

PRAISE FOR *TWELVE HEROES, ONE VOICE*

“Carl Bettinger’s book *Twelve Heroes, One Voice* is essential for trial lawyers who want to learn how to truly connect with jurors and empower them to have the courage to provide justice for their clients.”

—Barbara Bergman, Professor of Law, University of New Mexico School of Law; recipient of the Lifetime Achievement Award for Excellence in the Teaching of Trial Advocacy, Stetson School of Law, 2010

“Before I was halfway through the first read (there will be many return visits to this book) I was excitedly trying out what I’d learned so far.”

—Marjorie Russell, Professor of Law, chair of litigation skills,
Thomas Cooley Law School

“Carl integrated Homer and Cervantes with popular cinema to help us understand how to tell a story, the importance of juror empowerment, and the importance of self-empowerment.”

—Mark R. Kosieradzki, past president of the Minnesota Association for Justice, listed in Best *Lawyers in America*, diplomat in the National College of Advocacy

“A triumph. Once upon a time, I was losing hope that there were ways to win at trial other than by playing off jurors’ fears and biases. Playing the hero, Mr. Bettinger has restored my faith.”

—Mark D. Samson, plaintiff’s attorney for the Edwards verdict, a transfusion-associated AIDS case which remains the largest personal injury verdict in Arizona history, \$28.7 million

“Every courtroom lawyer has one book that he or she reaches for in order to prepare for the next major trial. This is the book I will reach for from now on.”

—James E. Girards, Texas Super Lawyer 2004–2011 and director of the Texas Trial Lawyers Association,

“Carl gives you what the *Reptile* left out. Learn why fear is not the end all and be all. Carl shows you how mentorship of the jury, earning their trust and empowering them will lead to heroic plaintiff’s verdicts even in these times.”

—Roy D. Turner, chair of the AAJ Nursing Home Litigation Group, inaugural and past chair, Virginia Trial Lawyers Long-Term Care Litigation Section

“Carl Bettinger is an outstanding trial lawyer and creative thinker who has authored one of the best books ever written on trial advocacy, *Twelve Heroes, One Voice*.”

—Garvin A. Isaacs, listed in *Oklahoma Super Lawyers*, 2007–2010

“*Twelve Heroes, One Voice* brings to light how the hero-villain-mentor relationship between the jury and lawyer can be examined and illuminated in-depth. Carl explains how to reach justice alongside the jury. No tricks, no illusions, no slight of hand—just the plain, simple truth.”

—Ann Deutscher, named one of the Top 100 Trial Lawyers in Washington State, 2008–2010

“*Twelve Heroes* is the best book I have read about the fundamentals of storytelling as they apply in the courtroom. It is clear, practical and filled with real-life examples. If you want to learn how to empower jurors, you need to read this book.”

—Joane Garcia-Colson, psychodramatic trial consultant, trial lawyer, former executive director of Gerry Spence’s Trial Lawyers College, co-author of *Trial In Action*

“A unique take on how to make your case come to life in the courtroom by actively engaging the people who matter the most in trial—the jurors—through empowerment and hero-making.”

—Fredilyn Sison, co-author of *Trial in Action*, former faculty of The Trial Lawyers College and the Advanced National Federal Defenders Program

“Like all good stories, *Twelve Heroes, One Voice* draws us ever onward. Bettinger shows us why and how to care for our clients. It invites us all to be larger than our present conception of ourselves.”

—Mary Peckham, co-author of *Trial in Action*, certified practitioner of psychodrama, former faculty of The Trial Lawyers College

TWELVE HEROES,
ONE VOICE

*Guiding Jurors
to Courageous Verdicts*

By

CARL BETTINGER



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*To life's everyday heroes, our jurors.
We need you now more than ever.*

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PUBLISHER'S NOTE

This book is intended for practicing attorneys. This book does not offer legal or other professional advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, techniques, ideas, and opinions set forth in this book in light of their own research, experience and judgment, to consult applicable rules, regulations, procedures, cases and statutes (including those issued after the publication date of this book), and to make independent decisions about whether and how to apply such information, techniques, ideas and opinions to a particular case.

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INTRODUCTION

Why Should Jurors Care?

The real voyage of discovery lies not in seeking new landscapes, but in having new eyes.

—Marcel Proust

We come to trial because we want something from the jurors. We want them to find for our client and against the other side. We want them to believe us.

