Antelopes, Grizzlies & Mountain Lions: Revealing True Character Through Cross:

Archetypal Cross Examination

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"A conclusion is the place where you get tired of thinking."

Steven Wright

By now most criminal defense attorneys have heard of and are likely introducing elements of storytelling into their trial practice. This article hopes to plant the seed of looking at the very foundations upon which stories have been told throughout the millennia. By looking at the roots of story we can the attempt to tell even more imaginative and compelling stories on behalf of our clients.

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"Life is not a matter of holding good cards, but of playing a poor hand well."

Robert Louis Stevenson

In the beginning there was counter punching. Back in a time where, perhaps, beyond a reasonable doubt, presumption of innocence and other constitutional protections still had meaning, it was not uncommon for the strategy to be "show me what you got and I'll poke holes in it." Or, "this is a house of cards, but...if you pull out this card here at the bottom, the whole house falls down." The approach was simple, counter punch the prosecutor's case until they had no case left and the jury would conclude that there was reasonable doubt. There was not a lot of push toward putting on a defense and clients very rarely took the stand.

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"The only real lawyers are trial lawyers, and trial lawyers try cases to juries"

Clarence Darrow

The next evolutionary stage of trial work took place when attorneys began to bring storytelling into the courtroom. At this stage the storytelling was by way of analogy. Storytelling was confined to closing arguments when great orators - such as The Honorable R. Eugene Pincham in Chicago - would tell a personal story, often from their childhood, which would serve as an analogy about why this jury should find this person not guilty because the prosecutor had not proven the case by evidence beyond a reasonable doubt.

In Pincham's story he would talk about growing up in the south where sugar was a commodity. Families would buy sugar not by the pound but rather by the barrel. Pincham's momma would prohibit Pincham and his brother from going into the sugar barrel without her permission. On those occasions when he or his brother would transgress his momma always knew. Pincham grew up thinking his mother was clairvoyant. She wasn't. When he was older he asked how she always knew. She told him she saw a couple of granules of sugar left on the floor. For Pincham, the granules of sugar were like the granules of inconsistency in the prosecutor's case, or the granules of missing evidence in the prosecutor's case.

The use of storytelling in closing argument was a breath of fresh air in its creativity and ability to analogize the facts of the case to something that might resonate with jurors. However, it did not argue in the affirmative that the client was in fact innocent and there was an alternative theory of defense that was a complete, consistent theory with the incontrovertible facts of the case.

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"It's all storytelling, you know. That's what journalism is all about."

Tom Brokaw

"All we want are the facts ma'am."

Sgt. Joe Friday

The next evolutionary stage of criminal defense trial practice was the introduction of story form. As opposed to storytelling in the closing argument by way of analogy, story form was the first attempt at putting the facts of the case, from the defense point of view, in a narrative format that led to the conclusion that the defendant was innocent. In its inception, story form was used in the opening statement as a way to organize the fact into a story structure that lined up all of the facts from A to Z without a lot of crafting or editing.

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"I like the storytelling and reading the letters, the long-distance dedications. Anytime in radio that you can reach somebody on an emotional level, you're really connecting."

Casey Kasum

Once criminal defense attorneys started using story form as a format for organizing information into a complete, consistent, and coherent presentation of evidence, it was only a matter of time before it became obvious that our stories were missing the key ingredient of emotion. As many marketing experts and jury researchers have noted, emotion is the engine that drives the persuasion machine. As attorneys began to explore the use of emotion in the courtroom it was often inconsistent and two dimensional. Attorneys capable of personal emotion were incapable of understanding the more subtle emotions of the witnesses they cross examined. A typical cross of a confidential informant would consist of the attorney sneering at the witness as they recounted for the jury how the C.I. got this "great deal" from the prosecutor. Emotion was much like that found in an old fashioned melodrama or soap opera. There were the folks with the white hats, the defense attorney, and the client. There were folks with black hats, the prosecutor, and the C.I.

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"In seeking truth you have to get both sides of a story."

