered, “Beats me!” to the fundamental questions. The decision maker’s yearning (as the audience) for a meaningful, satisfying story will affect the decision maker’s choices (as the coauthor of the story). And because the decision maker is the protagonist, there will be added reason to make sure that those choices seem not merely right but righteous in the context of the story. When done right, the backstory of facts, the constraints of law, and the secondary characters of parties all combine to mean that a judge who wants a good story has to make the choices that the advocate-as-storyteller wants. And, as with the volunteer who freely picks the jack of clubs to complete the trick, the result is magical.

To be clear, this is not cynical legal realism. It is, at its heart, idealism. Unlike a video game designer or stage magician, a lawyer is not an entertainer. It is not enough to weave a deft illusion that delights the audience. The audience, here, is a decision maker committed to doing what is right. And we as lawyers must persuade that decision maker in a manner consistent with our high ethical responsibilities. Ultimately, the stories that ring most true to legal decision makers are stories in which truth leads to justice. The role of the lawyer as storyteller is to find justice in the chaotic, tedious, confusing material of life and blaze the true path to get there.

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