But why should they? They are strangers to us, our client, and our cause. They have their own lives, families, work, and problems. Their lives do not involve us or our clients. Why should they leave the comfort of their worlds to come into this new world: a trial in a courtroom filled with strangers, many speaking in such inscrutable jargon that it may as well be a foreign language? Injury, death, or crimes will confront the jurors. These may scare or give them pause. Why should they take the risk of crossing the threshold into this new and scary world? Crossing thresholds can be painful, and so our requests that they look beyond their worlds, that they enter into this strange new world called a trial,

are not welcome requests. They are *impositions*. And, of course, they are impositions brought to them by trial lawyers—those manipulative schemers accomplished in the wiles of persuasive rhetoric, whose higher calling seems to be to trick and deceive, and often to do so for profit.

Why should jurors care? More specifically, why should they care enough to let go of the natural tendency to do nothing and leave well enough alone? Why should they volunteer to be the Man in the Arena?

. . . whose face is marred by dust and sweat and blood, who strives valiantly, who errs and comes up short again and again, because there is no effort without error or shortcoming, but who knows the great enthusiasms, the great devotions, who spends himself for a worthy cause; who, at the best, knows, in the end, the triumph of high achievement, and who, at the worst, if he fails, at least he fails while daring greatly, so that his place shall never be with those cold and timid souls who knew neither victory nor defeat.¹

This question—*why should jurors care?*—lies at the heart of every trial treatise or theory offered up to practitioners' jaded palates. Every tale told is designed with one thing in mind: to find an answer to that question.

The answer has been around for a long time, but has lain unnoticed at the bottom of the rushing currents of trial. The answer lies in recognizing that in a trial, jurors are presented with the opportunity, albeit a terrifying one, to transcend their ordinary lives and to enter a new world. This transformation mirrors the journey of the archetypal hero. With our guidance, the jurors can don the mantle of hero. Although much has been written about motivating jurors through an understanding of their biases or fears, or by trying to enrage them by having them

1. Theodore Roosevelt, "Citizenship in a Republic," speech at the Sorbonne, Paris, April 23, 1910.

identify with the betrayal in a given story, I suggest that mankind's greatest accomplishments—including great verdicts—result not from anger, hatred, fear, or vindictiveness, but from love and self-sacrifice. These qualities are the defining characteristics of the hero.

We all secretly desire to be a hero. Bearing witness to heroic acts—whether it be the stranger who dives into the frigid waters to save a drowning child, or the forty-two-year-old African-American woman who refuses to sit in the back of the bus—makes us stop in our tracks, stand up, and cheer. We dream that maybe, we, too, will have the opportunity to do something that amazes others. We want to save the day, and when someone will ask us, “What made you do it?” we can answer, *“Anyone would have.”*

The role of the hero is an archetype. We have a hardwired understanding of the hero's role, of other characters commonly found in such stories, and of the importance of universal truths realized by the story. Hero stories, or epics, show that the hero's role is reachable by any human being, so long as they are shown the path. But an understanding of that transformation, or how to incorporate these powerful archetypes into a trial, is something many attorneys are missing.

The purpose of this book is to show our jurors how to occupy the role of the hero. Helping them along that path, as their mentor, is yours.

1

BIASES, CODES, RULES, AND REPTILES:

The Search for a Unified Theory

If you can convince [people] they are on a hero's journey, they can begin to see obstacles as challenges, and choose behaviors more befitting a hero than a victim.

—Annette Simmons

Narrative is a way of dealing with the fear of being alone in an indifferent world.

—Dan Shapiro

In recent years, outstanding research in the areas of jury bias, cultural codes, rules of behavior, and primitive motivators has advanced our ability to answer the primary question, *why should jurors care?* Wenner and Cusimano's work recognized and addressed the biases and heuristic shortcuts that jurors bring to

courtroom.¹ Rapaille's study of corporate America helped to identify influential cultural archetypes (and stereotypes).² Friedman and Malone's work on the rules that any civilized society (and civil defendants) must follow provided us with a simple arsenal against ambiguity.³ Keenan, Ball, Fitzgerald, Johnson, and others have taken us into the brainstem where primitive motivators reside, over which we have little control.⁴

And yet it seems something is missing. Reduced to their lowest common denominator, each of these works look to the baser human emotions, particularly fear. And they do so in a calculating way which, if perceived by the jurors as manipulative, is exactly what jurors have come to expect of us. As David Mamet, the great playwright, observes:

[W]hat comes from the heart . . . goes to the heart.
 What comes from the head is perceived . . . as
 manipulative . . . We may succumb to the manipu-
 lative for a moment because it makes us feel good to
 side with the powerful. But finally we understand
 we are being manipulated. And we resent it.⁵

Winning, of course, is the ultimate endgame. But wins obtained by limiting our work to the jurors' most basic receptors only light up *part* of each juror, leaving the rest unrealized.