Walter Cronkite

The next step in the evolution of using story form as the primary persuasion device in the criminal defense trial was the recognition that stories are very seldom black and white. Very seldom are there good guys and bad guys. Most stories have many areas of grey if not a pastiche of colors. It is often easier for a jury to acquit if they do not have to decide that the government witnesses are all wearing black hats. Instead, if those witnesses can be given motivations and biases that are consistent with the defendant's innocence, then the jury can find one side not guilty without necessarily finding the prosecution guilty. Most people in the story unfolding before the jury have their own point of view they now believe is valid. Akira Kurosawa's great film *Rashomon* is a perfect example of this concept. *Rashomon* unfolds as four witnesses recount their versions of a rape and murder, leaving the viewer to decide what really happened. But the chain of events depicted by the bandit, the rape victim, the murdered man's ghost, and the woodcutter have more differences than similarities.

This more complicated view of the story form allowed for much more interesting and real cross examination. Instead of sneering at the confidential informant as the cross examination was taking place the examiner might start off the cross examination from the point of view of the C.I., questioning the C.I. about the fear the C.I. must have felt upon arrest, the fear of losing contact with one's children, the fear of what prison is either like or might be like, and the fear of losing a major portion of one's life behind bars. This approach to cross examination allowed the attorney to show how this witness might very well be motivated to lie without forcing the jury to determine that the witness was evil. The jury could imagine they might lie about our client if they were in the shoes of the witness. The lie was understandable and undercut the credibility of

the witness. It also recognizes that it is not really the C.I. that we despise. It is a system that allows and in fact encourages witnesses to lie for payment. The payment of freedom for testimony.

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"All the most powerful ideas in history go back to archetypes."

Carl Jung

Carl Jung was the founder of analytical psychology. Though Jung was not the first psychologist to use dream study for psychoanalysis, he is one of the most well known. From an early age he believed that there was more to the psyche than individual experience. He is particularly known for his study of symbols, the collective unconscious, and archetypes.

The collective unconscious is a term created by Jung to explain how the structure of the psyche organizes experience. Rather than this structure being individual to each person, Jung was convinced that all members of the species had a commonality of experiences at the psychological level. While each person has an individual unconscious, as a species we experience the same repeating motifs which are the collective unconscious. The collective unconscious is not learned but inherited. It is common across time, continent, and culture. Jung referred to these shared motifs as archetypes or primordial images. Jung referred to archetypes as innate universal psychic dispositions that form the substrate from which the basic symbols or representations of unconscious experience emerge. In other words; the symbols that the unconscious brings forth in our dreams. According to Jung there were four universal archetypes: mother, rebirth, spirit and trickster. All of our dreams came out of those four archetypes in various guises. These archetypes reflect different aspects of the human mind – which our personalities divide themselves into these characters to play out the drama of our lives.

From this basic idea of archetypes making up the collective unconscious, Jung extrapolated archetypal events, (birth, death, separation from parents, initiation, marriage, the union of opposites, etc.) and archetypal character (great mother, father, child, devil/shadow, God, wise old man, wise old woman, Apollo, trickster, hero). These archetypal events and characters are conscious representations of unconscious connections between members of the species. Every society will create its own archetypal representations based upon its individual needs and desires. Archetypes present themselves as constantly repeating characters or energies, which occur in the dreams of all people and the myths of all cultures. While these archetypal characters and stories may be tied to culture or civilization, the unconscious archetype is shared by all.

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"A myth is a metaphor for a mystery beyond human comprehension. It is a comparison that helps us understand, by analogy, some aspect of our mysterious selves. A myth, in this way of thinking, is not an untruth but a way of reaching profound truth." Joseph Campbell

Evolving from the thoughts of Carl Jung, Joseph Campbell believed in the unity of human consciousness and its poetic expression through the arts - in particular story. Campbell believed that the definite structure of the human psyche manifested itself through myth and story. For Campbell, mythology was a constant, consistent retelling of stories reflecting human consciousness. A collective unconsciousness as reflected by the conscious mind in story form. For Campbell the human race could be seen as retelling one human story about the search for meaning through the Hero's Journey. Heroes are those characters who transform themselves or their societies through a search for identity and wholeness. The hero possesses a full range of human emotions and desires and is flawed by definition.

Throughout mythology Campbell noted that the story as form has a basic structure and retelling with very similar characters or character types. Campbell's recurring characters are the natural continuation of Jung's archetypal characters. Campbell's recurring story structure is the natural continuation of Jung's archetypal events. There is a strong correspondence between dream figures and the common archetypical characters and events of mythology. Both are coming from a deeper source in the collective unconscious of the human race.

