



101 Managing the Transition to In-house Counsel

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THE Young ATTORNEY'S GUIDE TO IN-HOUSE Success

by Lyudmila Davidova

In Brief

- Fresh out of law school and ready to take on the world?
- Have some experience under your belt, but want to move up?
- Get advice from another young in-house attorney.
- Discover how best to serve your clients and make a good impression.

ACC Docket 58 July/August 2006



ACC Docket 59 July/August 2006

I remember my first day as in-house counsel, a brand new lawyer right out of law school. I had good technical skills, and of course I continued to improve those in my first few years on the job. But I also started to learn something just as important: what it takes to succeed as in-house counsel. I realized that my goal was to be more than a legal adviser off to the side in an office somewhere; I needed to become part of my company's big picture, and that would take hard work. So I developed what I call the 360-degree principle: 360 degrees of communication, value, and respect. If you're a new attorney—or maybe even if you're an old one—I hope that my thoughts on this principle will be helpful to you, too.

Seeing the Big Picture

I joined Wrigley's law department right after law school. I had interned there for a couple of years during law school, which may be why I was immediately assigned significant responsibilities in commercial transactions and international corporate governance. Things went well, I thought; the business people who were my clients were happy with me and my work. But my success didn't have the impact that I had expected on my career—I wasn't hitting the benchmarks. (See "The Top 5 Benchmarks for Young Attorney Success," below.) So I decided to do something that I'd recommend to any of you in my position—a young attorney uncertain about his or her career—ask for help. (See "Getting a Mentor's Help," on p. 62.)

The 360-degree Principle

My strategy to seek out mentors in annual "career meetings" produced immediate benefits. One of the key messages I got from my first career meeting with the general counsel, is that concentrating on technical legal skills will not guarantee success for an in-house attorney. Instead, I needed to learn the business and to spot legal issues in the context of that business. And to do that, I needed what I later formulated as the 360-degree principle. I needed to earn the trust and respect of all of the constituents around me: my business clients, supervisors, assistants, and colleagues.

I think most of us young attorneys know instinctively why we need to earn the trust and respect of our business clients and our supervisors. Our careers depend on meeting their expectations. We may be less aware of how well we are communicating with each group; as my own experience shows, your supervisor (for example) won't necessarily be aware of the respect you're earning from



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your business clients—unless you make sure that he or she is kept in the loop. But sometimes, in our eagerness to focus on these first two constituencies, we neglect the other two: assistants and colleagues.

Your assistants are the people you can count on to help you with your daily workload and to hold down the fort when you are out of the office. If I can't make an important meeting due to an unavoidable conflict, I don't worry; I know that my assistant can go in my place and take notes. My business clients appreciate not having to reschedule the

meeting. And who else but your assistant will catch the Typo of Doom? Not to mention any names, but I know one young attorney who misspelled the name of one of her bosses . . . fortunately, my assistant caught it before my boss had to sign the document. It is very important to have good communication and mutual respect with your assistants.

Your colleagues complete the circle surrounding you. Some of them will eventually become your good friends, someone to share insights with about the organization and your successes and failures. One of my friends once told me that he thought the workplace wasn't for making friends. But even if you could survive without friends in the workplace—people in the same environment who can understand and share thoughts, ideas, frustrations, and excitements about your day-to-day projects and responsibilities—would you really want to? If a colleague has a problem, offer empathy and support. Remember, next time it could be you.

Sometimes it is challenging to manage priorities and deadlines and still be attentive to everyone around you, but if you do invest the time and effort in earning the trust and respect of every group, you will be rewarded:

- Your business clients will want you to work on their projects because they will respect your work product and trust that you will address their issues;
- Your supervisors will prefer your assistance because they will respect you for your business knowledge and trust you to make them proud of their legal team;
- Your assistants will want to work for you because they will respect your management style and trust that you will listen and understand their challenges—such as the need to balance personal life with job expectations;
- Finally, your colleagues will respect you for your discipline and trust that your assistance on their projects will be top-quality. And, at least, you will have a network of friends and support that will enrich your life.

360 Degrees of Communication and Value

I think that the keys to earning each group's trust and respect are surprisingly similar. In each case, my focus is on proper communication and adding value. For me, good communication depends on five key tools:

- listening to what is said;
- acknowledging what you've heard;
- communicating by a method suited for the recipient;
- responding within a reasonable time; and
- responding in proper language.

Of course, you adjust your communication style based on the audience. You may tend to listen more with senior clients and supervisors and be more direct and talkative

with peers and assistants. However, the same fundamental skills make for the best communicators.