In short, what these methodologies are missing is a sense of the sublime. If we can give our jurors what they need to overcome the obstacles they bring to trial—jealousy of others' successes, fear of pain, racial or gender bias, concerns about money, and fear of crime—if we can show our jurors how to resist these common

1. David Wenner and Gregory Cusimano, "Motivating Jurors", *Trial*, Vol. 44, No. 3, March 2008; Wenner et al. "Reframing the Model", *Trial*, Vol. 44, No. 3, March 2008.

2. Clotilde Rapaille, *The Culture Code*, Broadway Books, 2006.

3. Rick Friedman and Patrick Malone, *Rules of the Road, Second Ed.*, Trial Guides, 2010.

4. David Ball and Don Keenan, *Reptile: The 2009 Manual of the Plaintiff's Revolution*, Balloon Press, 2009.

5. David Mamet, *Three Uses of the Knife*, Vintage Books, 1998.

temptations, then, our jurors can rise to the occasion, transcend the ordinary, and do what is necessary for the client we love.

Simply: *we empower jurors to save the day, and thereby become heroes.*

This role of the hero⁶ lies within each of us. Has there ever been a man, woman, or child who has not yearned to save the day? From Odysseus to Luke Skywalker, the hero has captivated the attention of us all, and has brought to our minds the thought: “If only I could be like *that*.” This book will focus on common heroes—those not born to fame and fortune, but ordinary people who are forced to confront injustice. Instead of running away, the hero chooses to stand and fight, even to the point of self-sacrifice.

From Joan of Arc to Booker T. Washington, Lech Walesa, and Harriet Tubman, there are many heroes who inspire and move us. Each of these people stands for what we feel in our bones: that any man or woman called to greatness can be a hero. Our job is to help the jurors find the hero in themselves. But how do we do that? Can the juror become the hero if we limit our appeals to their fears and instincts?⁷ I think not. Instead, we must appeal to the archetypes hardwired in us all.

Our task of helping the jurors in this regard is made easier by two realities. First, *every human being yearns to take on the hero's role*. Of course, this yearning often is divorced from the self-sacrifice and willingness to walk through what it takes to realize the role. A person may wish he could play guitar like Eric Clapton,

6. For ease of the reader, we will use “hero” as a gender-neutral term, recognizing that some would prefer to limit “hero” to men and “heroine” to women. Of note, the etymology of the word “hero” suggests a derivation from “Hera,” the goddess of women and marriage. The “he” part of “hero” bears no relationship to the pronoun “he” in English.

7. Betrayal has been utilized as a motivator and trial theme, but as a trial theme, it is “less-than.” Betrayal is useful in that we have all experienced it, and it may make jurors angry, but making it the touchstone of one's trial approach means risking that the attorney will confuse his or her own personal stories of betrayal with the story in the legal case. More importantly, mankind's heroes have not, ultimately, acted out of anger, but out of love and self-sacrifice to a higher good. Betrayal is best used as a means of identifying the villain in the story, for as we shall see, the villain always betrays.

but does not want to earn those skills by practicing until his fingers bleed. Likewise, the ordinary men and women who come to the courtroom as our jurors want to “be” the hero, but would prefer to avoid bleeding to get there.

Second, *we all have an innate sense for story structure, particularly the structure that revolves around the hero’s journey.* We know that when someone says, “let me tell you a story,” a certain form of telling is sure to follow. Stories typically begin with “once upon a time . . .” and end with “and ever since then . . .” The “ever since then” represents the verdict we want: “Ever since then, if Manor Shadows Nursing Home chooses to understaff its homes in order to make more money, it knows it will be held accountable and punished.”

Historically, human stories, particularly epics, center around survival. They tell us what we need to do to survive in the world. Through storytelling we learn how to preserve the fire, or avoid the clutches of the saber-toothed tiger, or what to do so that our children will survive to propagate the species. Empirical evidence suggests that our very means of communicating with one another is through story. In his innovative work, *Tell Me a Story*,⁸ Roger Schank, an electrical engineer and computer scientist, makes the point that human beings are “hardwired” for story. In other words, all of us have story “receptors” that allow us to more easily track, process, understand, and remember when the information is presented in story format.