In his writings on mythic structure, Campbell saw the following recurring character types:

Warrior/Hero – The hero's journey during a story is a path from the ego or the self, to a new identity which has grown to include the experiences of the story. This path often consists of a separation from family or group to a new, unfamiliar, and challenging world (even if it's the back yard), and finally a return to the ordinary - but now expanded - world. The hero must learn in order to grow. Often the heart of a story is not the obstacles faced, but the new wisdom acquired, from a mentor, a lover, or even from the villain.

Examples: Luke Skywalker, Ruben "Hurricane" Carter, Harry Potter, Prince Hal, Joan of Arc, Mulan, Defendant.

Mentor – The mentor is a character who aids or trains the hero. The essence of the mentor is the wise old man or woman. The mentor represents the wiser and more godlike qualities within us. The mentor's role may be to teach the hero. These characters are often found in the roles of drill instructor, squad leader or sergeant, the older police officer, the aged warrior training the squire, a trail boss, parent or grandparent, etc. An

effective teacher may be an otherwise inept or foolish character that possesses just the skill or wisdom the hero needs for the challenge.

Examples: Obi Wan Kenobi, Gandalf, Dumbledore, Denzel Washington in *Training Day*, Robin Williams in *Good Will Hunting*, Parent, Teacher, The Defense Attorney

Threshold Guardian – The threshold guardian is the first obstacle to the hero in the journey. The threshold is the gateway to the new world the hero must enter to change and grow. The threshold guardian is usually not the story's antagonist. Only after this initial test has been surpassed will the hero face the true contest and the arch-villain. Frequently the threshold guardian is a henchman or employee of the antagonist. But the threshold guardian can also be an otherwise neutral character, or even a potential ally such as the police lieutenant who warns the hero private detective off the case, or the Cowardly Lion who first frightens and then joins Dorothy on her journey to Oz. The role of the threshold guardian is to test the hero's mettle and worthiness to begin the story's journey, and to show that the journey will not be easy. The hero will encounter the guardian early in the story, usually right after the quest has begun.

Examples: The Storm Troopers in Star Wars, Ineffective police work, Governmental Bureaucracy, The Judge, The Prosecutor

Herald – The role of the herald is to announce the challenge which begins the hero on the story journey. The herald is the person or piece of information which upsets the sleepy equilibrium in which the hero has lived and starts the adventure. The herald need not be a person. It can be an event or force: the start of a war, a drought or famine, or even an ad in a newspaper.

Examples: An arrest warrant, an honest but mistaken identification witness, the Judge

Shapeshifter - The shapeshifter changes role or personality - often in significant ways - and is hard to understand. That very changeability is the essence of this archetype. The shapeshifter's alliances and loyalty are uncertain, and the sincerity of the claims is often questionable. This keeps the hero off guard. The shapeshifter is often a person of the opposite sex or often the hero's romantic interest. In other stories the shapeshifter may be a friend or ally of the same sex, often a buddy figure, or in fantasies, a magical figure such as a shaman or wizard. The shapeshifter is sometimes a catalyst who's changing nature forces changes in the hero, but the normal role is to bring suspense into a story by forcing the reader, along with the hero, to question beliefs and assumptions.

Examples: Gollum, Glenn Close in *Fatal Attraction*, Confidential Informant, false rape accusation.

Shadow - The Shadow archetype is a negative figure representing things we don't like and would like to eliminate. The shadow often takes the form of the antagonist in a story. But not all antagonists are villains; sometimes the antagonist is a good guy whose goals disagree with the protagonist's. The antagonist who is a villain though, is also a shadow. The shadow is the worthy opponent with whom the hero must struggle. In a conflict between hero and villain, the fight is to the end; one or the other must be destroyed or rendered impotent. While the shadow is a negative force in the story, it's important to remember that no person is a villain in their own eyes. In fact, the shadow frequently sees self as a hero, and the story's hero as the villain.

Examples: Iago, Darth Vader, Valdemort, manipulating parent, corrupt police officer

Trickster - The Trickster is a clown, a mischief maker who provides the comedy relief a story often needs to offset heavy dramatic tension. The trickster keeps things in proportion. The trickster can be an ally or companion of the hero, or may work for the villain. In some instances the trickster may even be the hero or villain. In any role, the trickster usually represents the force of cunning, and is pitted against opponents who are stronger or more powerful.