Listening

We all know that we need to listen. If your supervisor questions or criticizes your work product, that's the perfect chance to show your supervisor that she doesn't have to say things twice. When your assistant seeks your advice on his career development, give him the career challenge he's looking for, so you can be a better manager and gain a more productive and loyal employee.

Listening to your business clients helps you understand their legal needs and better consider all possible solutions. By listening, you will learn about their concerns and gain trust because your advice will address all their issues and be more complete. In addition, it also gives you a special opportunity to show respect. I find that while nonattorneys respect attorneys for their insight and legal expertise, they may find legal talk intimidating or may have low expectations of how much we care about their problems. They especially enjoy when attorneys listen to their issues.

Some of the best listening is active listening. What new projects are in development in the company? Find out, and you can anticipate any workload increase and prioritize, because you will know how the new projects will impact your business clients and your company. What are the hot business issues in the field? Find out, and you will have time to consider potential issues and research solutions, and, when it is time to provide guidance, your business clients will respect you for your prompt and complete advice. Keeping your ear to the ground can produce huge rewards; consider going the extra mile, and keep tabs on business meetings, presentations, reports, and news that are outside the strict scope of your legal responsibilities.

Be interested in everything! It's all part of the big picture that you want to be a part of: your company's history, its product line, its financials—everything. For example, I received an invitation to sign up for a free daily business update on the confectionery industry. Although I am very selective with my subscriptions because there is only so much time in a day, I signed up. And one day, I was the first in the department with the news of a competitor's business expansion. My department's senior staff was impressed, and they appreciated my sharing news that could impact our business.

Acknowledging

You *must* acknowledge all forms of communications, whether an email, voice message, fax, or office visit. That

Getting a Mentor's Help

Finding mentors—people who have been down the same road you want to travel (or know a lot about it)—can make all the difference. I had been on the job one year when I decided to schedule a meeting with Wrigley's general counsel. I have found that if you ask senior members that you respect in your organization for help in developing or refining your career plan, they will usually be generous with both their time and advice. It was certainly true in this case—the meeting impressed upon me how important it was to gain a better understanding of my clients' business needs—that paid dividends in the following year. My understanding of the business rationale of a major project enabled me to handle it without much direction—and impress a senior member of my business unit. So, I decided to do the same thing every year: Pick a senior member of my organization, ask him or her out to lunch, and ask what I could do to improve my performance or further my career. My second year, I asked the senior director of Treasury Services, whose group I supported throughout the year, to lunch with me. As a tax professional, rather than a lawyer, I thought he might be particularly helpful to my focus on expanding my understanding of the company's business. He advised me that to understand the business, I needed to expand my responsibilities. After some reflection, I realized that my company was rapidly expanding its real estate holdings, and that this was an area that could use some extra legal help as well as being a good fit with my transactional interests. So after the meeting, I approached my supervisor and asked to assist with real estate matters. My supervisor welcomed the idea, and I was assigned to handle commercial leases.

The Top 5 Benchmarks for Young Attorney Success

- A leader on projects
- Included in strategic confidential discussions
- Has direct contact with business clients
- Participates in meetings
- Gets invited to business clients' events

was a point especially stressed in my second annual “career meeting” with the senior director of Treasury Services. If we fail to acknowledge clients’ communications promptly, they will doubt our awareness of their issues and our support.

This point may seem obvious. But think about how we, as attorneys—especially new attorneys—communicate. We have no problem acknowledging when an issue is straightforward. However, when the issue is new or complicated, we are often tempted to delay until we have the answer. What we need to understand is that our quick response is essential. Most business clients will be quite satisfied if you reply that you are working on their issue and you will reply to them by a certain date. For example, if you reply to your business clients by stating that the presented contract will be reviewed within two days, they can proceed with scheduling a meeting with their counterpart with your timeframe in mind.

Another type of reply that we need to become comfortable with is the admission that our knowledge is limited. This is hard for us; but it is essential. If your business client asks you an accounting question outside of your expertise, tell him so. Don’t delay someone’s project

by hesitating to reply because of your limited knowledge. Instead, immediately direct them to an expert. Your business client will respect you for your suggestion and trust you for referrals for their questions.

By a Suitable Method

Attorneys say or see the phrase “on a case by case basis” regularly. That applies to communication, too. Even though you may prefer email, always think about the intended recipient. By communicating via the most appropriate method, you will show the individual attention that each group expects from you.

Some business clients may find email challenging because they may not be comfortable with technology. Instead try a telephone call or face-to-face visit.

