

# ARTICLES

## Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey

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### I. INTRODUCTION

What can Harry Potter<sup>1</sup> teach us about how to represent our clients? Potentially, quite a lot. Although it might seem odd to imagine the bright

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1. For those people who have resisted the cultural phenomenon, Harry Potter is a young orphan boy being raised, reluctantly, by his aunt and uncle. J.K. ROWLING, HARRY POTTER AND THE SORCERER'S STONE, 53 (Scholastic 1997) (originally published as HARRY POTTER AND THE PHILOSOPHER'S STONE (Bloomsbury 1997) [hereinafter HARRY POTTER AND THE SORCERER'S STONE]; J.K. ROWLING, HARRY POTTER AND THE ORDER OF THE PHOENIX 836 (Scholastic 2003) [hereinafter HARRY POTTER AND THE ORDER OF THE PHOENIX]. One day Harry receives a letter telling him that he has been accepted into the Hogwarts School for Witchcraft and Wizardry. HARRY POTTER AND THE SORCERER'S STONE, 51 (Scholastic 1997). He learns that he was scarred at an early age by the most evil wizard of the day, who disappeared after killing Harry's parents and after unsuccessfully trying to kill Harry. *Id.* at 53–56. The rest of the books explore Harry's adventures learning to be a wizard and his quest to help improve and find his place in the wizarding world. See HARRY POTTER AND THE SORCERER'S STONE; J.K. ROWLING, HARRY POTTER AND THE CHAMBER OF SECRETS, (Scholastic 1999) [hereinafter HARRY POTTER AND THE CHAMBER OF SECRETS]; J.K. ROWLING, HARRY POTTER AND THE PRISONER OF AZKABAN (Scholastic 1999) [hereinafter HARRY POTTER AND THE PRISONER OF AZKABAN]; J.K. ROWLING, HARRY POTTER AND THE GOBLET OF FIRE (Scholastic 2000) [hereinafter HARRY POTTER AND THE GOBLET OF FIRE]; HARRY POTTER AND THE ORDER OF THE PHOENIX; J.K. ROWLING, HARRY POTTER AND THE HALF-BLOOD PRINCE (Scholastic 2005) [hereinafter HARRY POTTER AND THE HALF-BLOOD PRINCE].

young wizard flying his *Firebolt* broomstick to a lawyer's office for advice about his numerous guardianship issues,<sup>2</sup> Harry's story nevertheless can help us as lawyers invoke more effective characterizations of clients and the role of the lawsuit in our clients' stories. There is a reason why *Harry Potter* novels topped the fiction bestseller lists for so many months<sup>3</sup> just as there is a reason why so many high-earning movies share a common plot development.<sup>4</sup> Memorable pop-culture protagonists such as Harry Potter, Dorothy Gale, Luke Skywalker and Frodo Baggins all share commonalities in their personalities and quests.<sup>5</sup> And, as storytellers in the law, lawyers should understand and appropriately utilize that phenomenon.<sup>6</sup> In essence, each time we represent an individual, we are representing a Harry Potter. Likewise, the role of a favorable court decision is more often akin to a talisman, such as Dorothy's ruby slippers, than to the slaying of a dragon.

This Article focuses on the relationship of mythology and folklore heroes to everyday lawyering decisions regarding case theory when the audience is a judge or panel of judges rather than a jury. Because people respond—instinctively and intuitively—to certain recurring story patterns and character archetypes, lawyers should systematically and delib-

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2. Issues that have been casually raised in various discussions include: did Harry's parents appoint a back-up guardian to the incarcerated Sirius Black? In the magical world, do incarcerated prisoners lose all legal rights including guardianship appointments? Even if there were no loss of legal rights, what are the guardianship ramifications of Sirius's death? Not to mention all of those other times J.K. Rowling denied Harry access to a lawyer for actual legal hearings. *See, e.g., HARRY POTTER AND THE ORDER OF THE PHOENIX, supra* note 1, at 137–51 (forcing a minor to appear pro se in front of an en banc court in order to defend himself against criminal charges).

3. In 1999, the first three *Harry Potter* books took over the top three spots on the New York Times' adult fiction bestsellers list. *See* Kera Bolonik, *A List of Their Own*, SALON.COM, Aug. 16, 2000, <http://archive.salon.com/mwt/feature/2000/08/16/bestseller>. The three books remained there for over a year. But with the looming threat of the about-to-be-released fourth book, the New York Times "effectively evicted" the books by creating a new bestseller fiction category for children's books. *Id.* *See also* Richard Corliss, *Why "Harry Potter" did a Houdini*, CNN.COM, July 21, 2000, [http://archives.cnn.com/2000/books/news/07/21/potter7\\_21.a.tm](http://archives.cnn.com/2000/books/news/07/21/potter7_21.a.tm).

4. *See* STUART VOYTILLA, *MYTH AND THE MOVIES: DISCOVERING THE MYTHIC STRUCTURE OF 50 UNFORGETTABLE FILMS* (Michael Wiese Prod. 1999) (analyzing the plot structures of classic films).

5. Dorothy Gale is the heroine in *The Wonderful Wizard of Oz*. L. FRANK BAUM, *THE WONDERFUL WIZARD OF OZ* (HarperCollins 1987) (1900). Luke Skywalker is the hero of the original *Star Wars* trilogy. *See, e.g.,* STAR WARS: EPISODE IV, *A NEW HOPE* (Lucasfilm 1977); STAR WARS: EPISODE V, *THE EMPIRE STRIKES BACK* (Lucasfilm 1980); STAR WARS: EPISODE VI, *RETURN OF THE JEDI* (Lucasfilm 1983). Frodo Baggins is a hero and arguably the main hero of the *Lord of the Rings* trilogy. *See* J.R.R. TOLKIEN, *LORD OF THE RINGS* (Houghton Mifflin 1999) (1954–55).

6. Harry Potter has already entered the world of law and literature, and one scholar has concluded that lawyers are privileged "implied readers" because of a hypothesized presence of "legal imagination" through the portrayal of several legal processes. William P. MacNeil, "*Kidlit*" as "*Law-and-Lit*": *Harry Potter and the Scales of Justice*, 14 *LAW & LITERATURE* 545–46 (2002).

erately integrate into their storytelling the larger picture of their clients' goals by subtly portraying their individual clients as heroes on a particular life path. This strategy is not merely a device to make the story more interesting, but provides a scaffold to influence the judge at the unconscious level by providing a metaphor for universal themes of struggle and growth. Folklore and mythology are already part of the doctrine in other disciplines that rely on persuasive techniques, such as screenplays, political campaigning, and advertising.<sup>7</sup> These disciplines have absorbed the lessons of heroic archetypes because we respond viscerally to certain story patterns unconsciously. We respond regardless of age;<sup>8</sup> for example, toddlers react to the classic animated Disney movies.<sup>9</sup> Adults respond similarly to the narratives of their religious texts. Thus, the use of the metaphoric hero's journey provides one potential and powerful option in the arsenal of lawyers' persuasive techniques.

According to linguistics experts, summoning the imagery of a hero employs metaphoric reasoning.<sup>10</sup> Metaphors are effective because they act as a mechanism that allows us to "understand one domain of experience in terms of another," and the understanding takes place in the gestalt of universal experience.<sup>11</sup> We are, then, left with the notion that we as lawyers should master the elements of persuasive and epic storytelling regardless of whether our audience is a jury or a legally-trained judge. As Professor Steven Winter wrote, "[t]he attraction of narrative is that it corresponds more closely to the manner in which the human mind makes sense of experience than does the conventional, abstracted rhetoric of law."<sup>12</sup> The story is not a parlor trick used to draw attention away from the logic of law. It is part of the logic itself.

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7. Marketing, in particular, is a very close analogy and books have been written about the connection of persuasive theory to product branding. See MARGARET MARK & CAROL S. PEARSON, *THE HERO AND THE OUTLAW: BUILDING EXTRAORDINARY BRANDS THROUGH THE POWER OF ARCHETYPES* (McGraw Hill 2001). Dr. Pearson is the psychologist who translated Joseph Campbell into a psychological framework for self-growth and awareness. Margaret Mark is a marketing strategist who is a leader in the field. They urge advertising specialists to pay attention to archetypal patterns that have been successfully employed by a variety of companies. The book is a fascinating read. You will never look at Nike or Pepsi advertisements in the same way.

8. See BRUNO BETTELHEIM, *THE USES OF ENCHANTMENT: THE MEANING AND IMPORTANCE OF FAIRY TALES*, 5-6 (Alfred A. Knopf 1976) (arguing that fairy tales provide children with a tangible method of learning the advantages of moral behavior and that fairy tales encourage the development of the conscious, preconscious and unconscious mind).

9. See generally ANALEE R. WARD, *MOUSE MORALITY: THE RHETORIC OF DISNEY ANIMATED FILM* (Univ. of Tex. Press 2002).

10. GEORGE LAKOFF & MARK JOHNSON, *METAPHORS WE LIVE BY* 115-19 (Univ. of Chi. Press 2003).

11. *Id.*

12. Steven L. Winter, *The Cognitive Dimension of the Agony Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2228 (1989).

Legal literature has addressed the concept of “hero,” but not as a foundation for client-centered lawyering and not for a judicial audience. Books and articles have been written on the use of storytelling as a narrative technique in jury trials<sup>13</sup> and as a way to present stories of communities in crisis.<sup>14</sup> Other legal publications discuss ethics and the telling of client stories in other contexts.<sup>15</sup> Articles in smaller publications such as bar journals have used the concept of heroism to characterize lawyers or judges on the occasion of their professional retirement.<sup>16</sup>

Moreover, although many law professors, lawyers and judges have used the word “hero” in their law review or practitioner articles or in published cases, most often the reference is to another lawyer or to a judge. We are not afraid to characterize a lawyer or judge as “pioneering” a field or policy in law. Lawyers, as client advocates, are sometimes themselves portrayed as heroes representing supreme underdogs.<sup>17</sup> In

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13. The best known examples of narrative theory in law are ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* (Harvard Univ. Press 2000) and MARTHA NUSSBAUM, *POETIC JUSTICE* (Beacon Press 1995). Other clinical articles addressing the issue of storytelling and lawyering theory in a jury trial context include: Ty Alper, Anthony G. Amsterdam, Todd E. Edelman, Randy Hertz, Rachel Shapior Janger, Hennifer McAllister-Nevins, Sonya Rudenstine & Robin Walker-Sterling, *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 CLINICAL L. REV. 1 (2005) (collaborating and applying an interdisciplinary set of legal practice criteria to analyze one jury trial and the defense counsel’s techniques); Philip N. Meyer, *Desperate for Love: Cinematic Influences Upon a Defendant’s Closing Argument to a Jury*, 18 VT. L. REV. 721 (1994); Philip N. Meyer, *Making The Narrative Move: Observations Based Upon Reading Gerry Spence’s Closing Argument in The Estate Of Karen Silkwood v. Kerr-Mcgee, Inc.*, 9 CLINICAL L. REV. 229 (2002); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994). These cited examples are in no way the complete body of work on the subject. Even the field of children’s literature acknowledges the importance of storytelling as a cultural phenomenon. See, e.g., WARD, *supra* note 9, at 1 (“stories are a vital way of searching and sharing truth”).

14. See TERESA GODWIN PHELPS, *SHATTERED VOICES: LANGUAGE, VIOLENCE AND THE WORK OF TRUTH COMMISSIONS* (Univ. of Pa. Press 2004) (hypothesizing that truth commissions allow people to heal through the telling of their stories so that the need for revenge or retribution is minimized).

15. See generally Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000) (theorizing that clients should have a say about how their stories are told in legal scholarship).

16. There are a plethora of articles that refer to lawyers as heroes. A few examples are: N. Lee Cooper, *Don’t Forget the Main Street Lawyer: These Heroes of the Profession Go About Their Work Quietly, One Client at a Time*, 83 A.B.A. 8 (1997); Robert M. O’Neil, *Two Unlikely Heroes in the Fight for First Amendment Rights*, 27 HUM. RTS. 14 (2000); Mark E. Steiner, *Heroes of the Revolution: Henry D. Sedgwick and Timothy Walker*, 3 SCRIBES J. LEGAL WRITING 43 (1992). One professor of legal ethics teaches a professional responsibility course entitled “The Legal Profession: Heroes and Villains.” Clark D. Cunningham, *How to Explain Confidentiality*, 9 CLINICAL L. REV. 579, 590 (2003).