Examples: The Marx Brothers, Shakespeare's Fool, confidential informant, co-defendant

Campbell believed that if myths are to continue to fulfill their vital functions in our modern world, they must continually transform and evolve because the older mythologies, untransformed, simply do not address the realities of contemporary life, particularly with regard to the changing cosmological and sociological realities of each new era. Here are examples of more modern archetypal characters:

- Care Giver Jesus Christ, Buddha, Oprah, Mother/Father Defendant, Nurse in Romeo and Juliet
- Every Person Harry Potter, Jimmy Stewart, Bill Clinton, George Bush, Hitchcock characters, Defendant
- Outlaw Robin Hood, Clint Eastwood, Han Solo, Thelma and Louise, Aragorn, Defendant who has a past but is righteous in this case
- Lover Romeo and Juliet, Shakespeare in Love, Moulin Rouge, Defendant who never learned from shapeshifting partner
- Jester/Fool Will Farrell characters, Bill Murray characters, Eddie Murphy, ridiculous witness
- Innocent Dorothy, Frodo, Michael Corleone, naive client, manipulated child witness

In his Book *The Writer's Journey, Mythic Structure for Storytellers & Screenwriters*, Christopher Vogler talks about how many Hollywood screenwriters have taken Joseph Campbell's work and used it to create a cookbook for writing screenplays. Vogler writes: "What is a story? A story is also a metaphor, a model of some aspect of human behavior. It is a thought machine, by which we test out our ideas and feelings about some human quality and try to learn more about it." This is precisely what we are doing when we use the story form of persuasion in trial work. We are engaging the jurors with a thought machine. A thought machine that will frame and drive our story forward.

Our trials contain all of the ingredients of the modern myth. Presumptions of innocence and beyond a reasonable doubt are not mythological. They are platitudes without current relevance. Jurors want to know who did what to whom and why did they do it. Who are the archetypal characters in the drama that is unfolding before them? Why did they act the way they did? What is the archetypal event that has occurred before we came to court that led us to the point we are now at? Jurors will try to figure out why people acted in the way they did. If we do not provide that structure, jurors will provide it on their own.

When looking at the characters present in the unfolding story of our trial there are limitless possibilities for archetypal character study. Every witness that testifies stands for something larger than the mere words on the page or in the courtroom. Every witness has motivations and biases that would form the background of their existence if they were written as characters. By finding these archetypal meanings we create a story that is more palpable, has more depth, and is more interesting. All toward driving forward the story of innocence.

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Bongo: I thought you said we were going to get away from our fans!

Bango: Yeah you said this island was deserted, and we'd be all alone!

Bingo: Now how did I know it was inhabited? That helicopter pilot told

me this place was out of sight man!

Bango: We MUST be way out! Get a load of these characters!

Gilligan's Island Script

Gilligan's Island provides an example of how archetypal characters can be found in any setting. Each of the characters in the sitcom could be effectively cross examined to show that they are archetypal representations of the seven deadly sins.

Gilligan's archetypal character = Sloth

In addition to Gilligan's favorite location on the island being a hammock and his extreme aversion to work, consider the following plot points:

My Fair Gilligan, Gilligan saves Mr. Howell's life. As a result the Howell's decide to adopt Gilligan and make him the heir. Gilligan doesn't like the fact that he now has to

review financial publications while the others on the island are having fun so he rejects his new found wealth.

Goodnight Sweet Skipper, Gilligan's inattentiveness leads to him breaking a radio that would have gotten the castaways off the island.

Birds Gotta Fly, Fish Gotta Talk, Gilligan recklessly loses the transmitter from the boat causing the group to become stranded on the island.

Water, Water Everywhere, Gilligan accidently spills the only fresh water left on the island.

So Sorry, My Island Now Gilligan sees a Japanese soldier from World War II in a submarine. No one believes Gilligan because he is always goofing off.

Skipper's archetypal character = Gluttony

In addition to the Skippers expanding beltline, and the fact that he regularly sits down to what could only be described as a feast, consider the following plot points:

The Sound of Quacking, Skipper dreams of eating a duck that has just come to the island instead of tying a note to its leg in the hopes of being rescued.