So, where to begin? We should, as the King said to the White Rabbit in Alice’s Wonderland, “begin at the beginning, go on till you come to the end, then stop.”⁹ Let us begin, then, with some basics about the structure of the hero-centric story and the archetypes that populate them. We’ll examine these stories and archetypes in the context of our trials, then look at how to discover these structures in what our clients bring to us. After that, we will explore techniques for presenting this information in a way that transforms ordinary people (our jurors) into heroes. And then we will stop.

8. Roger Schank, *Tell Me a Story*, Northwestern University Press, 1995.

9. Lewis Carroll, *Alice’s Adventures in Wonderland*, Random House, 1955.

2

STORY STRUCTURE

A hero ventures forth from the world of common day into a region of supernatural wonder: fabulous forces are there encountered and a decisive victory is won: the hero comes back from this mysterious adventure with the power to bestow boons on his fellow man.¹

—Joseph Campbell

WHAT DOES HOMER HAVE TO DO WITH ME, A TRIAL LAWYER?

After obtaining dozens of depositions, answers to innumerable interrogatories, and rooms full of documents, one of the greatest challenges facing the lawyer preparing for trial is: “What in the world am I going to do with all of this?” It should be clear that we can’t put it all into the trial. To do so is boring and wasteful. Rather, we need some sort of editorializing. We need a “theme,” everyone says. But what kind of deeper structure can we look to? How can we present the data in a way that fits the

1. Joseph Campbell, *The Hero with a Thousand Faces*, Princeton University Press, 1968.

information receptors preprogrammed into our jurors' brains? The answer lies in the oldest and most familiar story structure, that of the mythical hero.

THE HERO-CENTRIC STORY STRUCTURE

The hero's journey is the most well known of story structures. From epics like *The Odyssey*, to *The Hobbit*, *The Wizard of Oz*, *Star Wars*, or *The Matrix*, the structure is the same.

John Jacobsen, one of the founders of The Film School in Seattle, describes this structure as follows:

- ◆ There is a problem in the village.
- ◆ A villager, though reluctant to leave, is called upon to do so.
- ◆ That person, who ultimately will become the hero, must go out into the new world.
- ◆ He or she will be tested, and meet enemies and allies.
- ◆ He or she will find a cave where a dragon lives.
- ◆ The hero must pass into the cave to defeat the dragon.
- ◆ Inside the cave is the elixir that answers the central question posed by the story.
- ◆ The hero brings the elixir back to save the village.²

Improvisational acting students are taught story structure using the following story spine:

- | | |
|---|----------------------|
| 1. <i>Once upon a time . . .</i> | [the ordinary world] |
| 2. <i>And every day . . .</i> | [the ordinary world] |
| 3. <i>Until one day . . .</i> | [the inciting event] |
| 4. <i>And as a result of that . . .</i> | [the new world] |

2. John Jacobsen, 2007 presentation to Patrons of Northwest Civic, Cultural and Charitable Organizations, hosted by Paul and Lita Luvera.

- | | |
|---|--------------------------|
| 5. <i>And as a result of that . . .</i> | [the new world] |
| 6. <i>And as a result of that . . .</i> | [the new world] |
| 7. <i>Until, finally . . .</i> | [the climax] |
| 8. <i>And ever since then . . .</i> | [the moral of the story] |

Let's see how this plays out with a few examples.

1. **ONCE UPON A TIME . . .** The hero begins in an ordinary world (Act I)—think of Bilbo in *The Hobbit*, Luke Skywalker in *Star Wars*, or Dorothy in *The Wizard of Oz*—where as best the hero can tell, all is well. But all is not well. The ordinary world is that in which the hero believes all is well, when in fact it is not.
2. **AND EVERY DAY . . .** Bilbo goes about his merry way, enjoying the safety and comfort of the Shire, Dorothy farms in Kansas, Luke Skywalker tends to his robots.
3. **UNTIL ONE DAY . . .** Something happens—an inciting event—which shows the hero that all is not well, or at least, not as expected. Examples of this are Gandalf's knock at Bilbo's door, the twister that takes Dorothy to a strange new land, and R2-D2's projection of Princess Leia calling for help. The hero, being reluctant, does not want to leave his or her comfortable world and needs some sort of a push, what is variously known as a call to adventure or inciting event.
4. **AND AS A RESULT OF THAT . . .** The hero is helped over the threshold, into the new world (Act II), where he meets allies and enemies and undergoes tests of his will: Bilbo travels with Gandalf, the dwarves, and the elves; Luke joins up with Obi-Wan Kenobi, Han Solo, and Chewbacca; Dorothy leaves Kansas for Oz and her travels with the Scarecrow, the Tin Man, and the Cowardly Lion. The transition from the ordinary world to the new world involves a crossing of metaphorical and physical thresholds. This new world is filled with the new, the strange, and the challenging.