17. See Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom and Political Interference: a Clinical Program Under Siege*, 4 CLINICAL L. REV. 531, 535 (1998) (citing newspaper reports that clinic clients, low and moderate income residents living in the middle of a Baton Rouge area known as “Cancer Alley,” viewed the clinic students as heroes). See also Adam

related fashion, trial advocacy experts have touched upon the hero's journey in terms of jury argumentation theories, or to review works of literature that discuss law; however, these do not necessarily fully address client theory.<sup>18</sup>

While those lawyer accolades are undoubtedly well deserved, lawyers can do more with the heroic archetypes than merely call upon their imagery when describing one of our own. The potential to use heroic imagery as a form of persuasion extends beyond merely jury presentations to also include times when the judge is our audience. This Article adds to the discourse by beginning a conversation about what might be termed "applied legal storytelling." The term pertains to ideas of how everyday lawyers can utilize elements of mythology as a persuasive technique in stories told directly to judges—either via bench trials or via legal writing documents such as briefs—on behalf of an individual client in everyday litigation.

Parts II and III of this Article will review legal storytelling from a fiction writing perspective and will introduce the mythological and psychological perspective of heroes. Part IV will explain the different types of heroic archetypes and show examples of how to select the appropriate hero type for a client. Part V will outline the universal journey and show examples of how a lawsuit may fit into the client's overall journey. In all but one example, the Article draws on more day-to-day lawyering scenarios than on seminal cases. Smaller cases are analyzed in order to demonstrate that lawyers can use heroic archetypes as a routine scaffold rather than as a tool reserved for only the exceptional client scenarios.

## II. BASIC LEGAL STORYTELLING BUILDING BLOCKS

From the first year of law school and continuing in practice, lawyers are exhorted to "tell a good story" when they write briefs or argue in court.<sup>19</sup> This is good advice. In fact, any decent trial lawyer already knows that storytelling is a critical part of effective advocacy. We implicitly acknowledge that narrative is far more significant in law than

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Babich, *The Apolitical Law School Clinic*, 11 CLINICAL L. REV. 447 (2005) (describing earlier work by the Tulane Environmental Law Clinic on behalf of citizen groups and the beliefs by some people that the law students were "environmental heroes").

18. See, e.g., Nancy L. Cook, *A Call to Affirmative Action for Fiction's Heroes of Color, or how Hawkeye, Huck and Atticus Foil the Work of Antiracism*, 11 CORNELL J.L. & PUB. POL'Y, 603, 613-15 (2002).

19. This advice is given in just about every one of the abundant basic legal writing textbooks currently flooding the market. See also Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994) (where a judge will respond saying, "that's a good story counselor . . .").

merely one delivery method of human communication.<sup>20</sup> Psychologists are also moving towards the conclusion that all of our knowledge is contained in stories and in the mechanisms to construct and retrieve them.<sup>21</sup>

Although not necessarily included in all of the textbooks, the basic rubric of a story is also the stuff of law school lawyering courses.<sup>22</sup> Within the legal framework, a story has a few key elements: character, point of view, conflict, resolution, organization, and description.<sup>23</sup> The story must contain a cast of characters, and the author must choose to tell the story from someone's point of view. Each character has needs and goals. The author controls how much the audience knows about those needs and goals. The more skilled lawyers understand, of course, that their client is the protagonist of the story and that the story must be told from the protagonist's point of view.<sup>24</sup>

The next step that lawyers must take in persuasive storytelling is learning to develop the narrative of the client's character, and to describe the lawsuit in terms of where it fits into the framework of the client's needs and goals. Here is where lawyers should consider the concept of "hero." Framing the client's narrative as heroic in some sense provides a possible avenue for the lawyer to develop a strategy for character development, as well as possibly a meaningful type.<sup>25</sup>

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20. See generally Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 29–31 (1984).

21. ROGER G. SCHANK & ROBERT P. ABELSON, KNOWLEDGE AND MEMORY: THE REAL STORY 2 (Lawrence Erlbaum Assoc. 1995); Miller, *supra* note 19, at 554–55; Winter, *supra* note 12, at 2230–32.

22. One textbook that does talk extensively about story is STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS* (2nd ed., Aspen L. & Bus. 2003).

23. Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers On How To Use Fiction Writing Techniques To Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459, 465–72 (2001), reprinted in 51 No. 1 DEFENSE L.J. 149 (Spring 2002), reprinted as *How To Use Fiction Writing Techniques to Write Persuasive Facts Sections*, NATL. INST. TRIAL ADVOC. (July 2002).

24. *Id.* The article also explains that the lawyer should strategize the conflict type and the story's organization. *Id.* at 468–73.

25. *Id.* at 469 (citing JOSIP NOVAKOVICH, *FICTION WRITER'S WORKSHOP* 74–75 (Story Press 1995)). The conflict types are:

- Person vs. Person
- Person vs. Self
- Person vs. Nature
- Person vs. Society
- Person vs. Machine
- Person vs. God
- God vs. Everybody

Some of these can be phrased as, "Person vs. Institution," or "Person vs. Powerful Entity." *Id.*

The concept of "hero" also helps explain why or when lawyers should avoid choosing a "Person v. Person" conflict type. *Id.* at 472. There is no heroism in combating a person; rather, the heroism comes with what the person represents. *Id.* at 472 n. 45.

### III. A PRIMER ON THE DEVELOPMENT OF HEROIC ARCHETYPES AS A DISCOURSE

Heroic archetype, the myth of the hero, has been introduced to everyday culture through the interdisciplinary studies of many individuals, but most famously by mythologist Joseph Campbell.<sup>26</sup> Campbell made his hypotheses and reached many of his conclusions by combining the psychological work of Carl Jung with earlier publications of nineteenth century anthropologists such as Adolph Bastian.<sup>27</sup>

Jung believed that individual and social behavior and thought have their roots in a common pattern of characters.<sup>28</sup> He emphasized the universal psychological forces working within the individual to shape his or her personality.<sup>29</sup> These archetypal patterns were present in every culture he studied and in each time period in recorded history. Jung saw these common recurring patterns as manifestations of what he called “the collective unconscious.”<sup>30</sup> Anthropologist Adolph Bastian first proposed the idea that myths from all over the world seem to be built from the same “elementary ideas.” Subsequently, Sir James Frazer similarly observed that there was an unexplainable similarity that existed in certain tribal rituals in tribes so separate that no contact had ever taken place. He concluded that the rituals encapsulated the imaginative story of human connection to the universe.<sup>31</sup> More recently, the prolific psychologist and

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26. One question among religion experts is the extent to which Campbell's heroic paradigm in myth ignores the actual structures of eastern religions. Campbell believed in the universal across all world religions but may have oversimplified his hypotheses because he was looking through a western-style filter. *See, e.g.,* WILLIAM E. PADEN, *INTERPRETING THE SACRED: WAYS OF VIEWING RELIGION* 110–24 (Beacon Press 1992) (discussing the contextuality of religious interpretation as a function of many factors including geography and conceptual locations). This Article accepts Campbell's conclusions, although there is much debate on the issue.

27. JOSEPH CAMPBELL, *THE HERO WITH A THOUSAND FACES* (Princeton Univ. Press 1990) [hereinafter CAMPBELL, *THE HERO WITH A THOUSAND FACES*].

28. According to a traditional definition, archetypes are the “primary form that governs the psyche.” JAMES HILLMAN, *ARCHETYPAL PSYCHOLOGY: A BRIEF ACCOUNT I* (Spring Pub. 1985).

29. *Id.* at 11.

30. CARL G. JUNG, *THE PORTABLE JUNG* 59–60 (Joseph Campbell ed., Penguin Books 1976). Jung wrote that “the collective unconscious . . . is not a personal acquisition. [T]he contents of the collective unconscious have never been in consciousness, and therefore have never been individually acquired, but owe their existence exclusively to heredity. [T]he content of the collective unconsciousness is made up essentially of archetypes. The concept of archetype . . . indicates the existence of definite forms in the psyche which seem to be present always and everywhere. Mythological research calls them ‘motifs.’” *Id.* (emphasis in original).

31. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 18–19, n. 18. Professor Steven L. Winter alluded to the phenomenon in his seminal 1989 article when he referred to “stock stories” and “folk theories” by which people organize daily life into meaningful gestalts. Winter, *supra* note 12, at 2233.

writer, James Hillman, opined that the study of basic human nature necessarily includes learning about a society's mythology.<sup>32</sup>

Joseph Campbell coalesced these related psychological and anthropological theories into an analysis of human religion and spirituality. His tome, *The Hero With a Thousand Faces*, is considered a seminal publication in the field.<sup>33</sup> Campbell believed that within all of the world's mythologies there are heroes whose journeys follow a predictable pattern. He opined that the storytellers of the different eras and cultures were trying to tell us, through symbolism and metaphor, of our own journeys towards individuation.<sup>34</sup>

According to Campbell, myths can serve a pedagogical function, informing us of how to live in our society under any circumstances.<sup>35</sup> Humans learn lessons from storytelling because it is a more experiential type of learning. We use narrative to understand what would otherwise be just abstract. We understand narrative because we join the story and see ourselves as part of it: We place ourselves into the story and walk with the characters.<sup>36</sup> In terms of persuasion, we walk in the shoes of the protagonist. If we can marry the concepts of storytelling to the "collective conscious" in our statements of the case, we will potentially create powerfully persuasive undercurrents in the case that should help persuade in a more subtle way.

#### IV. THE LAWSUIT CASTING CALL: ONE STORY, ONE HERO

Joseph Campbell's words ring true in lawsuits just as in other ritualistic aspects of life. Rituals mimic myths. The rituals of each society give form to our lives, to connect us as individuals to a larger whole.<sup>37</sup> Similarly, the act of rising when a judge walks into the courtroom demonstrates the modern ritual of legal process.<sup>38</sup> We stand to acknowledge judges in their role as the wise and venerable figure; a character known to us through myth.<sup>39</sup>

The lawsuit, like the hero's journey, necessarily includes a predictable cast of characters.

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32. HILLMAN, *supra* note 28, at 3.

33. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27.

34. *Id.*

35. JOSEPH CAMPBELL ON MYTH & MYTHOLOGY 5 (Richard L. Sartore ed., Univ. Press of Am. 1994) [hereinafter CAMPBELL ON MYTH & MYTHOLOGY].

36. Winter, *supra* note 12, at 2272-77 ("The audience lives the story-experience, and is brought personally to engage in the process of constructing meaning out of another's experience.").

37. CAMPBELL ON MYTH & MYTHOLOGY, *supra* note 35, at 37.

38. *Id.* at 45.

39. *Id.* Similarly, when we address a court in writing, we sign our documents with "Respectfully . . . ."

The strategic lawyer should assign each character in the lawsuit a particular role. Although in theory a particular person in the story may wear more than one mask during the course of the journey, a short story such as a lawsuit will necessitate the lawyer keeping the various players in one primary role. The story of the lawsuit, especially when told in the short form of a brief, does not have the space or reader attention span to develop with any complexity the characters of many different players.<sup>40</sup>

The most important casting decisions, undoubtedly, are those of the client and the judge. All else becomes secondary. With rare exception, then, a lawyer can assign only one real hero to an individual lawsuit's story, and this must be the client. The lawyer must assign different roles to the lawsuit's other characters. The other possible roles available in a heroic journey include mentor, companion, gatekeeper, dragon, goddess/damsel, and shape-shifter. The lawyer herself may play only the role of an outsider narrator. If anything, the lawyer may consider herself as a narrator or Greek chorus.<sup>41</sup>

In comparison to an author or playwright, however, the lawyer faces this task at somewhat of a unique disadvantage because another narrator, the opposing counsel, is also trying to tell heroic tales. The opposing party is a hero in his or her own right. Perhaps a greater challenge, however, is the casting of the fact finder. Judges are schooled to consider themselves the heroes of the American legal system.<sup>42</sup> Although there may be truth to that notion in the global sense, the careful lawyer should gently shift that mindset for the purposes of telling the client's story.

