

The Ethical Implications of Legal Storytelling

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ABSTRACT

Legal storytelling occupies a central role in the practice of law, serving as a tool for persuasion, instruction, and societal justice. However, the ethical dimensions of crafting and presenting these narratives remain underexplored. This paper examines the interplay between narrative and ethics in legal contexts, analyzing how storytelling shapes outcomes in courtrooms and public perceptions of justice. By addressing the responsibilities of attorneys as narrators, this study delves into issues such as truth-telling, bias, selective representation, and the impact of marginalized voices. Through case studies of ethical and unethical legal storytelling practices, the paper highlights the consequences of narrative decisions. Finally, it provides guidelines for developing ethical storytelling practices, emphasizing respect, accountability, and the continual pursuit of narrative justice in legal contexts.

Keywords: Legal storytelling, Ethics in law, Narrative justice, Truth and bias, Selective representation, Marginalized voices.

INTRODUCTION

Narrative is as intrinsic to the law as it is to literature. Law is performed through narrated stories to at least three audiences: to persuade those who decide the cases; to instruct various people in the norms by which they must guide their conduct; and to provide a sense of justice for society. Legal storytelling can reach different audiences, by employing a strategy of language and style. This aspect of the narrative is particularly important since legal storytelling of every sort can shape outcomes in court and can also shape public conceptions of important legal issues. Narratives tell of ongoing conflicts at three levels, conflicts that are serious and, in many instances, ongoing. These conflicts run through these essays, whether we are talking about law within Guatemala, within East Africa, or as it is deployed by the International War Crimes Tribunal. Conflicts, both within the essays and between them, extend beyond the primary directions of looking at whether lawyer-narrators should have dissented from the official objectives of the lawyering organizations to whom they were beholden, and to the ethics of legal narration [1, 2]. It is generally thought that advocacy and storytelling belong together: the attorney is an advocate and can be judged as an advocate. The attorney is, in fact, more than an advocate. Because attorneys are also narrators, they have only partly the role of an advocate. To the extent that they are also narrators, they are to be judged by the broader standards that apply to all those who tell stories for societal ends, and then the standard becomes, in some elemental way, that of the narrator. The ethics of narration, however, have not been sufficiently explored, especially not in the domain of the legal. The profound and difficult questions concerning narrative and ethics that are set out here reveal legal narrators to be in a double bind: they must not only judge the actions of others, but a part of their judgments can also ultimately reflect on them. Legal narration is thus a continual back-and-forth of giving and taking responsibility. The ethics of narration must thus be judged by the ethics of the narrator, and the ethics of the narrator must itself be understood as a narrative. Legal narration is more than any account of the past: it is an expectation about the future [3, 4].

The Power of Narrative in Law and Justice

The narrative plays a fundamental role in the construction of law and justice. Various legal actors have remarked on the centrality of storytelling to law, and research has confirmed the influence of narrative on various legal audiences, including judges, jurors, and legal professionals. Indeed, the power of narrative in legal settings has become axiomatic. Judges often express the mobilizing effect of compelling tales in their decision-making processes, while the complexity of modern legal issues has led others to affirm the need to narrativize to understand and persuade. In practice, exceptional narratives have shaped notable legal cases. In one case, for example, the powerful story of a murdered college student helped to secure a conviction for the crime of rape [5, 6]. At the same time, concerns are often expressed about the potentially distorting and even unethical effects of narrative construction. Some raise the alarm about a "new civic religion of storytelling," advanced by legal scholars and judges who encourage that parties and courts change the grounds of decision from reason to empathy. As a response, this literature advocates for the careful construction and ethical use of narratives in the legal context. It has been argued that if stories can affect legal change, storytellers are imbued with the responsibility to ensure that their narratives possess a "rhetoric of authenticity." According to this perspective, fictional narratives may be permissible in law, but only if they are not fraudulent in their presentation of a legal statement—at least where the intention is to persuade. Thus, the use of storytelling in law is linked to broader ethical debates about the construction, presentation, sharing, and memory of stories [7, 8].

