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# under analysis

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BY THE LEVISON GROUP

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## CLASSIFIED THOUGHTS OF A TWO-HATTED, TWO-HEADED, MAN

Charles S. Kramer

Attorneys love to classify. It may even be an inextricable part of "thinking like a lawyer". It is thus not surprising that attorneys across the nation are currently petitioning for the right to further classify themselves, to label themselves "specialists." In their rabid pursuit of descriptive titles, however, these lawyers seem oblivious to the fact that "specialization" is a two-edged sword. Although a specialist label may help you succeed,

Good Morning, Mr. Smith. This is indeed a complex question. You'll be happy to know we specialize in foreclosure matters

it may also be turned against you,

You've retained who?? My god, man, he's not a real estate attorney, he's a foreclosure specialist!.

The trend towards specialization is the latest refinement of a long-standing professional idiosyncrasy. For years, lawyers have been asked to classify themselves. It starts the moment they wander into their first interview for their first job. "So," the interviewer asks, "do you want to do corporate law or

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litigation?" How is the aspiring lawyer to respond? The recent graduate's exposure to the real legal world is limited. Ivory tower corporate law classes are not closed door negotiations. Mock trial is closer to Perry Mason than state court proceedings. The choice isn't easy and the possible selections are widely diverse.

The "corporate lawyer" is known to the world as a relatively high-brow, quietly intense, individual who advises clients on subjects such as business acquisitions, loans, leases, and contracts. He earns his keep by putting deals together and keeping his clients out of trouble. The "trial lawyer", on the other hand, is a sports car driving, red meat-eating attorney who knows the courtroom inside and out and can try any case -- even when he hasn't a clue how the underlying product operates. The trial lawyer becomes involved only after the damage has been done, when it is time to force a transgressor to pay or to defend the wrongly accused.

I never was any good at answering interview questions. Accordingly, when asked the classification question, I stunned interviewers and myself by declaring I wanted to be both a corporate lawyer and a litigator. Frankly, I didn't know any better (a fact that most of the law firms who interviewed me were quick to point out).

In time, however, I discovered a home. My now-partners were either similarly unaware of the impossibility of it all, or

figured I'd grow out of it. They agreed to the experiment and my two-hatted career began.

I was schooled in the art of the deal -- lease and contract negotiation, product distribution and marketing theories, antitrust, real estate, employment issues and general business concerns. I learned to draft agreements and to demand personal guarantees and written representations and warranties to protect my client. At the same time however, I also learned the art of legal war -- litigation strategy, the knack of the deposition, the technique of motion practice, the rules of evidence, trial techniques and the bluff and the bludgeon. I learned to draft pleadings, to show that guarantees were unenforceable and that my client couldn't be held to his written representations or warranties. When I was immersed in corporate work, litigators would shake their heads and walk away, muttering something about nerds and fear of combat. When I was preparing to argue a summary judgment motion, the real estate and tax lawyers would bemoan the transitory nature of it all.

I eventually learned that, potential Nike endorsements aside, most attorneys are comfortable with the corporate - litigation distinction and have no interest in cross-training. A couple of years ago, for example, I was negotiating the sale of a business in the office of the purchaser's attorney. About an hour into the process, his firm's summer intern stuck his head in the door and apologized for interrupting. "Excuse me, Mr. Corin," he asked, "do I have to file the original interrogatories

with the Federal Court?". My adversary didn't miss a beat. "Ask one of the litigators" he snorted, "or turn your t.v. to the Discovery Channel. Isn't that why we got cable?".

Attorneys who practice both corporate law and litigation have an edge in both arenas. The twin-hatted "corporate attorney" knows, for example, what clauses of a document need not be argued over (since they'd be held unenforceable anyway) and, more importantly, how to plea bargain his own speeding tickets and force his own misguided house contractors to complete the job as promised. In the same manner, the two-headed "litigator" is sensitive to the broader business needs and goals of his or her client and is aware that what is best for a given lawsuit may not actually be in the client's overall best interest. Notably, the cross-trained litigator can also competently negotiate his own better deal with the handy-man hired to complete the work his housing contractor never finished.

Nevertheless, the combination is not without its problems. Switching perspectives magnifies frustration and exacts its own, personal toll. In the typical corporate deal, all players want the deal to close. A corporate attorney will rarely respond with computer-generated form objections or yell on the phone for effect. Instead, he'll spend hours thumbing through a thesaurus to make sure he's used every possible synonym for the words "claim" or "lawsuit" in his release provision. In litigation, on the other hand, there is usually at least one party who would be happier if the matter was never resolved.

The litigator is less concerned with precision of drafting. If there's a disagreement over wording, the trial attorney can always hide behind notice pleading or seek leave to amend. The combination approach to the practice may thus lead to more anxiety, rather than less. Finally, there's also the need to overcome the fear known as the "Judy Collins Syndrome." As I could swear I once heard Judy Blue Eyes warn,

Now friends are acting strange.  
They shake their heads, say I've been changed.  
Well, something's lost but something's gained  
in law every day.  
I've looked at law from both sides now,  
From win and lose, and still somehow,  
its law's illusions I recall.  
I really don't know law at all.

Although the corporate self may find litigation trying, and the trial self may feel corporate adversaries make too big a deal over wording, as long as the two-headed attorney makes sure he hasn't bitten off more than his mouths can chew, the improved service a bi-legal attorney can render, far outweighs any personal disadvantages.

The competitive pressures of the profession may some day require lawyers to specialize. In a sense, however, there are a few attorneys who, without much pomp or circumstance, have already carved out a highly beneficial niche in the practice -- those who play "Both Sides Now."

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