Physical Fatness, Professor makes fluorescent which he is convinced they can use to signal a plan or boat to get off the island. Skipper wants to get back into the Navy but he is too heavy. As a result he goes on a huge diet. He also wants Gilligan to get back in the Navy with him but Gilligan is too light. In the Skippers obsession to lose weight and Gilligan's obsession to gain weight, Gilligan eats all of the fluorescent.

Professor's archetypal character = Pride

The Professor is the embodiment of scientific pride and achievement in the 1960's. He does not believe in anything superstitious and believe he can build or invent his way home. As these plot points show, he is unsuccessful:

Nyet, Nyet - Not Yet, Two Russian cosmonauts land on the island. Rather than trying to get help from them, the Professor is convinced that they are Russian spies. His attempt to use their space ship to contact helped cause them to leave everyone on the island.

Voodoo, Skipper finds a trove of native artifacts in a cave. The Skipper is afraid of their voodoo potential. Professor laughs at the Skipper and removes all of the artifacts from their hiding place. Horrible results occur to all of the inhabitants as a result of a native witch Dr. putting pins in dolls that resemble each cast away. (Note: the doll of Ginger looks nothing like a Barbie Doll.)

Three to Get Ready, Gilligan finds a gem that appears to grant the finder three wishes. While Gilligan carelessly asks for ice cream two times, the Professor get in the way by insisting that the wishes are just coincidence and that the gem cannot get them home. In the end all of the wishes are wasted by the Professor's denial and Gilligan's childish desires.

Quick Before it Sinks, the professor convinces everyone that the island is sinking based on scientific measurements he has been taking. It turns out that Gilligan was just messing with his instruments.

Forget Me Not, Skipper hits his head and gets amnesia. Professor is convinced that he can help him through hypnosis. The hypnosis causes the Skipper to think that everyone on the island is an enemy and he takes them all hostage.

The Sound of Quacking, Professor keeps the castaways from eating berries when there is no other food available because he is certain that they are poisonous. They are not.

Goodbye Island, Professor takes pride in discovering maple syrup "glue" that will help them repair the boat and get off the island. The glue doesn't hold.

So Sorry, My Island Now Professor thinks he can get everyone of the island by fixing the transmitter on a submarine left over from WW II. Instead, the Japanese soldier who still thinks it is WWII leaves with the submarine.

Mr. Howell's archetypal character = Greed

The Big Gold Strike, Gilligan discovers gold on the island and Mr. Howell makes him spend all of his time mining for the gold.

Three Million Dollars More or Less, Gilligan wins three million dollars from Mr. Howell playing golf. Mr. Howell then convinces Gilligan to give him the three million dollars back for a useless oil well.

Plant You Now, Dig You Later, Gilligan finds what appears to be a treasure chest. Mr. Howell claims that it is his and insists on a trial. Instead of going through with the trial Mr. Howell pays everyone \$100,000 to buy them off.

Agonized labor, Mr. Howell hears on the radio that Howell industries have collapsed. As a result he wants to kill himself despite the fact that money means nothing on the island.

They're Off and Running, Mr. Howell wins all of Skipper's money in a series of turtle races. He even wins the services of Gilligan.

Mrs. Howell's archetypal character = Vanity

In addition to the fact that Mrs. Howell looks at herself in a mirror during each episode, she also has perfectly coifed hair on an island with no beauticians. Hmmmm.

Angel on the Island, the castaways decide to perform the play Cleopatra to cheer up Ginger who was supposed to be in the play prior to the shipwreck. Mrs. Howell insists on playing the lead character instead of the more appropriate figured Ginger.

Diamond's Are an Ape's best Friend, Mrs. Howell is kidnapped by an ape who is attracted to her very strong perfume and her large diamond brooch.

Love's Secret Admirer, Mrs. Howell dreams that she is Cinderella with two very ugly stepsisters. Her Cinderella get-up makes her look like Marie Antoinette.

<u>Ginger's archetypal character = Lust</u>

In addition to the fact that Ginger is always in a very seductive evening gown on the island, and always has bright red lip stick on, and always talks in a very deep voice, there are also specific episodes where she is uncovered.

See Angel on the Island, under Mrs. Howell.

Up at Bat, Ginger plays a very seductive vampire. (This was well before the onslaught of seductive vampires that currently reside on the big and little screen alike.)

The Producer, Ginger plays a very attractive version of Ophelia in an island production of Hamlet.