#### *A. Hero: The Client's Role*

Heroes are those who transform themselves or their societies through a search for identity and wholeness.<sup>43</sup> They can do this through internal reflection or through outward action. Heroes are termed as such because they all similarly embark on some sort of transformative jour-

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40. This is very different from epic journeys that span trilogies in books or movies. There are enough pages for the author to have developed multiple heroes in the *Lord of the Rings* series or in the *Star Wars* series than there are in a typical lawsuit. *Contra* CHRISTOPHER VOGLER, *THE WRITER'S JOURNEY* 30, 39 (2nd ed., Michael Wiese Prod. 1998) (1992).

41. A lawyer may also consider herself the story's director or producer, if that provides a better comfort zone. An idea for an interesting related article would be to detail the professional responsibility problems of the lawyer casting herself as a character in the client's story.

42. *See also* Erika Rackley, *Representations of the (Woman) Judge: Hercules, The Little Mermaid, and the Vain and Naked Emperor*, 22 J. LEGAL STUD. 602 (2002) (exploring the dominance of stereotypical "Herculean" judge models in the United Kingdom legal system, the simultaneous silencing of the female judicial voice, and the need to re-imagine the role of the normative judge in order to combat gender disparities in judicial appointments).

43. VOGLER, *supra* note 40, at 35.

ney. That journey can take place externally or internally. A hero's journey, for example, may be more inwards and involve transforming the self and consequently the hero's culture rather than the culture transforming the hero.<sup>44</sup>

Because the hero is the person in the story with whom the reader most closely identifies, the writer must grant the hero universal qualities and emotions that most readers have either experienced or understand. A hero grows and changes through the course of the journey. Heroes start out as somehow flawed at a fundamental level that affects their daily life and/or prevents them from living up to their potential.<sup>45</sup> The hero, then, represents a search for identity and wholeness.<sup>46</sup> Emotions and motivators at both ends of the spectrum are available to the hero; everything from love and joy to anger and a thirst for revenge to the middle emotions of loneliness, despair and the feelings of oppression.<sup>47</sup> A hero is imperfect by definition, and audiences admire the hero all the more for striving to overcome these flaws.

Casting the client as the main character and hero of the lawsuit story gives the client permission to be imperfect. In fact, heroes must be imperfect in order to have the audience identify with them and with their need to embark on or continue on their transformative journeys.<sup>48</sup> The hero's flaw could be a weakness such as a fear, a vice or an addiction, or any other idiosyncrasy not usually acceptable in the hero's everyday world.<sup>49</sup> The character flaw does not ultimately define a hero, assuming the hero can overcome it, but the hero is allowed to have that flaw at least at the outset. In this way, the hero is somewhat unique amongst the different roles in the journey. In the abbreviated nature of a lawsuit story, the lawyer-storyteller has time to develop only one character with that sort of depth. If the lawyer casts someone else—for example, the judge—as the hero, then only the judge has been granted permission to be imperfect while also remaining a “good guy.” In short stories, supporting characters are often defined by their displayed weaknesses. Thus, a lawyer's decision to place the client in a supporting role may prove

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44. This type of journey is often associated with the female hero. MAUREEN MURDOCK, *THE HEROINE'S JOURNEY* 4 (Shambhala Pub. Inc. 1990); VOGLER, *supra* note 40. *See also* CAROL S. PEARSON, *THE HERO WITHIN: SIX ARCHETYPES WE LIVE BY* 2–4 (Harper & Row 1989) [hereinafter PEARSON, *THE HERO WITHIN*]; CAROL PEARSON & KATHERINE POPE, *THE FEMALE HERO IN AMERICAN AND BRITISH LITERATURE* 67 (R.R. Bowker Co. 1981).

45. VOGLER, *supra* note 40, at 90–94.

46. *Id.* at 35.

47. *Id.* at 36–38.

48. *Id.*

49. CAROL S. PEARSON, *AWAKENING THE HERO WITHIN: TWELVE ARCHETYPES TO HELP US FIND OURSELVES AND TRANSFORM OUR WORLD* 4, 15–18 (HarperCollins 1991) [hereinafter PEARSON, *AWAKENING THE HERO WITHIN*].

disastrous if the client's inevitable flaws are revealed during the course of the proceeding.

### 1. Types of Heroes

For purposes of this Article, the word "hero" is used as a gender-neutral and racially-blind word to designate a person who is in the process of individuation.<sup>50</sup> To so define the word, however, requires the reader to first understand that Americans are fed on a steady diet of "warrior" champions who are traditionally males, and quite often Caucasian.<sup>51</sup> Lawyers must interpret the word "hero" more broadly, however. There are other types of heroes in myths, and these characters do not necessarily have to engage in a physical confrontation in order to earn their "hero" status. Heroes are not just warriors, and in different story modules can appear as creators, scholars, pioneers, lovers, caregivers, or wise prophets.<sup>52</sup>

In modern application there are several authors who have proffered a variety of heroic archetypes.<sup>53</sup> Each of these archetypes, though pursuing different goals and possessing different character traits and flaws, nevertheless shares some significant commonalities with other archetypes. Each different type of hero character has its own quest and fear, and each has its own proverbial dragon that the hero must, metaphorically or literally, slay.

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50. Undoubtedly, I may hear criticisms for my decision to use the word "hero" as a gender-neutral term. I choose to think that the word "heroine" is merely diminutive. Joseph Campbell used the word "hero" to mean "the man or woman who has been able to battle his personal and local limitations to the generally valid, normally human forms." CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 19–20. One satirist has suggested the word "she-ro" as an alternative designation for heroes who are also female. JAMES FINN GARNER, *ONCE UPON A MORE ENLIGHTENED TIME* (MacMillan 1995) (referring to the protagonist in *The Little Mer-Persun* as "she-roic" for saving a Greenpeace member from freezing waters after a whaling boat attacked his rubber raft).

51. For example, Luke Skywalker from the *Star Wars* movies. See *STAR WARS: EPISODE IV, A NEW HOPE*, *supra* note 5. Other examples from fiction, religious texts, iconic American historical figures and film characters are too numerous to name here.

52. VOGLER, *supra* note 40, at xvii.

53. Campbell himself suggested six different archetypes, based on world mythology. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 315–54. While originally adopting those six for her earlier work, Dr. Carol Pearson fleshed out those initial six into twelve archetypes. PEARSON, *AWAKENING THE HERO WITHIN*, *supra* note 49; PEARSON, *THE HERO WITHIN*, *supra* note 44. Fiction and screenwriters have expanded the list further still. See also TAMI D. COWDEN, ET AL., *THE COMPLETE WRITERS GUIDE TO HEROES AND HEROINES: SIXTEEN MASTER ARCHETYPES* (Lone Eagle 2000). Moreover, at least one author writing for a screenwriting audience concludes that there are sixteen character types that can be used for story development purposes and that each of these sixteen have a flip aspect to them (for a total of 32). VICTORIA SCHMIDT, *45 MASTER CHARACTERS: MYTHIC MODELS FOR CREATING ORIGINAL CHARACTERS* (Writer's Digest Books 2001). The other thirteen characters are the supporting roles of friends, mentors, and rivals.

This Article relies on Dr. Carol Pearson's work, which suggests twelve different hero types.<sup>54</sup> The list appears below along with some brief examples to help the reader based on what I hope are "shared knowledge" examples, i.e., illustrations that will resonate by calling upon common experiences.<sup>55</sup> A more detailed chart, including a column of related "dragons," appears in Appendix I.

<b>Hero type</b>	<b>Illustrative example</b>
Warrior	Prototypical Hollywood hero such as Luke Skywalker from <i>Star Wars</i>
Creator	Writer or artist struggling to succeed such as <i>Harry Potter</i> author, J.K. Rowling
Care-giver/Martyr <sup>56</sup>	Mother taking care of her family against odds; Religious icons or leaders such as Jesus Christ, Moses, Buddha, etc.
Every person/ Orphan	Harry Potter the orphan looking for his birthright and a sense of family and identity; Bill Clinton and "A Place Called Hope"
Out-law/Destroyer	Robin Hood
Sage/Scholar	Student trying to do well in school or a professor trying to get tenure
Explorer/ Wanderer/Seeker	Early colonists and pioneers such as Davy Crockett or Daniel Boone; astronauts
Magician	Merlin; Gandalf ( <i>Lord of the Rings</i> ); Obi Wan Kenobi ( <i>Star Wars</i> )—each had his own heroic story before becoming a mentor to a later hero
Ruler	King Arthur or Queen Elizabeth I of England
Lover	Cinderella variations; Princess Diana of Wales
Jester/Fool	Leads in comic movies are most often jester-heroes

54. PEARSON, AWAKENING THE HERO WITHIN, *supra* note 49.

55. "Shared knowledge," a concept from discursive psychology, is a means to provide a shortcut to comprehension within human communication when one person uses brief allusions or references to material known by everyone involved with the communication. The communicator is often considered by the audience clever for using the allusion. Thus, the lawyer who effectively employs this technique stands to score persuasive points with the reader. See MICHAEL R. SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING 20–21 (Aspen L. & Bus. 2002).

56. Multiple hero entries show differences in terms used by Dr. Carol S. Pearson in her psychological self-help book versus her advertising collaboration book. See PEARSON, AWAKENING THE HERO WITHIN, *supra* note 49; MARK & PEARSON, *supra* note 7. For a chart showing the twelve heroic archetypes with their respective quests and goals, see the chart included as Appendix I of this Article.

**Hero type****Illustrative example**

Innocent

Young, happy and well-cared for child who wishes to remain so; Dorothy from *The Wizard of Oz*

Just as there is more than one story module, there are multiple hero types. According to archetypal psychologists, we are each on different heroic quests throughout our lives as we mature and transform ourselves.<sup>57</sup> The process is not linear or absolute. Instead, we may ourselves be more than one type of hero at any given point in time. This is good news for lawyers working with their clients, because the lawyer is not limited to casting the client in the role of Luke Skywalker.

Because there are different choices, the lawyer must also carefully write the story around the correct type of hero that the client embodies. To do that effectively, the lawyer must carefully employ all of the client-centered skills that are the stuff of clinical education and scholarship. Factual investigation of one's own client becomes even more crucial as the lawyer develops the story's theme. Is a client really a warrior hero who is on a quest to slay an external dragon, or is the journey one of internal transformation? This question intertwines with considerations of the case's thematic conflict type.

## 2. Example of Heroic Archetype Selection: Clients Seeking Domestic Violence Protective Orders

This particular area of law provides a conundrum to the storyteller. How do we make the domestic violence plaintiff look like a hero, especially if she acted imperfectly herself, either by acting with aggression herself or perhaps by returning to the abuser on more than one occasion?<sup>58</sup> Since a hero cannot be passive, how do we make that client look active? This situation occurs more frequently than one might suppose. By thinking and placing the plaintiff in a "victim" role, the lawyer has essentially cast the client as the damsel-in-distress rather than as the hero of her own story. Too easily, the lawyer in a domestic violence case in-

57. Drs. James Hillman and Carol S. Pearson are perhaps the most widely known in the realm of archetypal psychologists. See, e.g., HILLMAN, *supra* note 28, at 1; PEARSON, AWAKENING THE HERO WITHIN, *supra* note 49. There are, of course, many other psychologists publishing in the field.

58. Ilene Durst, *Valuing Women Storytellers: What They Talk About When They Talk About Law*, 11 YALE J.L. & FEMINISM 245, 264-65 (1999) ("Many attorneys are, and will continue to be resistant to the lessons of mere fiction, especially when the heroines are women and the stories urge attorneys to temper their rule-based reasoning with consideration for personal relationships."). See, e.g., JILL DAVIES, SAFETY PLANNING WITH BATTERED WOMEN (Sage 1998) (challenging the model of learned helplessness and instead calling for domestic violence service providers to look at the many and valid variables that battered women consider when reviewing their options).

stead awards the role of hero to the judge, whose job it becomes to save the damsel from her distress. However, a hero will save only a true and pure damsel and not one who shows herself to have impurities.<sup>59</sup> Consequently, when the client acted imperfectly, a judge cast in the role of hero may conclude that the client is no true damsel who deserves saving.

