

# The Mask that Becomes You

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“What do you do?”

“I’m a lawyer.”

“What kind of law do you do?”

“Fund formation.”

“...?”

“It’s like ‘fun’ with a *d*.”

“Oh.”

One of the advantages of being a litigator is that other people get it. I used to be one, and I never had to explain myself. Litigation involves conflict. Conflict makes for good stories. Good stories make for good television. So . . . everyone knows what litigators are, and everyone has a pretty decent—albeit mostly inaccurate—idea of what they do. I certainly did, heading downtown with my recent law degree and first-year-associate, big-firm litigation job.

That job lasted one and a half years.

When I left, I had a choice between two firms. One was a litigation boutique: dynamic name partner; reasonably interesting cases, one involving a local sports star. The other was the corporate department of another big firm with a reputation that was a little less brutal but not by much.

That should have been an easy choice.

I’m grateful that it wasn’t.

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Tax lawyers, fund formation lawyers, securitization lawyers,

employee benefits lawyers—these are shadowy delineations for most people. The women and men who do this stuff are associated with printed paper, telephone conference calls, and plate glass windows in downtown office towers. To non-lawyers—except certain rare, highly specialized breeds of business people—what they do is a mystery. There is a black box: Emails, phone calls, meetings, and lots of dollars go in; documents, most of which will be read only by a small number of other specialists, come out. Even to lawyers who have had the benefit of classes in securities and partnership law and federal income taxation during their three-year education, the activities are vague.

But combine civil procedure, constitutional law, and 50-plus hours of *Law & Order*, *Matlock*, and *The Practice* and you know what’s going on. Heck, pare away the civ pro and con law, and there is still a firm basis for speculation.

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“What do you want to do?”

This was from my wife, pre-kids, who had her own high-stress career.

“I don’t know. I can do either. They’re both better than selling cars.” That is what I used to do.

“Yes, but you need to make a choice.”

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In *The Paradox of Choice* (2004), psychologist Barry Schwartz argued that giving people too many choices lessens their



satisfaction. This is counterintuitive, which Dr. Schwartz recognized:

Autonomy and freedom of choice are critical to our well-being, and choice is critical to freedom and autonomy. Nonetheless, though modern Americans have more choice than any group of people ever had before, and thus, presumably, more freedom and autonomy, we don't seem to be benefitting from it psychologically.

Dr. Schwartz's solution is to understand your goals, cut down your decision-making time, and learn to live with the results. I had two choices. This should have been easy. But have you ever tried to understand your goals? Really?

I liked what I did before having to choose between the litigation boutique and the big-firm corporate department. What I didn't like so much were some of the people I did it for. The choice, from that angle and at that time, was whether to work for a bunch of people I didn't know yet at Shop A or work for a bunch of people I didn't know yet at Shop B. I was okay with cutting down decision-making time, and I thought I could live with whatever result I got, but the goals bit was confounding me.

My goal, for work, was to have a career of 30-plus years, keep my mind engaged, not have sending the kids-to-come to college be too economically painful, and retire with a decent nest egg. It looked as though either place could do that. So make a decision and live with it, right?

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"Litigation is a 'zero-sum game,' and the gain to one party is offset by the loss to the other." Professor Dan Fischel may not be 100 percent right on that (so no need to write in), but he expresses a view that a lot of people share. There are winners and losers. To be successful in the litigation arena over a 20- or 30-year period means winning—if not every time, then as often as possible, and definitely more often than losing. It means thinking through every angle, preparing, over-preparing, and over-over-preparing. It means that winning is very important. It means that losing is very bad.

There is a story about an extremely successful litigator in town who decided to leave his post-college children no money. He gave them no assistance at all. His reason, he said, is that he wanted them to be strong—like him. I think he must believe that only by exposing his children naked to the battles of life could he help them develop the skills, ambition, and fortitude to succeed, to be winners. If life is a conflict with winners and losers, they will be stronger by having to fight it out themselves. I think he's right—if life is a conflict.

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"You are in trouble." It's Monday morning. I am pouring myself a tasty cup of free coffee in my first firm's kitchenette.



"What do you mean?"

"It's the XXX case. We all were here yesterday until midnight researching YYY."

"When did that meeting get called?"

"Yesterday. Didn't you check your voice mail?"

"Um, no."

"You're supposed to check your voicemail. ZZZ probably wants to see you."

The walk to ZZZ's office is not fun. I head down the hallway past my colleagues navigating through Lexis, around the corner past the closeted practitioners of mass torts, past the corporate folks, the earnest junior associates and chubby, jolly partners, into the domain of the litigation powers. Here they are smart, they are bespectacled, they are severe. I continue down, all the way down to the specter in ZZZ's office, the focal point of displeasure.

"We needed you here last night."

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If anyone reading this has ever read "The Mask of Morgumm!," which appeared in *Strange Tales #91* (Marvel Comics Group, December 1961), I'd like to meet you and buy you a beer. The story, if you are eight years old, is riveting. A handsome trickster buys a scary mask to hide his identity while he does a dastardly deed. When the deed is done, he goes to make his getaway but . . . *the mask won't come off!* It is who he has become; it is who he is. R. L. Stine picked up the theme in his book *The Haunted Mask*, and you may recall a *Night Gallery* episode with a similar dénouement. The lesson is pretty straightforward: Don't put on scary masks because they can stick.

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"What did you do?" My wife, again.

"I said I was sorry."

"... and?"

"That I should have checked my voicemail and that I'd stay late all week to get the research done."

"... and?"

"She said it was done, that I should thank the other associates who showed up."

"She could have called the house."

"Yes."

"She's mean."

"Yes."

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Albert Camus is supposed to have said that life is the sum of all your choices. Not that living by the words of a French existentialist is guaranteed to get you where you want to go in life, but an authority no less august than Albus Dumbledore echoed the same sentiment during a particularly sticky moment in Harry Potter's early school career. ("It is not our abilities that show us what we truly are. It is our choices." *Harry Potter and the Chamber of Secrets*).

Of course, choosing a place to work, or even a career path, generally is not an ethical choice. There are places—organizations (and some firms)—trying to change legal and social policies. There are pro bono institutions. There are public defenders (and prosecutors). But most law firms are commercial shops, and that is what these two firms were. Whether you choose to draft briefs for Company A or registration statements for Company B, the ethics boil down to about the same.

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"Congratulations on your new job." I'm leaving Shop A with a box of photographs, a radio/CD player, and some hornbooks I should have sold after law school.

"Thanks."

"Out of the frying pan into the frying pan, huh?"

"I guess I just like big firms."

"But why corporate?"

"..."

"Isn't it boring?"

"Um, it looks like good chunks of it are."

"Well, good luck. Better you than me."

"OK, thanks." I head for the elevator but then turn back.

"You know what it was?"

"No. What?"

"I don't know anything about corporate, outside of some law school courses. The first few years look especially boring. Litigators, on the other hand, write memos about interesting areas of the law. We construct arguments. We learn new fact patterns about different industries. It's interesting. They review registration statements and draft contracts. They do due diligence, whatever that is. But I walk down the halls and look in the offices of the partners—the people we are going to be in 20 or 30 years, God willing—and most of the corporate and tax partners are fat and happy. Maybe it's because they don't have to do anything anymore. Maybe it's because it gets easy. But the litigation partners look stressed. They're kind of haggard."

"What about Terry?"

"OK, she looks great. But a lot of the others . . . I think I'd just rather be fat and happy. Given that choice, I mean." ■