If it will take more than one email to address your business clients’ concerns, email may not be the best choice. I have seen email sequences go back and forth a dozen times without a resolution. In that situation, consider calling or meeting with your client to address all potential options at once. Your business client will appreciate your approach because his questions will be addressed promptly.

Email may also not be the best choice if someone’s feelings or self-respect are at stake. If your assistant asks your opinion on his work product, and you email remarks are not 100 percent positive, that might trigger a defensive reaction. But if you meet in person and discuss your remarks and your reasoning, you can defuse any frustrations in your face-to-face discussion.

Remember, email was intended to enhance communications, not to replace all other types. And remember, unlike verbal conversation, which allows for instant clarification, restatement, and body language, what you write in email cannot be changed.

Within a Reasonable Time

There is no better way to show respect to any member of our constituency than responding within a reasonable time. If a client or colleague asks for your advice, that probably means she can’t proceed without first hearing from you.

Of course, the word “reasonable,” as attorneys know, is subjective. For example, I learned by observing how one of our vice presidents interacts with others that he places a very high value on having his questions addressed right away. If he doesn’t get a reply within a couple of hours, he will email that person and ask him to reply immediately. For him, that *is* a reasonable amount of time. So whenever I get a question or a project from

him, I try to get back to him as soon as possible. This vice president is also known for not only demanding answers promptly but also for replying promptly. I know that if I need his input to finish a project, that I can count on him replying almost immediately—because I have earned his trust by always replying within what *he* considers a reasonable time.

With Proper Language

One of the hardest things for us to realize as new attorneys, after our hard-won skills in legal writing, is that legal language is probably not appropriate for every group. The general counsel at my company often advises us to communicate with our clients by expressing our advice in business language, rather than legalese. I’ve found it helpful to remember the following:

- Be concise and to the point. Leave your Latin at home!
- Explain the concerns and potential solutions.
- Never cite cases or statutes; business clients don’t care which case or statute blocks their transaction.

When you communicate with business clients in their language, they respect you for explaining legal issues in terms they understand. The same is true for colleagues who aren’t familiar with specific terms from your practice area. Don’t assume that just because someone is an attorney, he will understand your specialized lingo.

Add Value

As one of my business clients observed, after you master these tools to improve your communication etiquette, you are more than halfway down the road to success. The other half? Proving that your presence in the department adds value. I find the following points a helpful guide.

Ask Questions

One important way to add value for your clients is to be actively engaged. After listening to their story, ask questions. For example, maybe your client has decided to enter into a joint venture. You may want to test your client’s preparedness for a joint venture by presenting the issues that will arise. Who should be in charge of the joint company? Should it be managed by someone from either company or by a third party? Instead, what about a licensing agreement, which avoids the need to compromise that is involved in the joint company setting? Asking questions about your business clients’ projects can gain you their respect by helping them see possible pitfalls and other available options.

Your questions can also add value for your supervisor and colleagues by showing them how their clients

When ‘No’ Means No Dead Ends

Last year my supervisor asked me to relocate to Russia to assist our attorney in the Russian office. Of course, I wanted to be a team player! However, I had a dilemma: During that same time, I was the only one working on a restructuring from our first international acquisition, and I was also assisting with matters arising from a large domestic acquisition. I did not want to let my business clients down by transferring my ongoing matters to another attorney. Instead of objecting to the request, I came up with a solution that worked well for all parties. I proposed that business clients in Russia email me their contracts for review and approval. The proposal was accepted, and for a few months I was reviewing Russian transactions from my Chicago office. My existing projects got done, and in addition, my department avoided some potentially large travel and relocation expenses. Which just goes to show, it’s important to be familiar with your technological options, as well as with your legal options.

or counterparts may perceive their advice. Asking them questions about their assumptions and methods may lead them to discover that they have not thought about the issue fully or from every angle. They will respect you for helping them be better prepared to respond to their clients. Of course, you have to ensure you have gained the trust and respect of your counterparts first, so as not to be seen as just being contrary! To avoid sounding preachy, you may want to offer suggestions through questioning as opposed to directly telling them what to do.

Be Flexible


Being flexible means you never say just "no." For instance, I'm not rigid about requiring business clients to sign only my preapproved confidentiality agreement form. If the client needs to evaluate a software package, and the software company insists on its own form, I will offer to review it. My business clients respect lawyers who try to accommodate the needs of the business.

However, there are times when it is difficult to be flexible with a request. In such situations, I try to think about various options and offer a win-win solution. Take the confidentiality agreement example again. If your company

has a written policy that your business clients can sign only your standard confidentiality agreement, then offer to work with the software company to accommodate their requirements.