Alternatively, if the lawyer is cast as hero, the client again remains in the role of damsel-in-distress. Setting up the story that way then leaves the judge little choice but to become a threshold guardian.<sup>60</sup> The judge's job becomes one of testing the lawyer-hero. Potentially, the test may include stopping the lawyer-hero from completing the journey of saving the client from the distress. The only other casting option forces the judge to agree to become a companion—impossible for someone who is supposed to remain a neutral fact-finder.

Casting the client as the hero is the option, then, that allows the client to have flaws, but the domestic violence lawyer faces a daunting task in selecting the right type of hero. Again, factual investigation of one's own client is a critical step. What are the client's long term goals? One choice, the lover hero, presents as an obvious option for the legal storyteller. A person seeking a domestic violence protective order is, in a very real way, seeking freedom from the lethal form of love of her present circumstances. The legal system, by protecting domestic violence victims, grants them the renewed opportunity to find bliss, i.e. the hero returned to the path.<sup>61</sup> In the typical "lover" story, a beautiful maiden seeks safety and security away from the sad life she currently lives. She is deserving of love but, through circumstances beyond her control, she is not being loved. Accordingly, her journey is towards the freedom to be herself in a safer place, where she can receive the love that she deserves.<sup>62</sup>

The danger with defaulting to the lover hero, however, is the cliché of the Cinderella fairytale. Such romanticized notions of "the maiden" help account for the unfortunate misconception that a woman who "fights back" or who has economic or educational advantages cannot

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59. CAROL PEARSON & KATHERINE POPE, *THE FEMALE HERO IN AMERICAN AND BRITISH LITERATURE*, 25–32 (R.R. Bowker Co. 1981) (discussing historical literary examples of females cast as either "good angels" or as "ruined women").

60. Examples of threshold guardians are explored more fully *infra* Part IV.D.

61. If done well, the lover hero does make a compelling and marketable story. See PEARSON & POPE, *supra* note 59, at 186 (discussing the movie *PRETTY WOMAN*, as a financially-successful retelling of the Cinderella story where the protagonist was clearly flawed both by being a prostitute and by wearing clothing that signaled her profession).

62. MARK & PEARSON, *supra* note 7, at 178–81 (discussing the market branding of products aimed at the romanticized vision of femininity). The most famous of modern day and real world lover heroes was Diana, Princess of Wales. Her death appeared all the more tragic because she had not yet completed her journey towards finding happiness in love.

truly be the victim of domestic violence.<sup>63</sup> Commonly, Cinderella characters are close to being one-dimensional or flawless; in other words, the damsel-in-distress.<sup>64</sup> The lawyer must proceed cautiously.

The best strategy for the domestic violence lawyer is to move the storyline far away from one in which the client appears to play the ill-fitting role of damsel-in-distress. The very fact, however, that the domestic violence client is never a perfect damsel-in-distress (or Cinderella) makes it that much more important for the lawyer to consciously consider heroic role casting in this type of lawsuit. I believe it to be that much more important because the very terminology in common usage—"domestic violence victim"—suggests anything but a heroic protagonist. A "victim"<sup>65</sup> is someone more like a damsel-in-distress, and in the hero's story this character is not a hero but rather is a person whom the hero might save—so long as the damsel doesn't reveal herself to be only a shape-shifting femme fatale.<sup>66</sup> An abbreviated list from the online Roget's Thesaurus offers, for instance, these possible synonyms for "victim": basket case, boob, chump, clown, dupe, easy mark, easy pickings, fool, hunted, injured party, innocent, martyr, patsy, pawn, pushover, schlemiel, sitting duck, softie, stooge, sucker, sufferer, tool, wretch.<sup>67</sup> Substituting the word "survivor" does not help either, because it suggests someone who has already completed the heroic journey.<sup>68</sup> The word choice should convey the sense that the client is still on the heroic journey. Thus, the lawyer should perhaps practice avoiding the common phrase "domestic violence victim" and substitute either a new phrase or simply "Ms. [name]."

Lawyers can expand the universe to consider other alternatives, assuming that the client has life goals beyond those of love. A person seeking a protective order may be on a caregiver's journey. She may be seeking protection not only for herself but for her children or other family members. She may be on a creator's journey, seeking protection so that

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63. Domestic violence advocates, of whom I am one, will immediately point out that statistically, domestic violence victims come from every socio-economic class, from every racial and social group. See, e.g., DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>. See also DAVIES, *supra* note 58, at 259. Moreover, contrary to the Hollywood version of a helpless maiden, many domestic violence victims will fight back to some degree, yet are still ultimately victims.

64. These "heroines" are the stuff of early Disney movies.

65. VOGLER, *supra* note 40, at 68; see also SCHMIDT, *supra* note 53.

66. See the discussion of shape-shifters, *infra* Part IV.E.

67. ROGET'S NEW MILLENNIUM THESAURUS (1st ed., Lexico Pub. 2005) available at <http://www.thesaurus.reference.com/search?q=victim>.

68. See Dictionary.com, <http://dictionary.reference.com/search?q=survivor> (last visited May 5, 2006).

she may go to work without the fear of being harassed or stalked. Or, she may be an every-person who is looking for her place in society. The lawyer is not locked into one archetype, and should feel free to explore other options that are tailored to the individual client.

Further, by carefully casting the client as the story's hero, we are then able to select and use the conflict type that is thematic to the client's journey and goal. For example, a caregiver hero seeking a protective order may have, as a conflict type, person versus nature/environment.<sup>69</sup> The hero is trying to raise her children in safety, but first she has to get out of the metaphoric locked building where she has been trapped.<sup>70</sup> Someone needs to toss her the key. Once she has the key, she will be able to emerge and return to her caregiver duties. This is a very different story than one of saving the damsel-in-distress from the evil villain. Alternatively, a caregiver hero's story may involve a "person versus self" theme if the client's struggle is ultimately internal.<sup>71</sup>

### B. Mentor: The Judge

If the judge cannot be the hero of the client's story, the next best role that an attorney can award the judge is as the hero's mentor. The mentor is a former hero who now serves as the sage advice-giver to the next hero. The prototypical mentor is Merlin in the Arthurian legends. Other examples of mentors include Harry Potter's Professor Dumbledore, Luke Skywalker's Obi-Wan Kenobi, Cinderella's Fairy Godmother, or Dorothy's Glinda. In each of those stories, the mentor teaches and tests the hero and offers the gift of an amulet or talisman needed to help conquer the so-called villain or dragon.<sup>72</sup> Hence, as a symbol of protection or action, King Arthur receives Excalibur, Harry receives the wand, Luke receives the light saber, Cinderella receives the glass slippers, and Dorothy receives the ruby (or silver<sup>73</sup>) slippers.

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69. See *supra* text accompanying note 25.

70. See VICTORIA LYNN SCHMIDT, STORY STRUCTURE ARCHITECTURE 15–19 (Writer's Digest Books 2005) (providing wonderfully useful examples of what sorts of situations heroes might be facing in each of the six different conflict categories).

71. *Id.*

72. By dictionary definitions, an amulet is a protective charm that the bearer wears. Dictionary.com, <http://dictionary.reference.com/search?q=amulet> (last visited May 5, 2006). A talisman is a broader category of magical item that can either protect or confer other magical powers. Dictionary.com, <http://dictionary.reference.com/search?q=talisman> (last visited May 5, 2006). Thus, Cinderella's glass slippers and Dorothy's ruby slippers are both amulets and talismans, whereas a light saber and Excalibur are only talismans.

73. In the original novel by L. Frank Baum, Dorothy receives a pair of silver slippers after the untimely passing of the wicked witch. L. FRANK BAUM, THE WONDERFUL WIZARD OF OZ, *supra* note 5. Which footwear is more appropriate depends on the reader's preference.

In storyboard terms, the judge, through wise decision-making, provides the hero with the mentoring lessons needed to allow the hero to move forward.<sup>74</sup> Casting the judge as mentor allows the judge to symbolically and literally deliver a talisman to the client in the form of a judgment and opinion. In myth and story, the symbolic gifts must be earned by the hero by demonstrating the learned lesson of commitment.<sup>75</sup> In the lawsuit scenario, so too the hero client earns the judge's favorable opinion only after going through the tests of the legal process. And so too, the judge's favorable ruling gives the client something that will help the client continue on the journey of transformation.

Finally, by casting the judge in the role of mentor, we are also acknowledging the judge's own heroism. Mentors in myth may be heroes themselves from a different quest who now impart the knowledge they have gained to the next generation of hero. Judges are heroes because they have completed a journey themselves: that of becoming a judge and mentor. In a sense, all judges are scholar heroes or magician heroes and by completing their own quests they have acquired the special ability to help parties on their respective journeys.

*Example of Judge as Mentor: Juvenile Charged as an Adult for a Crime*

A judicial opinion chastising an attorney for his failure to provide effective assistance to a juvenile client provides an excellent opportunity to analyze a successful example of how lawyers cast judges in the role of mentor to a juvenile offender-hero. The New Jersey Superior Court, Appellate Division, in a pair of decisions, demonstrated its acceptance of the client in the hero role and used it to release a juvenile convicted of murder, confident that he would be a productive and educated member of society. In the particular case, the juvenile, James Ferguson, was convicted of the knowing and purposeful murder of a fellow high school student.<sup>76</sup> Tried as an adult, he was sentenced to a thirty year term without the possibility of parole.<sup>77</sup> At the time of the transfer of the case from juvenile court to the adult criminal division, Ferguson was fourteen years

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74. See Rackley, *supra* note 42. Nothing in Rackley's article suggests that she would oppose the casting of a judge as mentor so long as it did not thwart the ability of female judges to create their own voices.

75. This theme recurs in popular culture. Harry receives his wand after he agrees to go to Hogwarts and after he learns about his unhappy past. HARRY POTTER AND THE SORCERER'S STONE, *supra* note 1, at 58–60, 82–85. Moreover, the wand is one of the last items he is given before starting school. *Id.* at 81–82. In doing so, he has shown a willingness to consider taking the larger journey. In the *Star Wars* movies, Luke Skywalker receives the light saber only after agreeing to take an initial journey to return droids to their owner. STAR WARS: EPISODE IV, A NEW HOPE, *supra* note 5.

76. State v. Ferguson, 605 A.2d 765, 766 (N.J. Super. Ct. App. Div. 1992), *opinion on remand*, 642 A.2d 1008 (N.J. Super. Ct. App. Div. 1994), *cert. denied*, 649 A.2d 1285 (N.J. Sup. Ct. 1994).

77. *Ferguson*, 605 A.2d at 766.

old<sup>78</sup> and his attorney was handling this kind of case for the first time.<sup>79</sup> At the transfer hearing, the lawyer relied completely on the testimony of a psychologist.<sup>80</sup> Thus, the trial judge ruling on the transfer had only evidence of psychological theory and the knowledge that Ferguson carried a knife on him for a year before the homicide.<sup>81</sup>

The *pro bono* lawyers representing Ferguson in his appeal told a much more detailed and compelling story, one that they argued the initial lawyer should have told at the transfer hearing.<sup>82</sup> They portrayed Ferguson as a “sage” hero; a high school student with great talent<sup>83</sup> and a future ahead of him and who exercised poor judgment by carrying a knife for protection. At the time of the “sad incident,”<sup>84</sup> the victim was two years older, much larger than James Ferguson, and perhaps the initial aggressor. There were possibly racial overtones to the incident.<sup>85</sup> Ferguson had no criminal record at all, and in fact had previously attended the prestigious Newark Boys Chorus School and Science High School before moving to Edison, New Jersey to live with his grandmother and attend a better high school than he could have if he remained with his mother.<sup>86</sup> Ferguson carried the knife with him because of racial episodes in school and around town and because he sometimes walked home three miles from a friend’s house at night, after his grandmother returned from her evening shift at work.<sup>87</sup> Because of Ferguson’s prior racial victimization during some of those walks, his friend had given him a sheathed knife that the friend had received from his own mother as a souvenir from Mexico.<sup>88</sup> Because the initial lawyer did not have Ferguson testify on his own behalf, he was not able to tell the judge any of this at the waiver hearing.<sup>89</sup>

Moreover, the appellate lawyers for Ferguson masterfully cast those people involved with the prison system as his sympathetic companions. While in the correctional facility, the Chief of the Division of Juvenile

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78. *Id.*

79. *Id.* at 771.

80. *Id.*

81. *See id.* at 771.

82. *Id.* at 770.