And Then There Were None, Ginger plays the Lady in Red.

May Ann's archetypal character = Envy

The Second Ginger Grant, Mary Ann has always been jealous of Ginger. She falls and hits her head and then imagines she is Ginger. She starts wearing Ginger's dresses and acts sexy with all of the men.

The Postman Cometh, for months Mary Ann has been sending letters to her "boyfriend" in bottles that she tosses out to sea. A news report comes out that MaryAnn's boyfriend has eloped with someone else. After feeling great sympathy for Mary Ann the rest of the castaways find out that Mary Ann hardly knew her boyfriend and that she was sending out letters to make the others think someone was very much in love with her.

Big man on a Little Stick, a surfer arrives at the island on a giant Tsunami. He is attracted to Ginger's obvious charms. Mary Ann is captivated by his good looks and envious of his attention to Ginger.

Beauty is as Beauty Does, a beauty contest is held on the island. Mary Ann is jealous of Ginger's sex appeal and Mrs. Howell's beautiful jewels and clothing, etc.

The Sweepstakes, the Howells decide to create a private country club. Mary Ann wants very much to have enough money to be able to join the club.

And Then There Were None, Mary Ann plays Eliza Doolittle.

The question then becomes, were these archetypal representations written into the characters purposely by the creator Sherwood Schwartz or are they attributes that I was able to pick out because I have too much time on my hands? Ultimately, it does not matter because each of them could be cross examined on these particular behaviors and events.

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These same principles of character digestion can be applied to witnesses in our trials. When the witnesses are examined in a way that brings out the archetypal representation that they present in the trial/story, the story of innocence comes alive with meaning and depth. To viewers in the courtroom gallery it will appear as if there was never a case to be had. Indeed, viewers of the trial will often ask during the trial how this case ever made it to trial in the first place. It is not that the prosecutor did not have a case, but rather the portrayal of the witnesses during cross examination completely filled out there motives, biases and personality types.

In a recent sexual assault trial in Wisconsin I envisioned the main characters in the following archetypal personalities:

The driving force of the case was a roommate, who upon discovering that the complaining witness and the defendant had sex together, immediately decided it was a sexual assault. She was a *Puppet Master* who had definite elements of the *Shadow*.

The complaining witness was a *Shape Shifter*. She was not the *Shadow* in the story because she was not entirely dark. She saw herself as a *Responsible Driver* and a *Responsible Girlfriend*. She is not the kind of person who would have drove home that evening a little drunk. She is also not the person who would have let the defendant in through her bedroom window even though she was very good friends with his girlfriend.

The *Trickster* was a police officer who had written a report that was favorable to my client. While this may have made him a *Threshold Guardian* or even a *Herald*, his performance on the stand was definitely that of a *Trickster*. Rather than just admitting to what was in his report he continuously played games with me during cross examination about what the various meanings of words were. He came off as someone who was more interested in messing around than in getting at the truth.

The *Threshold Guardian* in the case was the S.A.N.E. nurse. While her information was helpful to the defense she was extremely reluctant to give it and stood in the way of providing this information as much as she possibly could.

The final archetypal character in this drama was the client who simply wanted to make his way back home to Mexico where he was from.

The case was scary from the beginning given the allegation and potential prejudices of a Wisconsin jury. As the trial played out, attorneys who gathered to watch the trial were in fact surprised at what a weak case the prosecutor had. In post trial interviews, the jurors, almost to a person, picked up on the archetypal characterizations that were emphasized during the trial. The client is now back attending The University of Mexico.

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"Truth is one, the sages speak of it by many names."

Vedic Scripture

This article touches on the idea of looking for deeper meaning when preparing for and engaging in the cross examination of witnesses. Witnesses, like all individuals, are living out archetypal experiences in everyday events. Investigation will uncover what deeper meaning and motives witnesses bring to the courtroom. An investigation into these deeper meanings and motivations will open up a whole new approach to cross examination. It encompasses all of the work that has been done before but raises the level of storytelling to a psychological level that resonates with truth in the courtroom. Jurors will wonder why they were called in to judge this case. They will walk away with great remembrance of the story that unfurled before them, and while they may not always hate the witnesses on the prosecution side they will understand their credibility

has been permanently soiled. As Joseph Campbell used to say "Stick with this stuff. It'll take you a long way."