Ethical Considerations in Legal Storytelling: Truth, Bias, and Representation

It is a foundational truism that legal narratives ought to be, above all, "true" or, at least, factual. But, as any attorney knows, legal stories are all about truth-telling [9, 10]. It is a professional obligation. It is also demanded of the narrative by the court, which is still, at its root, conceived of as a truth-seeking institution. But legal storytelling is not just about truth-telling; beyond attesting to the facts of a client's case, legal narratives are crafted for persuasive effect. To a certain extent, then, the narrative told by opposing counsels in legal texts is filtered through one or both sides of the dispute. There is no possible narrative that could provide every detail or, in some cases, impute fault with one's case; a good narrative picks and chooses fiscal exposure. This paper acknowledges that fact, but it is also a warning of the ethical implications of these choices. Perhaps at the core of this question of crafting truth or factuality is the question of bias [11, 12]. In the legal field, bias is something to be avoided, purged for the trial stage of proceedings in which the advocacy has begun. But lawyers and our perspectives are inescapable and undeniable aspects of legal representation and the legal stories that make up client narratives. And when judicial narratives are written to guide a trial, they are used for that purpose. Bias as a consideration here encompasses the representation of clients and cases, but many who write law and literature work towards the inclusion of more marginalized voices in our analysis of cultural narratives. The personal perspectives of the authors themselves play into trajectory planning, like already set rail tracks. There is also an aspect of selective storytelling that deserves consideration. What facts, figures, and portions of evidence do lawyers and judicial opinions present in their narratives of the case to bring the court to their particular point of view? What potential for harm does selectivity in representation present? Early groups considered something like a theory of false consciousness to answer these questions—the notion that storytelling in the court follows a negative thesis. But it is not necessarily that litigators and judges are being untruthful or intentionally misleading. I will seek to break down this notion a bit later, but before I do, I remind the reader here that the epistemology of law and the law of narrative storytelling are inherently linked [13, 14].

Case Studies and Examples of Ethical and Unethical Legal Storytelling Practices

In this paper, I want to walk the reader through a few examples of how some attorneys made ethically good choices when it comes to legal storytelling. Next, I will show how some attorneys have, intentionally or not, crossed the line into being unethical in their storytelling. These case studies will illustrate the potential real-world impact of using, and failing to fire, the storytelling "nuclear option." "He Could Kill Anyone" Matt Murdock, a lawyer by day, and a superhero by night, is defending an eccentric millionaire in front of the Happiest Girls in the World. Matt Murdock defends a lot of truly despicable people, and only gets put off by one client: his most recent, Mr. Melvin Powells—the "Odd Mr. Mel"—a grown man who had gotten into the good graces of a group of pre-teen girls. Murdock's job was not to judge Mel, of course; it was to defend him in a court of law—just as it was his duty to represent a man who was human trash, who bore the dark mark of death itself! Murdock's method wins the jury over, and Melvin is acquitted. Unethical Storytelling Case Study [15, 16]. In 1993, the first-ever World Trade

Center bombing occurred. Six people died and 1,042 were injured when a car bomb went off below the tower. In what at the time was considered the task of piecing together who was responsible for the plots and assigning guilt to human actors, the federal government charged six men. Their case eventually ended up in the United States District Court for the Southern District of New York. The date was February 20, 1996 [17, 18].

Guidelines and Best Practices for Ethical Legal Storytelling

This paper reflects on what the implications of our analysis might be for guidance practitioners who wish to use legal storytelling ethically. The paper urges attorneys who wish to tell compelling stories for their clients to develop a set of guidelines for good practices in legal storytelling [19, 20]. Effective legal stories have to be congruent with our ethical obligations. Legal stories can be compelling without being dehumanizing. Although we must remember that narrative justice is not impartial, agencies acting to help parties in cases should have a heightened ability to look for it. It is not possible to do a perfect job of telling a legal story, but there is the option to tell the best story one can. In this concluding paper, we draw on our analysis of barriers to narrative justice to offer a collection of guidelines for engaging in ethical legal storytelling [21, 22]. One overarching theme that weaves together each of the barriers to narrative justice reviewed in this essay is that all these ethical considerations reflect the idea that, in storytelling, respect for the strength and power of those individuals speaking, writing, and appearing in our stories is paramount. Therefore, in the generation of storytelling practices, respect for every person involved in the story, the writers, those who are spoken of, and those who have some stake in the story must also be respected. Attorneys do not just concern themselves with generating storytelling practices; rather, they concern themselves with ensuring that storytelling practices stay productive. One important way to fulfill our obligations to tell good stories is to constantly reflect on the retelling, keeping the bar on how we tell legal stories high, and constantly working on improving. Keeping this bar high is essential for responsible legal storytelling. In this spirit, we offer guidance for attorneys eager to tell good legal stories [23, 24].

CONCLUSION

Legal storytelling is a powerful tool that influences decisions in courtrooms, shapes societal norms, and defines justice narratives. However, this power carries significant ethical responsibilities. Attorneys must navigate a delicate balance between persuasive advocacy and truthful representation, ensuring their narratives respect the dignity and perspectives of all parties involved. By addressing biases, avoiding selective storytelling, and amplifying marginalized voices, legal practitioners can align their storytelling with broader ethical principles. Ultimately, the goal of ethical legal storytelling is to uphold justice not only in outcomes but also in the processes by which stories are told. This paper underscores the importance of continual reflection and adherence to ethical guidelines, ensuring that legal storytelling remains a force for fairness, accountability, and societal progress.

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