83. Brief of Defendant-Appellant at 3–4, *State of New Jersey v. James Ferguson*, No. A-327-90T2 at 10 (N.J. Super. Ct. App. Div. 1991) [hereinafter Brief of Defendant-Appellant].

84. *Ferguson*, 605 A.2d at 766.

85. *Id.*

86. *Id.* at 772; *see also* Brief of Defendant-Appellant, *supra* note 83, at 4.

87. Brief of Defendant-Appellant, *supra* note 83, at 4.

88. *Id.*; *Ferguson*, 605 A.2d at 772. The appellate court did not mention the details of the knife’s origin, but did acknowledge the gift from the friend because of Ferguson’s fear of walking home at night.

89. *Ferguson*, 605 A.2d at 772.

Services wrote an evaluation report on behalf of an experienced group of correctional officers, each of whom had interviewed Ferguson. The report concluded that the correctional officers “were unanimous in our opinion that this youngster represents one of the most appropriate candidates for being treated as a juvenile of any that we have seen. I cannot recall another juvenile offender who had the potential for being rehabilitated that James does in my over 20 years with the Department of Corrections.”<sup>90</sup> Not surprisingly, the New Jersey Superior Court, Appellate Division reversed the transfer of the case from juvenile court based on ineffective assistance of counsel, noting that there were many examples from the record of evidence that could have been presented at the transfer hearing.<sup>91</sup>

After reversing the case, the appellate court remanded the matter to the trial court for sentencing in accordance with the higher court’s opinion.<sup>92</sup> The trial court sentenced Ferguson to an indeterminate term of up to eighteen years. Ferguson again appealed and the New Jersey Superior Court, Appellate Division, again stepped in to help him.<sup>93</sup> This time the appellate court came right out and used Ferguson’s commitment to education as one of mitigating factors outweighing any aggravating factors of the case. Specifically, the reviewing court pointed to the fact that while incarcerated, Ferguson had earned his high school diploma as well as twelve college credits.<sup>94</sup> More correctional officers provided letters praising Ferguson’s character and his work at the facility.<sup>95</sup> The appellate court reversed the trial court’s penalty, with instructions to sentence Ferguson for exactly as long as he had already been incarcerated, and with credit for time served.<sup>96</sup> After being released, Ferguson went on to college.<sup>97</sup>

By deciding as it did, the appellate court demonstrated the hallmarks of a mentor figure. The opinion represented the talisman, used by the hero to protect himself and to return to his quest for education. Further, by the very nature of the schooling that it takes to become a judge, the appellate panel fulfilled the mentor role of former-hero-turned-teacher. In contrast, the lawyers handling the appeal played the role of

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90. *Id.* at 771.

91. *Id.*

92. *Id.* at 772.

93. *State v. Ferguson*, 642 A.2d 1008, 1009 (N.J. Super. Ct. App. Div. 1994), *cert. denied*, 649 A.2d 1285 (N.J. Sup. Ct. 1994).

94. *Id.* at 1013.

95. *Id.*

96. *Id.* at 1016.

97. E-mail from Barry Albin, Esquire of Wilentz, Goldman & Spitzer to Ruth Anne Robbins, Professor, Rutgers School of Law–Camden (Feb. 19, 2001, 19:03:46 EST) (on file with author).

storyteller rather than hero or mentor. The decision was strategically flawless, and no naysayer reading this Article could claim that such a tactic runs the risk of falling flat with judges who will not respond well to such emotional persuasion. In fact, the lead attorney handling Ferguson's appeal went on to become a justice of the New Jersey Supreme Court.<sup>98</sup>

### C. Villain or Dragon: Not Necessarily the Opposing Party's Role

Villains or dragons, also called shadows, represent darkness and suppression.<sup>99</sup> The hero must confront the villain in order to complete the transformation. Depending on the type of journey, the villain may be an internal dragon.<sup>100</sup> Internal struggles include an addiction or perhaps a character trait that the hero needs to overcome such as blaming others, manipulating people's emotions, laziness, or diminished self-esteem. Of course, the villain can also be an external source.<sup>101</sup>

Generally, however, when we think of "villains" we think of individuals rather than character traits. It is not necessarily a general term for all heroic story antagonists.<sup>102</sup> In myth, an external villain often is related to the hero by blood.<sup>103</sup> Think of Hamlet and his uncle, the usurper of the throne; Luke Skywalker and his father, Darth Vader; and Moses and the Pharaohs. In *The Wizard of Oz*, Dorothy and the Wicked Witch of the West are also related through the slippers. The shoes belong to the Wicked Witch of the West by way of inheritance, but they become magically and physically bonded to Dorothy. Even Harry Potter is related, biologically, to the villain Voldemort. Voldemort transferred some of his powers to Harry during the first attempt on his life.<sup>104</sup> Harry's blood was also a key ingredient in the resurrection of Voldemort in corpus.<sup>105</sup>

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98. The lead appellate attorney on the brief for the defendant-appellant was Barry T. Albin, who went on to become Justice Albin of the New Jersey Supreme Court. See Biography of Justice Barry T. Albin, <http://www.judiciary.state.nj.us/supreme/jalbin.htm> (last visited Feb. 16, 2006). See also *Ferguson*, 642 A.2d at 1009.

99. PEARSON, AWAKENING THE HEROES WITHIN, *supra* note 49, at 15; VOGLER, *supra* note 40, at 71.

100. JOSEPH CAMPBELL WITH BILL MOYERS, THE POWER OF MYTH 183–84 (First Anchor Books ed., Random House 1999) (1988). Joseph Campbell believed that the "ultimate dragon" is within ourselves; the binding of oneself to one's ego. Potentially, this bond could prevent us from following our bliss. *Id.*

101. PEARSON, AWAKENING THE HEROES WITHIN, *supra* note 49, at 15–18.

102. *Id.* at 15.

103. M. Katherine Grimes, *Harry Potter: Fairy Tale Prince, Real Boy, and Archetypal Hero*, in THE IVORY TOWER AND HARRY POTTER, 89, 109 (Lana A. Whited ed., Univ. of Mo. Press 2002). Grimes points out other examples from Roman, Greek, and Christian mythology.

104. HARRY POTTER AND THE CHAMBER OF SECRETS, *supra* note 1, at 333.

105. Grimes, *supra* note 103, at 113; HARRY POTTER AND THE GOBLET OF FIRE, *supra* note 1, at 642. The two are also related through their wands, which both have, as their core, the tail feathers

Because the relationship of villain to hero implicates a familial tie that may not actually exist or the client may not wish to exist, the lawyer should be careful about default casting the opposing party as the dragon. Dragons are also potentially heroes, if viewed from the opposite point of view.<sup>106</sup> Joseph Campbell warned that the hero, though blessed by the father to represent the father, can instead deteriorate and become a tyrant. A tyrant is a hero who has gone astray.<sup>107</sup> As a consequence, automatically casting the opposing party as “villain” risks giving the opposing party an opening to reverse the logic and to make the hero look like the actual villain.

This reversal strategy already has a voice in the law by way of expert testimony. Cross examination publications offer the strategy of discrediting therapists, for example. Therapists sometimes create “triangulated relationships” in which the therapist helps the client designate as “villains” significant people in the client’s life from whom the client has become disaffected. By so characterizing others, the therapist is able to lure the client into excessive dependence by becoming the client’s savior from those villains. Knowing that this sort of therapist-client relationship exists gives an attorney fodder for cross examination tactics.<sup>108</sup>

Pigeonholing the opposing party as villain may also risk the lawyer entering the world of damaging hyperbole. Part of the lawyer’s ethos depends on that lawyer displaying good will in his or her advocacy demeanor.<sup>109</sup> Thus, a lawyer may end up unwittingly giving the opposing party a persuasive opportunity to present himself favorably to the judge.<sup>110</sup> The wise lawyer, then, refrains from alluding to the other side as He Who Must Not Be Named.<sup>111</sup>

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of the phoenix belonging to Hogwarts’ headmaster, Albus Dumbledore. *HARRY POTTER AND THE GOBLET OF FIRE*, *supra* note 1, at 697. The wands cannot do battle against each other, *id.* at 697, but when forced, will create a cage of light built by the vibrations. *Id.* at 663–68.

106. CAMPBELL WITH MOYERS, *supra* note 100, at 156. Campbell hypothesized that a hero might be a local god to some but to other in the community, the new god might be the enemy: “Whether you call someone a hero or a monster is all relative to where the focus of your consciousness may be.”

107. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 347–48.

108. Terence W. Campbell & Demosthenes Lorandos, *Counterproductive Treatment Practices—Victims, Villains and Saviors*, 2 *CROSS EXAM. EXP. IN BEHAV. SCI.* §10.14 (July 2005).

109. Advocates must display good will towards other advocates in order to establish and maintain credibility. ARISTOTLE ON RHETORIC 77 (George A. Kennedy trans., Oxford Univ. Press 1991). For more explanation of what goes into a lawyer’s ethos, see SMITH, *supra* note 55, at Ch. 7–8 (analyzing the factors going into an attorney’s ethos and concluding that credibility is comprised of socially moral character, good will, and intelligence).

110. Many writers have earned a lot of money simply by reversing a traditional story’s perspective. See, e.g., MARION ZIMMER BRADLEY, *THE MISTS OF AVALON* (Ballantine 1982) (retelling the Arthurian legend from the point of view of the traditionally wicked Morgan le Fay); GREGORY MAGUIRE, *WICKED: THE LIFE AND TIMES OF THE WICKED WITCH OF THE WEST* (Regan Books

*D. Threshold Guardians: a Potential Role for the Opposing Party*

A better choice for the opposing party lies in the role of threshold guardian: the minor villains of the story. Threshold guardians, or gatekeepers, are sometimes lesser antagonists to the hero. The school bully, Draco Malfoy, and the nasty teacher, Professor Snape, represent this type of character in the *Harry Potter* books. Other examples include the storm troopers in the *Star Wars* films and the flying monkeys or apple trees in *The Wizard of Oz*. Threshold guardians may also be neutral characters that are part of the environment. In the story they function to test the hero before the hero can progress to the next stage of the journey.<sup>112</sup> Often, the best way to thwart a threshold guardian is not to challenge it head-on, but rather to go around it. By doing so, the hero can gain valuable insight about turning adversity into an advantage.

In a lawsuit, the opposing party may represent a threshold guardian rather than a true dragon. For example, the defendant in a domestic violence action may represent more of an initial barrier to the hero starting her journey than the villain himself. A lawyer can make this sort of casting decision most clearly if she has already concluded that the client's quest is larger than the lawsuit; rather, that the lawsuit is merely one early test either along the road of trials or at the threshold to the new world. The dragon, then, is something that will be faced outside the context of the legal system or at least outside the context of the current litigation.

A lawyer who has miscast the roles of hero and mentor by assigning those parts to other lawsuit characters is a lawyer who leaves the judge little choice but to become a threshold guardian or gatekeeper. Moreover, a judge may cast himself into the gatekeeper role when that judge defines the client by her flaws.

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1995) (inventing a sympathetic story about the traditional *Wizard of Oz* villain). The latter has also become a lucrative Broadway musical.

111. Within Harry Potter's magical world, Lord Voldemort is most often referred to as "He Who Must Not Be Named," or "You Know Who," a moniker which has meshed into pop culture parlance as a common literary metaphor for an unspeakably evil person. See HARRY POTTER AND THE ORDER OF THE PHOENIX, *supra* note 1, at 845; HARRY POTTER AND THE SORCERER'S STONE, *supra* note 1, at 10.

112. VOGLER, *supra* note 40, at 57. The *Harry Potter* series also contains an example of a neutral threshold guardian in the form of the Sorting Hat. Each new student must try on the hat to be sorted into one of four school houses. HARRY POTTER AND THE SORCERER'S STONE, *supra* note 1, at 113–22. Presumably, a student would not be permitted to matriculate if the hat did not sort him.

*E. Shape-Shifter: Another Potential Role for the Opposing Party*

By their very nature, shape-shifters are elusive and unstable characters.<sup>113</sup> Often they appear in stories as potential love interests for the hero. The shape-shifter's fickle or mood-changing personality can make him a negative influence rather than a positive one.<sup>114</sup> Examples of female shape-shifters in stories include the stepmother/witch in *Snow White* and the femmes fatales in James Bond movies.