It is a world that the hero is ill-equipped to handle, and so she requires the guidance of a mentor: Obi-Wan for Luke Skywalker; Gandalf for Bilbo; the Scarecrow, Tin Man, and Cowardly Lion for Dorothy. The mentor's job is to help the hero begin the transition from the ordinary to the extraordinary, from the mundane to the sublime. More importantly, the mentor's job is to help the hero recognize that her heroic qualities are already within her, but must be awakened. In the new world, the hero will meet allies and enemies, and will face a series of increasingly difficult challenges, until the ultimate confrontation with the villain.

5. AND AS A RESULT OF THAT . . . In Act II, the hero must confront the villain, and, more importantly, what that villain stands for. For Bilbo, it is the dragon. For Luke, the villain is Darth Vader and the Dark Side. For Dorothy, it is a part of herself. In John Jacobsen's words, "Act II is where the hero is taken to the bottom and bounced off the floor, often by being forced to make a supreme choice, along the lines of, 'I will do anything to [achieve goal], but don't ask me to do *that*.'"³ When the hero confronts the villain, the hero, either in a true or metaphorical sense, must die, or at the very least, a significant part of him must die. The hero's return, or rebirth, is often brought about through the help of some universal truth (truth will conquer dishonesty, love will win out over hate, others are more important than oneself).

Many times, and of particular importance for our trial work, the ultimate confrontation involves the death of one of the hero's beliefs. In *Moonstruck*, Ronny (Nicholas Cage) shows Loretta (Cher) that a part of her, the part that believes in "playing safe," must die. As his last attempt to woo Loretta into breaking off her upcoming marriage to his brother, Ronny says:

3. John Jacobsen, 2007 presentation to Patrons of Northwest Civic, Cultural and Charitable Organizations, hosted by Paul and Lita Luvera.

Love don't make things nice, it ruins everything. It breaks your heart. It makes things a mess. We aren't here to make things perfect. The snowflakes are perfect. The stars are perfect. Not us. Not us. We are here to ruin ourselves. And, and, to break our hearts. And to love the wrong people. And die. I mean, the story books are bullshit!⁴

When Loretta accepts Ronny, we cheer for her. She has become a hero in the sense that she is willing to sacrifice her old truths and a comfortable life for true love. This kind of transformation is important for our trial work. As we shall see in the following chapters, our jurors bring pieces of themselves from their old worlds into the new world of the courtroom. These old truths (lawsuits are bad, large verdicts are bad, what is this going to do to my insurance rates?) are pieces that must metaphorically die in order for the jurors to become our heroes.

6. AND AS A RESULT OF THAT . . . This death of a part of the hero's character is crucial to our understanding of our trials. Our jurors' old truths cannot coexist with the Verdict (with a capital "V") that we wish of them. These old truths, as we shall see in the coming chapters, must die. Our job as mentors is to show the jurors why they must be willing to let this happen.
7. UNTIL, FINALLY . . . Finally, in Act III, the hero takes the road back, the journey home. She returns to the ordinary world, bringing with her the answer to the central question posed by the story. Luke returns with the understanding that he should trust in the Force; Dorothy learns that there is no place like home; and Bilbo returns to the Shire having "grown up," with a new confidence and comfort for the outside world, and with a little ring

4. *Moonstruck*, 1987.

that, in the legacy trilogy of *The Lord of the Rings*, may mean the end of Middle Earth.

8. AND EVER SINCE THEN . . . The world is a different place, in ways that matter. The Dark Side will no longer go unopposed, Dorothy needn't run away to find her heart's desire, and the goodness in the big heart of a little Hobbit is a force to be reckoned with.