And sometimes difficult requests come from your supervisors. Remember, you don't have to say "yes" to everything to avoid saying "no." (See "When 'No' Means No Dead Ends," on p. 64.)

Close the Circle

If you communicate fully and courteously and focus on adding value to your constituencies, you will have a complete circle of trust and respect, from assistants, supervisors, colleagues, and business clients. With 360 degrees of trust and respect, you will be well on your way to a long and successful career as an in-house attorney. 

Have a comment on this article? Email editorinchief@acca.com.

Lyudmila Davidova, "The Young Attorney's Guide to In-house Success," *ACC Docket* 24, no. 7 (July/August 2006): 59-65. Copyright © 2006, the Association of Corporate Counsel. All rights reserved.

Creating the Legal Function:

By James E. Williams

The process of creating a legal function presents a unique challenge. In reality, you have two jobs. The first is the job of chief legal officer (CLO) (or other in-house counsel position), which is hard enough as we all know. The other job is educating senior management and the company about your role and the role of the legal function. This can be an especially delicate task: Your CEO and management teams will have strong views about your role, some of which may be inaccurate, especially if they have never before had internal counsel on staff. You will have to work to build their trust and, at the same time, challenge their ideas about your role. This requires you to walk a fine line. Defining your role within the company also presents a unique opportunity. In most cases, an in-house attorney is hired to fill a well-defined role (SEC counsel, employment counsel, etc.). Creating the legal function allows you to define your role and, ultimately, design your job as well as its function: A rare opportunity in a professional's life. In the process of building the legal function at my company, I have learned a few lessons about the keys to success in such an effort. While there is no "secret sauce," there are some practical, important steps to take that can ease your transition into the company and smooth out the process.

A Formula for Success

Initial Steps: Before Coming on Board

I strongly recommend that if you are the company's CLO, you negotiate to report directly to the CEO. The key component of a CLO and his or her department's success is their perceived authority within the company. If you end up reporting to a CFO or COO, your stature, and consequently your authority, will be diminished. It's not that you cannot be successful reporting to a COO or CFO; there are many examples of successful CLOs who do not report to the CEO. However, you will find the job of building the department much easier if you report to the CEO and are seen as a part of the company's executive team.

You should also investigate the company's ethical culture before coming on board. Use your network to do your due diligence on the company. Ask direct questions of the CEO, board, and management team. Spend time with outside counsel and ask them about the company. A key issue to consider is the timing of the creation of the legal function.

- What is the driver and who are the proponents within the company?
- Is the company creating the function early or late in its life cycle?
- If the company, for example, has been public for many years and is now creating the function, what was the reason for the delay?

Answers to these questions will give you insight into whether the company values (and understands) the legal function, and how receptive they will be to your recommendations. CLOs and legal departments, for all of the value we bring, cannot remake a company's culture. It is vital that you have a full understanding of the environment you are stepping into before taking the job.

Obtain the CEO's Support

This may seem a bit obvious, but I have found this to be the single most important ingredient for success in creating the legal function. The CEO must communicate to the other members of management that the CLO is a key member of the executive team, whose ideas and recommendations are to be treated with deference. The CEO must also communicate that the CLO and the department must be kept fully informed of developments at the company. For example, I asked my CEO, at certain meetings I convened early on, to make a few introductory remarks or kick-off the meeting, so that all of the attendees got the message: The CEO stands behind the



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CLO and the legal function. Another example is that when our department heads visit the home office for their quarterly reviews, they are required to meet with me to review compliance. These steps really help to reinforce that the CLO and the legal department are important functions within the company. Having your CEO deliver and reinforce this message will give you the credibility and authority you need.

Build the Trust of the Company's Senior Executives

I have found that the relationship between inside counsel and their clients is a lot like that of a dentist and his or her patients: They do not look forward to seeing you, and are

often not happy with the news you deliver. Moreover, as is often the case with dentists, the longer the clients wait to involve us, the worse the problems get. To avoid this, it's important to let the senior executives know you really are there to help them. Although they may become frustrated with you, if they understand that you are looking out for their best interests, they will appreciate you and your department much more. A few early "wins" can go a long way in this regard. In my first few months, I was able to identify a few cost savings and win a legal battle with a small publication. Albeit small items, they helped to quickly build trust. If you are able to demonstrate that you are all on the same side, you will earn their trust and support, which are vital to your success.

Integrate Yourself into the Business

This step involves more than gaining that important and essential understanding of your company's business. You need to take it a step further and become fully integrated into the functioning of the departments. Attend departmental staff meetings and quarterly reviews. Ask questions. Become an active participant in these meetings. This will enable you to anticipate legal issues before they arise and get to know the political dynamics and personalities within your company. This will also help you to be seen as a business partner. Ultimately, the better you understand your client, the better you'll be able to advise them.