Those examples from popular stories explain another potential pit-fall for the lawyer who has cast the hero as someone other than the client. There is a risk when representing a female client that miscasting the roles could lead to negative consequences in terms of the fact finder's perceptions. Too often in our society, the female roles in stories are limited to pure and chaste maidens or femmes fatales/witches.

The role of shape-shifter, however, provides the lawyer with a useful casting choice for the opposing party. A shape-shifter cannot be trusted, but the shape-shifter must also possess some good qualities in order to succeed in duping the hero. Shape-shifters also symbolize the need for transformation, and a hero who deals with one may change her attitude towards the opposite sex or towards repressed energies.<sup>115</sup> A lawyer may strategically avoid caricaturing the opposing party as a villain by instead merely referring to that party as changeable. In myth, the god Eros/Cupid hid his face and name from his mortal wife Psyche and abandoned her to the elements when she discovered his true identity. She ultimately completed a series of tasks that enabled her to become a goddess and to rejoin Eros as his equal.<sup>116</sup> Although the ultimate ending may not involve reconciliation in modern situations, the myth of Eros and Psyche can prove instructive to lawyers. In a domestic violence case, for example, it is easy to see how a lawyer representing the plaintiff may choose to cast the male defendant as a shape-shifter in the pattern of Eros. By portraying the defendant as someone who changed his personality from loving to violent, the lawyer also provides an easy explanation for why the hero-client fell in love with him in the first place.

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113. VOGLER, *supra* note 40, at 65–70.

114. *Id.*

115. *Id.* at 67.

116. BULFINCH'S MYTHOLOGY 81–91 (Avenel 1979) (1855). In one feminist analysis, Psyche is ultimately transformed by her own hard work. No longer someone who subscribes to a notion of romantic love, she instead achieves true love by becoming Eros's equal and marrying him only when she is a goddess herself. See MURDOCK, *supra* note 44, at 58–60.

*F. Companions and Minor Characters*

In many stories, the hero's companions are there to accompany the hero and to provide invaluable help at crucial times.<sup>117</sup> The companions also teach the hero about the new world into which the hero has entered. If a lawyer chooses to cast a lawsuit character as a companion, the most likely candidates would be the witnesses.

The lawyer may also choose to cast in roles other people surrounding the client. These minor characters may never appear in the telling of the client's story to the judge, but nevertheless, it may be a worthwhile mental or preparatory exercise for the lawyer. One example might be the role of "herald," which Vogler argues is either a person or a force that operates in a positive, negative, or even neutral way.<sup>118</sup> The herald functions to announce the need for the hero to change by way of providing information or a challenge. In *The Wizard of Oz*, for example, both the tornado and the munchkins are forms of heralds. A lawyer might not necessarily cast the role of herald in a lawsuit but may instead use knowledge of this character type to understand the role of legal support persons, such as victim-witness advocates, social workers, counselors or other people helping the client with transformation.<sup>119</sup>

## V. A HERO'S TRANSFORMATIVE JOURNEY

Part of the lawyer's lesson in preparing to tell the client's story lies in the lawyer also understanding the lawsuit's place in the client's journey. Any hero, no matter the specific type, follows a similar path. The hero's path symbolizes a journey we each take to transform ourselves as individuals. The journey, then, changes the hero, and potentially also the

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117. VOGLER, *supra* note 40, at 137. Another name for companions is "sidekicks."

118. *Id.* at 61-64.

119. I discovered the importance of heralds while speaking with law students I co-supervise in the Rutgers Law pro bono Domestic Violence Project. Rutgers Law Camden Domestic Violence Project Homepage, <http://camlaw.rutgers.edu/organization/o-dvp> (last visited May 5, 2006). These law students were providing free legal information—rather than representation or advice—to people seeking domestic violence protective orders. As part of a discussion session designed to allow students to decompress from the stress of the courthouse, I asked the students to think about their role in the domestic violence plaintiff's heroic journey towards self-empowerment. The students decided that they were the minor characters best described as "bartender" or "munchkin"; a neutral minor character providing critical information for the hero. Another possible analogy, they told me, was Ollivander, the person who sold Harry Potter his wand. Purely as a matter of curiosity, Ollivander provided Harry with the interesting information that his wand was a twin of Lord Voldemort's wand. These students felt that similarly, they provide information that may help the plaintiff procure the "talisman" of a protective order; yet, they do not play a major role in the ultimate winning of the boon. The credit for this insight belongs to David Gallivan, J.D. Candidate Rutgers-Camden School of Law, May 2007. We now serve Dunkin' Donuts donut holes, known as "munchkins," during a session each semester in which we have a discussion about our volunteer work entitled "You're Not Their Hero: They Are."

hero's society.<sup>120</sup> Each of us embodies some form of the heroic archetype, and our journeys mirror that of the hero. The noble deeds that make us heroes can be physical, psychological, or spiritual.<sup>121</sup>

The three main stages of the journey include the departure, the initiation, and the return.<sup>122</sup> The departure stage involves the hero leaving the ordinary and journeying to the new world, whether voluntarily or involuntarily. During the initiation stage, the hero faces tests designed to teach the hero how to face and overcome the dragon; at the end of that stage, the hero does exactly that. Finally, during the return stage the hero either goes back to the ordinary world to transform it with the knowledge and gifts that the hero has learned along the journey, or the hero remains in the new world and helps that society heal or change.<sup>123</sup> Although described linearly here for simplicity's sake, a journey may be circular or spiral because of different life rhythms, including childbearing pressures.<sup>124</sup> Part of deciding how to cast the client necessarily involves the lawyer understanding what role the lawsuit itself plays in the client's overall hero journey. Is winning the lawsuit the same as obtaining the ultimate boon? In reality, this is probably only the case on rare occasions.<sup>125</sup> It is more likely that the lawsuit represents one test the client must face along the road of trials. The litigation may be an attempt to keep the hero from her transformation, or it may be the client's chance to start a new journey by first obtaining some sort of financial recovery or freedom from a destructive relationship.

#### *A. Departure*

In myth, a hero's birth will generally have an unusual aspect surrounding it. Many heroes are born to royalty or are in danger at birth.<sup>126</sup> Either way, they are marked by these circumstances as different and destined for greatness. Though a client may not be so marked at birth, the

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120. CAMPBELL WITH MOYERS, *supra* note 100. Transforming society through self-transformation can be an act as simple as going from maiden to mother. By giving birth, society is changed by the addition of the new member to it.

121. *Id.* at 152.

122. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 245.

123. *Id.*

124. VOGLER, *supra* note 40, at xix.

125. Those are the "Erin Brokovich" situations that are the stuff of Hollywood movies but are few and far between in litigation. See *supra* note 17 (discussing the Tulane Environmental Clinic work).

126. For example, Harry Potter was scarred as a baby from an encounter with the evil Lord Voldemort. *HARRY POTTER AND THE SORCERER'S STONE*, *supra* note 1, at 55. The unusual birth aspect of the heroic archetype also appears in religious myths. Judeo-Christian examples include the births of Moses and Jesus.

lawyer may still use other aspects of the journey for persuasive storytelling in advocacy.

More important to the eventual transformation, the hero will be called to start the quest at some point early in the story. Whether that hero willingly starts the journey or initially refuses the call to the quest may differ from story to story, but in the end the hero will have no choice but to heed the call. If the hero refuses the initial call to the quest, an event will happen that changes the landscape whether metaphorically or literally by way of natural events, such as tornadoes.<sup>127</sup>

The hero must also cross the first threshold into the new world, where he or she will start on a road of trials. At the threshold to the new world stand guardians or gatekeepers who try to block the hero's path. These gatekeepers provide the hero with the opportunity for training; training that the hero will need in order to complete the journey.<sup>128</sup> They also may reappear in various guises throughout the hero's journey. Gatekeepers are not the villains or dragons, per se, but may be agents of the chief villain or may be seemingly unrelated minor villains.<sup>129</sup>

Often, a spiritual or magical guide or mentor will herald the call to the quest. That guide will not travel with the hero, but will appear at key points during the adventure. The most accessible example of a magical guide or mentor is Merlin of Arthurian legend.<sup>130</sup> Further, in the departure stage, the hero will also receive the gift of a protective amulet or talisman.<sup>131</sup> The gift can be anything: a wand, ruby or glass slippers, or a light saber. The hero cannot receive the gift, however, until completion of a first task or otherwise demonstrating commitment to the journey.<sup>132</sup>

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127. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27. Examples of unwilling heroes include Dorothy Gale from *The Wizard of Oz* and Luke Skywalker from the *Star Wars* movies. *See, e.g.*, STAR WARS: EPISODE IV, A NEW HOPE, *supra* note 5. George Lucas, the screenwriter and director of the *Star Wars* movies has freely admitted that he used Joseph Campbell's theories as a format for his initial movie. Joseph Campbell with Bill Moyers, *The Power of Myth* (Mystic Fire Video, 2001) (recorded 1988). Sometimes, of course, the hero is happy to start the quest. Harry Potter was delighted to discover that he had a way to escape his dreary world. *See HARRY POTTER AND THE SORCERER'S STONE* *supra* note 1, at 58.

128. VOGLER, *supra* note 40, at 129–30.

129. *Id.* These characters are key casting choices for the lawyer.

130. *See, e.g.*, SIR THOMAS MALORY, *LE MORTE D'ARTHUR* (Stephen H. A. Shepherd, ed., Norton Pub. 2004) (1485). The word "mentor" comes to us from THE ODYSSEY. Mentor was the name of a character in the Odyssey who was a trusted advisor to Odysseus' son, Telemachus. At times, the goddess Athena assumed the form of Mentor in order to give Telemachus sage counsel about going on a quest to find his father. For Telemachus to stay in Ithaca would have been mortally dangerous because of the politicking happening in Odysseus's absence. HOMER, *THE ODYSSEY* Book 2 (W.H.D. Rose ed., Signet 1999) (c. 800 B.C.E.).

131. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 69.

132. *Id.*; CAMPBELL WITH MOYERS, *THE POWER OF MYTH*, *supra* note 100, at 159–60; VOGLER, *supra* note 40, at 49–50.

The hero then enters the proverbial “belly of the whale,” or road of trials. This is the start of the true lessons and tests. The belly of the whale may be a journey into a cave. It may include a first battle of sorts. It represents the individual going into the abyss to start the journey and to begin the confrontation that will ultimately lead the hero to individuation.<sup>133</sup>

*Example of Initiation Story:  
Domestic Violence Protective Order as Ruby Slipper*

The lawsuit may easily represent a threshold that the client must first cross before she can start down the path towards her bliss.<sup>134</sup> For example, a protective order is probably not the end of a domestic violence client's journey. It may or may not be the beginning. A lawyer representing the domestic violence client can use this as a possible contextual setting for the lawsuit's story. To do this, the lawyer must understand not only the type of hero the client best represents, but also what the protective order will do for the client's life and how it will help her achieve her larger goals.

In a certain sense, a domestic violence protective order hearing most appropriately represents either the departure or road of trials stages of the client's journey. The protective order, then, serves as a talisman of protection. The best literary analogy, perhaps, is Dorothy's ruby slippers.<sup>135</sup> The slippers both protect her on her literal road of trials and create danger for her that she might not have had if she did not possess them. Comparably, a domestic violence client who receives a protective order has decided to enter a new world but to carry protection with her.<sup>136</sup> And that new world certainly involves the possibility of mortal peril because protective orders, while ultimately a net positive like the ruby slippers, also involve some risk that the batterer will retaliate.<sup>137</sup>

133. CAMPBELL, *THE HERO WITH A THOUSAND FACES*, *supra* note 27, at 127–28.

134. *Cf.* Lenora Ledwon, *The Poetics of Evidence: Some Applications from Law & Literature*, 21 QUINNIPIAC L. REV. 1145, 1168–69 (2003) (arguing that the Federal Rules of Evidence are heroic).

135. As noted above, MGM elected to use ruby slippers rather than the silver slippers from L. Frank Baum's book. *See supra* note 73.

136. MURDOCK, *supra* note 44, at 46–47 (suggesting that a heroine's journey may start with leaving the home to find her truth and to choose her destiny).