CLASSIC CHARACTERS

In a hero-centric story, there is a villain, a victim, a mentor, and a hero. Oftentimes, there's a trickster as well—a “fool” in the Shakespearean sense—someone who speaks the truth which others do not want to hear. These archetypes, just like story structure itself, are hard-wired into our brains. Carl Jung explored the archetypes (Self, Shadow, Anima, Animus, Hero, the Great Mother, the Wise Old Man or Woman, the Devil, the Mentor, and others) in the context of the very evolution of our psyches.⁵ Joseph Campbell's work, *The Hero with a Thousand Faces*⁶, looked at the commonalities in the “monomyth,” the fundamental structure shared by myths from around the world. We, and our jurors, are wired to understand these roles.

The Hero

What defines a hero? What sort of person is he or she? Is the best hero the starting quarterback? Or the prideful leader of the village? Not at all. The best heroes are ordinary people. In fact, the very best are subordinary in some way: loners, outcasts, or less-thans. Why? There is no challenge for Superman to leap a building, because Superman can fly. On the other hand, an ordinary person is not expected to be able to surmount an obstacle that

5. Carl Jung, *The Archetypes and the Collective Unconscious*, Princeton University Press, 1968.

6. Joseph Campbell, *The Hero with a Thousand Faces*, Princeton University Press, 1968.

would stop the rest of us ordinary Joes (and Janes) in our tracks. So when he does the unexpected in the face of overwhelming odds, for selfless reasons, we stand up and cheer. He has struck a blow for us all. John Jacobsen says that people want real heroes, real humans with real faults, who make mistakes, persevere, and find redemption through self-sacrifice.⁷

The hero has a goal—a quest, if you will—and this quest is constantly being thwarted. Yet the hero, when confronted with whatever it is that obstructs her goal, will not give in. At the same time, the hero is often filled with self-doubt. She, and other skeptics, often question whether she has what it takes. Think of Neo in *The Matrix*.⁸ The movie raises the same question over and over: Is Neo the One? When Neo meets with the Oracle, the Oracle tells him that he is still incomplete, from which Neo concludes he in fact is not the One. In *Star Wars*,⁹ Luke Skywalker is told that the Force is within him, yet despite his best efforts, he seems unable to find it. He bumbles in the training sessions with his mentor, Obi-Wan. At the same time, the hero's drive will not let her give up, no matter how many obstacles are thrown in her way, and no matter how discouraged she may become.

The hero often has wrong ideas about how to solve the problems he faces. He may not even recognize what the true problem is, but if he does, he will try to force some solution that will not work, instead of recognizing that the answer lies within. Luke Skywalker repeatedly tries to compel the Force, to no avail. In the climax of *Star Wars*, where all will be lost if the Death Star cannot be destroyed, Luke struggles in vain to force his fighter into the Death Star. Finally, he hears the voice of Obi-Wan, now dead, who says to him: "Use the Force, Luke. *Let go*. Luke, trust me." Luke shuts off the computers, turns inward to what he has within him, and saves the day.

7. John Jacobsen, 2007 presentation to Patrons of Northwest Civic, Cultural and Charitable Organizations, hosted by Paul and Lita Luvera.

8. 1999.

9. 1977.

While the hero may be an outcast, and a bit of a bumbler at times, he cannot lack skills. He must have something special that allows him to do what no one else could do: defeat the villain in the story. (In many stories, the villain may be one of the hero's own character traits.) This special talent is usually an undeveloped one—the Force for Luke, that ability to “see” the Matrix for Neo, the courageous side of a little Hobbit like Bilbo. In each of these stories, however, the power in question is waiting to be awakened. Act II of a story is largely about the awakening of that power, which invariably requires the guidance of a mentor.

The hero must be strong-willed; her will must *drive* the story. To borrow from Mamet: “[T]he hero and the heroine are those people who do not give in to temptation. The hero story is about a person undergoing a test that he or she didn’t choose . . . the strength of these heroes comes from the power to resist.”¹⁰ This refusal to give up—more than any speeding car chase, exploding spaceship, close athletic match, or romantic moment—is what hooks us into the story and makes us root for the hero. It is Neo’s determination to find the Matrix, Dorothy’s determination to follow the Yellow Brick Road, Luke’s determination not to give in to the Dark Side, no matter the temptation, that tells us: “*This is no ordinary story, this is no ordinary person. We are in the presence of someone extraordinary. We are in the presence of the heroic.*”

What traits help define the hero?

First, the hero must have characteristics, usually more than one, that make him empathetic to the audience. John Jacobsen of The Film School provides a nice list; the hero may be:

- ◆ The underdog, or have suffered an undeserved misfortune or injustice.
- ◆ Put in sudden and unexpected danger.
- ◆ Excel at some seemingly irrelevant skill or trait.