137. Statistically, the termination of a relationship poses an increased risk of abuse without legal intervention. *See, e.g.,* DAVIES, *supra*, note 58, at 25; *see also* PATRICIA TJADEN & NANCY THOENNES, DEPARTMENT OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 37 (2000) available at <http://www.ncjrs.gov/txtfiles1/nij/181867.txt> (concluding that married women who now lived apart from their abusers were up to four times more likely to experience an increase in abuse); Matthew J. Carlson, Susan D. Harris and George W. Holden, *Protective orders and domestic violence: Risk factors for re-abuse* 14(2) JOURNAL OF FAMILY VIOLENCE 205 (1999) (show-

By expressing the domestic violence story as one in which the hero seeks leave to embark on a new life, the lawyer has also helped cast the roles properly.<sup>138</sup> The client is clearly the hero and the judge is clearly the mentor who has the ability to give the hero the protective talisman. The batterer is not cast as the villain but instead as a threshold guardian who is seeking to stop the hero from crossing the threshold to her new life. Moreover, the story actually looks less melodramatic. Rather than attempting to ask the judge to help slay a full-blown dragon, the lawyer has instead narrated a story as one in which the vast road of trials still lies ahead for the hero. The judge's decision to issue a protective order may be easier because the order is positive, yet not monumental.

Consider, as an example, a case in which a New Jersey family court judge ordered a batterer-defendant to move out of a house in his former wife's neighborhood.<sup>139</sup> A month prior to that ruling, the same family court judge had granted the plaintiff-former wife a protective order based on incidents of the defendant appearing at her house to curse and scream at her; driving by her house, banging on her doors and looking through her windows; and confronting her at their children's school.<sup>140</sup> The protective order prohibited the defendant from, among other things, "parking in the neighbor's driveway and watching her home."<sup>141</sup> A month later, the former wife discovered that her ex-husband was planning to lease a house in her neighborhood in a location that would allow him to monitor her whereabouts.<sup>142</sup> Although the testimony was unclear as to the exact location, the family court judge, during a recess, drove to the neighborhood and noted that the house in question would effectively require the plaintiff to drive past her ex-husband's abode each time she wished to leave or return to her own home.<sup>143</sup> The judge thus ruled that the defendant was restrained from living in that house and was ordered to vacate it.<sup>144</sup> On appeal, the New Jersey Appellate Division affirmed, holding that in light of the public policy favoring liberal remedial statu-

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ing a decrease in violence experienced by women who had received protective orders against their abusers).

138. *See supra* Part IV.

139. *Zappaunbulso v. Zappaunbulso*, 842 A.2d 300, 306–307 (N.J. Super. Ct. App. Div. 2004).

140. *Id.* at 303. The parties divorced two years before the events leading up to the domestic violence action. *Id.* at 301, 303. The appellate court noted that during the marriage the defendant had abused the plaintiff by harassing her, throwing furniture to frighten her, and restricting her ability to leave the house with the children. *Id.* at 302. The New Jersey Prevention of Domestic Violence Act defines domestic violence to include the criminal acts of harassment, criminal mischief, and false imprisonment. N.J. STAT. ANN. §2C:25–19 (West 2006).

141. *Zappaunbulso*, 842 A.2d at 303.

142. *Id.*

143. *Id.* at 304–05.

144. *Id.* at 305.

tory construction, as well as the defendant's past stalking history, the family court properly enjoined the defendant from residing in the plaintiff's immediate neighborhood.<sup>145</sup>

The New Jersey decision is not as astounding as it might appear at first blush, when one analyzes it in terms of the hero's journey. If the initial protective order represents the amulet or talisman awarded by the mentor to the deserving hero, then the later ruling by the same judge is merely an example of the mentor coming back into the story to show the hero how the talisman could be used as the magical object of protection or action. The judge's second ruling corresponds to Dumbledore teaching Harry how to use his wand or Glinda showing Dorothy how to use the ruby slippers.

### *B. Initiation*

In the second phase of the journey, which Campbell called "initiation," the hero encounters a series of encounters or "road of trials" during which the hero learns lessons that he or she will need in order to reach the ultimate goal. Along the way, the hero generally meets companions who will journey with and aid the hero until the final confrontation. In *The Wizard of Oz*, Dorothy literally travels on a road during this time. The road of trials can be something as simple as taking classes in school or being tutored in weaponry.<sup>146</sup> A companion can be anyone who brings comfort to the hero along the way, including peers,<sup>147</sup> animals,<sup>148</sup> or even machines.<sup>149</sup>

During the initiation phase of the journey, the hero will also have a meeting with both mother and father symbolic figures in the form of goddess or damsel-in-distress. These characters could also be shape-shifters masquerading as the mother or father figure. Meeting these characters helps the hero reflect upon the self and thus recognize what has been missing or holding the hero back from accomplishing his or her

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145. *Id.* at 306–07.

146. And so, Harry Potter, at Hogwarts, learns to use his wand to do magic. *See, e.g.*, HARRY POTTER AND THE SORCERER'S STONE, *supra* note 1, at 170–71. So, too, Luke Skywalker learns how to use a light saber and to control "the force." STAR WARS: EPISODE IV, A NEW HOPE, *supra* note 5.

147. For example, Harry Potter's classmate companions, such as Ron Weasley and Hermione Granger. HARRY POTTER AND THE CHAMBER OF SECRETS, *supra* note 1, at 7. In the *Star Wars* movies, Luke Skywalker had Han Solo. STAR WARS: EPISODE V, THE EMPIRE STRIKES BACK, *supra* note 5.

148. In *The Wizard of Oz*, Dorothy had the Cowardly Lion and Toto as animal companions. THE WONDERFUL WIZARD OF OZ, *supra* note 5.

149. In *The Wizard of Oz*, Dorothy had the Tin Man, *id.*, and in the *Star Wars* movies, Luke Skywalker had R2D2 and C3PO. STAR WARS: EPISODE IV, A NEW HOPE, *supra* note 5.

desires.<sup>150</sup> It is a moment of rebirth.<sup>151</sup> The whole purpose for the journey is revealed. Moreover, the hero also understands that he or she has the tools to complete the quest. At that point, the hero completes him or herself and can become divine by facing the fears and moving past them. The hero is now empowered to slay the dragon.<sup>152</sup>

As part of the movement towards the ultimate test or “showdown,” the hero may suffer a ritual injury or dismemberment. This phase of the journey serves to remind the hero that we are all human or mortal and that there are still risks involved with the ultimate boon.<sup>153</sup> The hero will not die, however, because he or she has faced and conquered his or her fears.

The final part of the initiation phase includes slaying the dragon and receiving “the ultimate boon.” Slaying the dragon is of course what the hero is best remembered for. Beyond the slaying of Grendel, most people probably don’t remember that much about their high school lessons on *Beowulf*. Similarly, in modern Hollywood retellings of the hero myth, slaying the dragon often involves literally killing a person or creature. In life, however, a dragon can be something that is intangible and internal to the hero. The hero may receive the ultimate boon by facing and overcoming something within him or herself, or, the boon could be something wholly unanticipated until the moment when the hero became whole enough to realize how to transform.

*Example of Road of Trials Story:*

*J.K. Rowling as “Creator” Hero Facing Plagiarism Accusations*

Poetically, in terms of the title of this Article, one of the most accessible examples of an “every-person” hero is J.K. Rowling herself, the author of the quintessentially Campbellian *Harry Potter* series. Her story and her recent litigation help demonstrate the power of heroic archetypes in modern and real-life stories. Rowling is a creator hero whose journey is towards contributing unique and lasting work to her field of literature.<sup>154</sup>

J.K. Rowling’s rise to fame and fortune is the stuff of Horatio Alger novels. At the time she wrote the first of the *Harry Potter* novels, she

150. CAMPBELL, THE HERO WITH A THOUSAND FACES, *supra* note 27, at 109–26; CAMPBELL WITH MOYERS, *supra* note 100, at 207–30.

151. CAMPBELL, THE HERO WITH A THOUSAND FACES, *supra* note 27, at 109–26; CAMPBELL WITH MOYERS, *supra* note 100, at 207–30.

152. VOGLER, *supra* note 40, at 155, 159.

153. *Id.* at 159–79. By way of example, recall that in *The Wizard of Oz*, Dorothy watches her life slip away in the Wicked Witch’s hourglass. THE WONDERFUL WIZARD OF OZ, *supra* note 5.

154. For more on creator heroes, see PEARSON, AWAKENING THE HERO WITHIN, *supra* note 48, at 163–78.

was the single mother of an infant child. She was living in relative poverty and receiving public assistance. She wrote what she knew to be the first of a seven-novel series—in longhand—at coffeehouses while her daughter slept in the pram.<sup>155</sup> Although she received a grant from a Scottish foundation, she continued to struggle financially.<sup>156</sup> The book was initially rejected by several publishers before Bloomsbury agreed to print it.<sup>157</sup> Even after Rowling rocketed to fame only two years after the first book's publication, she nevertheless strove to remain a positive role model to aspiring young authors. She also continually demonstrates herself to be a person “of the people” through extensive charity work and donations, as well as through public readings for children.<sup>158</sup>

When Rowling found herself embroiled in a copyright infringement lawsuit, she had not yet completed her journey because she had not yet completed the promised seven-book series.<sup>159</sup> She was still on her journey and, as such, was confronted with the inevitable test by a minor villain, a threshold guardian. An author by the name of Nancy Stouffer threatened Rowling with a lawsuit, claiming that Rowling stole ideas from Stouffer's book *The Legend of Rah and the Muggles*.<sup>160</sup> Rowling refused to settle the matter and instead chose to litigate for vindication. Through her American publisher, Scholastic, Inc., she sought declaratory judgment from the federal courts.<sup>161</sup> One popular theory of why she would not give in was voiced by one British tabloid reporter: “She has had a tough life and has the integrity of someone who is a purist.”<sup>162</sup>

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155. SEAN SMITH, J.K. ROWLING: A BIOGRAPHY 124–26 (Michael O'Mara Books Ltd. 2003). The biographer detailed the struggle it took to get a carriage up twenty steps and into “Nicholson's,” the coffeehouse that was the most tolerant of Rowling nursing one cup of coffee for several hours.

156. *Id.* at 148–49.

157. The first book was published in June, 1997. It took Rowling seven years to reach that moment. *Id.* at 151.

158. *Id.* at 217. A Google search reveals numerous links to stories about the monies that she helps raise for multiple sclerosis research, for the U.K. Comic Relief organization, and for children's organizations.

159. She had completed the fourth book, *Harry Potter and the Goblet of Fire*. By that time, Harry Potter was a worldwide phenomenon. *Time* magazine recognized this by putting Harry on its cover in 1999 and again in 2003. *TIME*, Sept. 20, 1999, at 154.; *TIME*, June 23, 2003, at 161.

160. Stouffer wrote twelve books, but none included magic. Magic, of course, is central to the *Harry Potter* series. See SMITH, *supra* note 155. The author of the biography casts the story as one of an attack on a hero using phases to describe the conflict. “When your head is above the parapet of fame then someone with a peashooter is going to take potshots at it . . . . Something was bound to interrupt . . . [Rowling's] serene progress. It came in the form of a previously little known author by the name of Nancy Stouffer [N.K. Stouffer].”

161. *Scholastic, Inc. v. Stouffer*, 221 F. Supp. 2d 425, 426 (S.D.N.Y. 2002). The litigation helped delay publication of the fifth book. Prior to that time Rowling published approximately one book per year. The fifth book, *Harry Potter and the Order of the Phoenix*, was not released until 2003. *HARRY POTTER AND THE ORDER OF THE PHOENIX*, *supra* note 1.

162. SMITH, *supra* note 155, at 201, attributing Nigel Reynolds of the *Daily Telegraph*.

Stouffer's claims began with an allegation that Rowling took her word for non-magical humans, "muggle," from Stouffer's books.<sup>163</sup> The Southern District of New York disagreed, stating that Stouffer's usage of the terms differed from Rowling's usage, and that in any case, it was not a trademark.<sup>164</sup> Stouffer then alleged confusion of Rowling's Harry Potter with a character in one of Stouffer's publications, Larry Potter.<sup>165</sup> The court rejected this argument as well.<sup>166</sup> First, the court stated that evidence did not show that "Larry Potter" was even used in a published work prior to the litigation.<sup>167</sup> The paragraphs that contained "Larry Potter" in the work produced by Stouffer, supposedly during the 1980s, were printed with technology that could not have existed at that time.<sup>168</sup> The Southern District of New York thus ruled in favor of Rowling, granting Scholastic, Inc. summary judgment.<sup>169</sup> The court also awarded sanctions because it concluded that Stouffer had committed fraud on the

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163. *Id.* at 434–35.