10. David Mamet, *Three Uses of the Knife*, Vintage Books, 1998.

- ◆ Well liked by other characters, often through a scene that shows that hero doing something nice for an innocent character (what Jacobsen refers to as a “pet the dog” scene).¹¹

Second, the hero must be selfless. She is the antagonist to the villain in the most literal of ways. Just as the villain’s defining characteristic is self-interest, that of the hero is self-sacrifice. By the end of a good story, the hero must choose in favor not of herself, but of another. Jacobsen says that one way to identify the hero is by asking: “Who is making the self-sacrifice?” Dorothy will suffer the dangers necessary to find the Wizard and find a way home. Neo will confront the Agents, which will mean almost certain death, to learn what the Matrix really is. Bilbo is willing not only to leave the Shire, but to enter the dragon’s cave.

The Villain

What about the villain? We know one when we see one, right? But what is it about the villain that makes us say, “that’s the bad guy”? A villain’s defining characteristic is the unwavering pursuit of self. The villain always puts himself first. There is never any self-sacrifice to the greater good. There may be times when the villain does something “good,” but never for good reasons: the villain is always motivated by self-interest. There may be more than one villain in a story, but the true inner nature of each is always evil.

In *On Writing*,¹² Stephen King describes how he went about defining the villain, Greg Stillson, early in the book *The Dead Zone*.¹³ Before becoming the successful politician who might start World War III, Stillson is a traveling Bible salesman. At one farm he is met by a snarling dog. Stillson maintains his friendly demeanor until he is sure no one is home, “then he sprays tear-gas into the dog’s eyes and kicks it to death.” Thus, the villain is

11. In the *Wizard of Oz*, Dorothy has a literal dog to pet. In *Star Wars*, Luke rescues (pets) R2-D2 and C-3PO from the Jawa traders.

12. Stephen King, *On Writing*, Scribner, 2000.

13. Stephen King, *The Dead Zone*, New American Library, 1980.

the hero's ethical counterpoint. The hero pets the dog; the villain kicks it to death.

Here is where the concept of betrayal is most useful—not as a central theme in defining the story, but as a signpost that points us to the real villain. The real villain gives himself away by placing some self-centered goal before the common good or the right thing. The universal truths of the story grow and mature from the selfish choices of the villain and the unselfish ones of the hero.

Unity of Opposites

A good villain must be at least as strong as (if not stronger than) the hero. In fact, the best villains *are* stronger than the hero. A good villain must pursue his evil goal just as relentlessly as the hero pursues his. In *The Art of Dramatic Writing*,¹⁴ Lajos Egri emphasizes that neither the hero nor the villain can compromise or back down, and neither can achieve his goal unless the other's goal is denied. Only one or the other can prevail, not both. This unity of opposites creates the ultimate fight from which the hero can arise with the answer to the story's central question.

Sometimes the unity of opposites exists within a single character, whose internal struggle is between the villainous, self-centered part of himself and the heroic, selfless part. Luke is tempted by the Dark Side, which, after all, is but a part of him, yet he will not give in. Recognizing that we all have these dark places within us—*as do our jurors*—is essential to the hero's transformation. Our job as courtroom lawyers is to help the jurors find a way for this to happen. As Annette Simmons wrote in *The Story Factor*: “If you can convince [people] they are on a hero's journey, they can begin to see obstacles as challenges, and choose behaviors more befitting a hero than a victim.”¹⁵

The Mentor

The mentor's first responsibility is to help the reluctant hero to cross the threshold and enter the new world. A good hero won't

14. Lajos Egri, *The Art of Dramatic Writing*, Simon & Schuster, 1960.

15. Annette Simmons, *The Story Factor*, Basic Books, 2006.

want to go. Remember, the hero is an ordinary person—someone who does not see themselves as anything other than ordinary. In other words, the hero is like you and me. And what sane person would want to leave the anesthetizing security of conformity¹⁶ and enter a world of trouble, danger, and betrayal? So the hero balks. In *The Hobbit*, does Bilbo want to leave the comfort of the Shire? Does Neo want to leave his pizza-induced stupor at the beginning of *The Matrix*? Does Dorothy really want to run away from Auntie Em and Uncle Henry? Of course not!

As the audience, though, we know that there is a problem in the village, and that to solve the problem the hero must begin his journey. For, as Barbara Cook said, “The place that seems most dangerous is exactly where safety lies.” Part of the mentor’s job is to give the hero the extra push necessary to move away from safety and toward danger. Gandalf knocks on Bilbo’s door, the dwarves show up, and pretty soon, Bilbo is ridiculed into joining an expedition to steal a dragon’s treasure. Neo, at the instruction of Morpheus, is dragged kicking and screaming into the real world. Dorothy’s future is pushed along by the fortune-telling of Professor Marvel.

Once in the new world, the mentor must stand ready to disabuse the hero of his false beliefs and encourage him to allow to blossom whatever trait is special to that hero for that story. Typically, this involves training in the context of adventure and the conveyance of special skills or tools that the hero will need to survive in the new world. Obi-Wan teaches Luke in the ways of the Force; Morpheus trains Neo by uploading martial arts programs directly to his mind; Gandalf encourages the growth of Bilbo’s common sense and decency; the Scarecrow, the Tin Man, and the Cowardly Lion each in their own deficient way, guide Dorothy along the Yellow Brick Road.

While the mentor provides invaluable assistance to the hero, the mentor can never supplant the hero. Sooner or later, the mentor must step aside, so that the hero can engage in the ultimate confrontation.

16. Martin Luther King, Jr., *Strength to Love* (Minneapolis, MN: Fortress Press, 2010).

When the Agents attack Neo and his group, Morpheus allows himself to be captured so Neo can continue his journey. In *Star Wars*, Obi-Wan, in the midst of battling Darth Vader, drops his guard, thereby allowing Vader to kill him (and so distracting Vader as the good guys make their escape). This common theme of the mentor stepping aside is necessary because the mentor is not the hero. Despite all his powers and wisdom, Gandalf cannot take the dragon's treasure; only Bilbo can do that. Morpheus and Trinity may be able to walk up walls, but they cannot "see" the Matrix and thereby be "the One." Only Neo can do that.

At the end of the story, only the hero can save the day.

The Victim

The victim is that person, or group of persons, harmed by the villain's conduct and helpless to do anything about it. It is the dog gassed and kicked to death. It is the people living in Hinkley, California, whose health and welfare were threatened by the groundwater contamination discovered by Erin Brokovich. It is all of the ordinary people in *The Matrix*, unknowingly connected to the computers. Sometimes the victim is the "old" part that stands in the hero's way of moving forward. Sometimes the victim is Everyman, in the sense that Everyman is subject to the effects of the villain's misconduct. Here, again, the concept of betrayal is useful—*not* as a trial theme, but as a way of identifying both the villain (the betrayer) and the victim (the subject of the betrayal).

The Trickster, Fool, or Jester

The trickster, fool, or jester—in more modern stories, the sidekick or rogue—is the character who speaks the truth that others are unwilling or unable to say. He is the one who points out that the emperor in fact is buck naked, not draped in fineries. Lear's fool is famous for speaking the truth. The fool suffers no illusions, and is refreshingly honest when others are not. The fool may not be able to hold forth on the matters that occupy the attention of his masters, coming as he often does from the lower castes or orders in life. Nonetheless, the fool outfoxes his betters because,

in the final analysis, he is smarter than they about the things that really matter. Brer Rabbit is the classic folk example. Han Solo plays the role in *Star Wars*.

WHAT DOES THIS HAVE TO DO WITH MY CASE?

What, you might ask, does any of this have to do with our work as trial lawyers? The answer is: *everything*. The hero-centric story structure is hardwired into our brains. We all “get it.” Our minds are preprogrammed to understand information that is presented in this format. Simmons points out that people don’t want more information—they already have too much information. What they want is to believe, to have faith, to see and embrace the Truths with a capital “T.”¹⁷

To that end, we must find ways to tell—and more importantly, *show*—the elements of this structure to our jurors. We must show them the “ordinary world” of our client, the defendant, and, most importantly, the jurors. Why? Because in the courtroom, the jurors are the heroes, the ones with the power to save the day. Of course, they can do so only if they undergo the transformation required of any hero. We show them the injury or death—the inciting event—which drags our client, the defendant, and the jurors into a New World—for certainly the courtroom is a “new world” to the jurors, and one where they need a mentor. We must show the conflict in that new world, the motivations of the client and the defendant. We must show the battle. And finally, we must deliver the story to the jurors to write the ending.

So, let’s begin by finding the hero-centric structure, and its corresponding archetypes, in the courtroom.

17. Annette Simmons, *The Story Factor*, Basic Books, 2006.