164. *Id.* In Stouffer's works, the court noted that "[m]uggles are tiny, hairless creatures with elongated heads that live in a fictional, post-apocalyptic world called Aura." Rowling's "muggles" are ordinary human beings who lack magic powers. Furthermore, research into the terms shows that the terms are not recently created words by any stretch of the imagination. A Dictionary of Slang and Unconventional English states that the word "mug" had been used in the 1930s and 1940s to mean "anyone not of the Underworld," providing an example from W. Buchanan-Taylor, author of the 1943 work *Shake it Again*: "There is a whole range of talk which cannot be understood by the 'mug,' a word which describes all members of the public who attend fairs." A DICTIONARY OF SLANG AND UNCONVENTIONAL ENGLISH (Partridge & Beale, eds., Macmillan Publishing Co., 1984) (1961) (emphasis in original). The slang dictionary predates both the supposed publication dates of Stouffer's works and the actual publication dates of Rowling's. The usage seems to be primarily British and resoundingly similar to the meaning used by Rowling; American usage of the word "muggle" in the 1920s referred to marijuana, especially in the jazz music of the day. SHORTER OXFORD ENGLISH DICTIONARY (Oxford Univ. Press, 2002) (1933). Jazz musician Louis Armstrong, on December 7, 1928, recorded a song entitled *Muggles*. This title referred to the drug marijuana, and "to muggle" or "to muggle up" meant smoking marijuana, whereas being "all muggled up" was used to convey the intoxicating effects of the drug. This term predates either author's usage by over 60 years, having been used primarily in the 1920s and 1930s by jazz musicians. See *Muggles Muggle*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Muggles> (last visited May 5, 2006). The song is available on several compact disc collections of Louis Armstrong's music, one of which is available on Amazon.com for both purchase and as an auditory sample at <http://www.amazon.com/exec/obidos/tg/detail/-/B0000026T8/>. The song is in twelve bar blues form.

165. See *Stouffer*, 221 F. Supp. 2d at 433.

166. *Id.* at 434–35.

167. *Id.* at 435.

168. *Id.* The court excoriated Stouffer in its opinion. Even assuming that Stouffer had used "Larry Potter" prior to litigation, there was no likelihood of confusion, the court ruled. *Id.* "Larry Potter" appeared in an eleven page booklet about a boy who is sad because he has glasses. *Id.* Larry has brown or orange hair and non-circular glasses with tortoiseshell frames. *Id.* "Harry Potter," however, is a young orphan boy with dark hair, a lightning bolt scar, and distinctive round black-framed glasses; he is a wizard and attends a school for magic, and each of his books is several hundred pages in length. *Id.* The court also analyzed and rejected Stouffer's other claims that there was a likelihood of confusion with various aspects of the two publications. *Id.* at 435–36.

169. *Id.* at 437.

court by submitting “fraudulent documents [and] . . . untruthful testimony.”<sup>170</sup> The Second Circuit affirmed both issues on appeal.<sup>171</sup>

Not surprisingly, Rowling suffered no real loss at the hands of the lawsuit in terms of her or her books' popularity.<sup>172</sup> One explanation is that J.K. Rowling's history has always been accessible to the public and we have identified her as a hero from early on. We walk the transparent journey with Rowling—we are allowed to participate in the narrative as invisible observers. We are able to identify with her story and we view her as a worthy protagonist. For that reason, we want her to become the anointed queen of fiction, a title towards which she is moving. She will have earned it. If you ask a Harry Potter fan what the world would be like without completion of the series, you would undoubtedly hear an unhappy response. Rather, the federal court's decision was celebrated because it signaled the return of the hero to her quest. Rowling has been granted the boon that will permit her to transform our community by finishing the series. Moreover, Nancy Stouffer was not Rowling's dragon, but rather a threshold guardian, a Draco Malfoy.

In heroic terms, the outcome of Rowling's lawsuit represented a “road of trials” victory over a foe trying to stop the hero from reaching her goal and receiving the boon. As a creator hero, Rowling's ultimate villain is more societal in nature, i.e. whether or not her entire series will be published and read.

Rowling's attorneys actually employed heroic imagery, whether deliberately or not. In their legal brief, the attorneys recognized their client's larger goals and journey when they wrote, as a topic sentence very early in the counterstatement of the case's story, “Rowling conceived of the *Harry Potter* Books in 1990, while on a train between Manchester and London, England.”<sup>173</sup> The sentence literally conjures the image of someone beginning a long journey, much as Harry Potter travels each year by train to and from school. With the end of the litigation, Rowling demonstrated that she had concluded that particular—and literal—trial, and could now continue down the path of writing the remainder of the *Harry Potter* series.

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170. *Id.* at 444.

171. *Scholastic, Inc. v. Stouffer*, 81 Fed. Appx. 396, 397–98 (2d Cir. 2003).

172. The fifth book in the series, *Harry Potter and the Order of the Phoenix*, was released several months after the federal district court handed down its ruling. That book had a record first printing of 8.5 million copies in the United States alone. CBS News Entertainment, *Potter Couldn't Be Hotter*, June 23, 2003, <http://www.cbsnews.com/stories/2003/06/18/entertainment/main559306.shtml>. Barnes & Noble reported selling one million copies during the first forty-eight hours after the book's release. *Id.*

173. Brief of Plaintiff-Appellees at 5, *Scholastic, Inc. v. Stouffer*, No. 02-9405 (2d Cir. Apr. 17, 2003).

*C. Return*

The journey doesn't end with the slaying of the dragon because the hero still needs to transform and reach bliss.<sup>174</sup> With all of the lessons learned during the initiation stage, the hero now has tools that will aid the transformation of the hero's society upon his or her return. Campbell pointed to three faces of the hero, or three types of conclusory "bliss."<sup>175</sup> In the first, the hero leaves his or her society to explore an unknown world, but returns knowing that the original society is best for him or her. Perhaps the best example of this type of bliss is embodied by Dorothy, from *The Wizard of Oz*, who returns to Kansas believing that there is no place like home.<sup>176</sup> In the second scenario, the hero journeys to another world and similarly returns to the original society, yet brings things back from the journey to better that society. Frodo Baggins, from the *Lord of the Rings* trilogy, represents this sort of hero.<sup>177</sup> Finally, in the third scenario, the hero journeys to another world and does not return because his or her bliss is outside of the original society.<sup>178</sup> Harry Potter's journey embodies the bliss of the third hero's journey. He never truly returns to his original world.<sup>179</sup>

Whichever bliss he or she chooses, the hero is nevertheless the master of both worlds because the hero has conquered the fears that previously hindered him or her from growth as an individual. The hero may go on to likewise mentor others or to serve as a role model. And so the hero, by accomplishing individuation, transforms not just him or herself, but also his or her culture.

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174. Joseph Campbell defined bliss as going where your body and soul want to take you; your rapture. CAMPBELL WITH MOYERS, *THE POWER OF MYTH*, *supra* note 100, at 147, 149.

175. JOSEPH CAMPBELL ON MYTH & MYTHOLOGY, *supra* note 35, at xiv–xv.

176. *THE WONDERFUL WIZARD OF OZ*, *supra* note 5. Later in the series of books, Dorothy returns to Oz and eventually leaves Kansas permanently. L. FRANK BAUM, *THE EMERALD CITY OF OZ* (HarperCollins 1993) (1910).

177. Frodo Baggins is a complicated hero. Many could (and would) argue that he never actually completed the quest because he could not himself throw the ring of power into Mount Doom; rather, Gollum accomplished the task for Frodo by biting off Frodo's finger with the ring still on it, then himself jumping into the fires. TOLKEIN, *supra* note 5, at 925. Moreover, although Frodo returned home to the Shire and helped rid it of the last vagrants, he ultimately left again to "sail off into the West." *Id.* at 1007.

178. See TOLKEIN, *supra* note 5.

179. Yes, I do remember that technically, Harry Potter does return each summer to the non-magical society in which he grew up. See HARRY POTTER AND THE SORCERER'S STONE, *supra* note 1, at 307–309. The author makes clear, however, that Harry does not return by choice, but merely by rules governing children in both societies. HARRY POTTER AND THE ORDER OF THE PHOENIX, *supra* note 1, at 836.

## VI. CONCLUSION

These concepts of hero and journey provide lawyers with a framework to do factual investigation. Since all humans are on quests during various stages of their lives, lawyers can use the journey premise as a foundation or scaffold for starting to strategize a theory of the case. This Article cannot hope to provide examples for every situation. Moreover, there is no discussion of how-to's in terms of strategic word choice, although I do advise against blatant usage of the word "hero" because it runs the risk of sounding hyperbolic or cliché.

I do not intend for this Article to stand for the sum total of the discussion about heroic archetypes in legal representation; it is intended to start the conversation. Left open is the topic of portraying non-human entities, such as businesses or government, with heroic imagery. Heroic journeys provide one possibility for conceptualizing the client's story and the theory of the case. Lawyers certainly may reject the notion of depicting their clients as heroes on a journey; the concept is just one template idea and there are many others. The true point is that lawyers should have a methodology for story building. The attorney can choose to represent the hero's journey through a single metaphor or as an extended allusion throughout the whole of a brief or bench trial. The possibilities truly are infinite.

APPENDIX I<sup>180</sup>

<b>Hero Type</b>	<b>Task</b>	<b>Virtue ♦ Fear</b>	<b>How Hero Defeats the Dragon</b>	<b>Remarks</b>
<b>Warrior</b>	Fight (and win) for just causes/important is-	Courage ♦ Weakness	Slays or confronts it	The “stereotypical hero”
<b>Creator</b>	Creating identity through self-creation and self-acceptance	Individuality and enterprise ♦ Being illusionary	Gives form to a vision and claims it as part of self	J.K. Rowling is a creator hero; good choice for clients’ stories
<b>Caregiver</b>	Help others without maiming self or others	Compassion and generosity ♦ Selfishness	Takes care of it or those that it harms	A good choice for clients’ stories
<b>Every person/ Orphan</b>	Connect with society	Realism; empathy ♦ Exile	Allows others to help hero (this is different than others <i>saving</i> the hero)	Harry Potter is most appropriately categorized as this type
<b>Outlaw/ Destroyer</b>	Destroy, via revenge or revolution, what is not working in society	Righteous indignation, radical freedoms ♦ Being inconsequential	Allows dragon to destroy itself	Social justice missions may be characterized as such
<b>Sage</b>	Gain enlightenment and truth	Wisdom and non-attachment ♦ Deception	Transcends it	Law students are on this path (we hope)
<b>Hero</b>	<b>Task</b>	<b>Virtue ♦</b>	<b>How hero</b>	<b>Remarks</b>

180. PEARSON, AWAKENING THE HEROES WITHIN, *supra* note 49, at 10–11 (charting twelve “heroic archetypes” as hypothesized by the psychologist author).

Type		Fear	defeats the dragon	
<b>Explorer/ Wanderer /Seeker</b>	Search for better life through exploration of the world	Autonomy ♦ Conformity or becoming a misfit	Walks away from it	
<b>Magician</b>	Align self with universe and make dreams come true	Personal control/finding solutions ♦ unanticipated consequences	Transforms it	
<b>Ruler</b>	Create a prosperous family or community, and to gain power	Responsibility; leadership ♦ Chaos or being overthrown	Controls it	
<b>Lover</b>	Gain freedom to follow bliss through relationships	Passion and commitment ♦ Loss of love	Loves it	Be careful using this indiscriminately because it can look very "damsel-in-distress"
<b>Jester/ Fool</b>	Enjoy life and change by exposing the absurd	Joy and freedom ♦ Boredom	Plays tricks on it	Obviously risky to portray clients this way
<b>Innocent</b>	Gain fidelity and discernment while remaining in safety	Trust and optimism ♦ Abandonment	Will deny it or seek rescuing	Since this role is mostly reserved for children, it is not a great choice for adult-age clients