Build a Good Relationship with the Board

In today's environment, boards of directors, especially those in public companies, will be particularly glad to have a company CLO. As a first step, you should be pres-

You will have to **prioritize** and decide how best to address each issue and **which battles to fight**. Keeping your sights on the **overall objectives** of the business is also important.

ent at all board and board committee meetings, and have an executive session with the Audit Committee and/or the full board on a regular basis. This will send the message to the board that the CEO sees you a key member of the management team. It will also allow you keep abreast of developments in the board room.

Your board will also want to know that they can speak freely and openly with you as the CLO, and will want your candid assessments of your company's overall legal compliance. Being transparent will be one of the keys to building trust with the members of the board. As long as they know they can speak freely with you and can rely on your candor, you will have gone a long way to building a good relationship with them. Another key element will be letting them know that you are looking out for them. In my case, one of my first projects as CLO was to put in place a D&O insurance program and present the recommended program to the board members for their review. Taking them through the details of the program, answering their questions, and putting in place a program that gave them sufficient protection helped me deliver a key message: I am looking out for them and their interests. Ultimately, your client is the company and not the individual directors, but you have a responsibility to them as in-house counsel. If they feel you are transparent with them and looking out for them, they will support you.

Establish Control of the Outside Counsel Relationship

In most cases, if you are creating the legal function, the company will already have outside counsel. Outside counsel will be used to interacting directly with the CFO or the CEO and the board. If you are the CLO, outside counsel will have to understand that they now report to you as the CEO will now hold you accountable for their performance. This doesn't mean that they can only talk to you (although on important issues, you should be the first one they call). In most companies, that's impractical. It does mean, however, that they not get ahead of you on important issues or issue important legal recommendations without your approval. There are some obvious exceptions to this, such as when outside counsel is ethi-

cally obligated to go directly to the CEO or the board.¹ The CLO (or other inside counsel) should also be the first point of contact for the board and management, so they can decide if and how to involve outside counsel. This will be an important component of building your authority and the authority of your department.

I also recommend that, as part of your negotiations to join the company you secure agreement that, as CLO, you will have the ultimate authority over selection of outside counsel. This way, if you need to make a change, you will have the authority to do so. You should, of course, always involve your CEO and management team in significant decisions to change counsel. This type of change can be disruptive and will have a major impact on them. However, since the ultimate responsibility rests with you, so too must the authority. In addition, if you elect to make changes in outside counsel, be clear and transparent about your reasons (cost, performance, etc.). Also, be objective and open about the reasons for making the change so that the management team and the board will appreciate the basis for your making a change.

Lastly, make sure that the management understands that, while you manage outside counsel, you are not a replacement for them. There are many day-to-day tasks that you can take over, but you will need outside counsel for various other tasks. In companies that have not had inside counsel, this will be an important message to deliver.

Pick Your Battles/Become a Business Partner

This may go without saying, but you will have to pick your battles. Since you are entering an environment that has been without a legal function, the company will not be accustomed to the oversight that comes with internal counsel. You will have to prioritize and decide how best to address each issue and which battles to fight. Keeping your sights on the overall objectives of the business is also important. If, as in my case, you are entering into an entrepreneurial environment, tailor your advice appropriately. While adherence to the law is essential, the optimal approach for a Fortune 500 company may

not necessarily be optimal for your company.

One practical example of this is that if one of your business units negotiates a high volume of contracts with small business owners, it is likely to involve a fairly standard form. I worked with the sales team to finalize an agreed upon form in advance. As long as the sales team doesn't make changes to the form, they are free to execute the agreement with customers. Only if they deviate from the form do they need to come to me. This helped speed up the contracting process and drive revenue, which is critical to all of our clients. Being seen as

a problem solver and a provider of practical legal advice will help you overcome the obstacles of building a good relationship with your client.

Identify What Resources You Will Need Quickly

It is important to identify the staffing and budget resources you will need as quickly as possible. You do not want to be in the position of moving too slowly on this front and end up with too few resources, or being perceived as a bottleneck. Use input from the client to help determine what your priorities should be and

ACC Extras on... Creating a Law Department

InfoPAKs

- *Law Department Glossary of Job Descriptions*
This **InfoPAK** includes an overview of typical skills, educational backgrounds, and duties for numerous corporate legal department positions. www.acc.com/resource/v7261
- *Strategic Planning for In-house Counsel*
This **InfoPAK** is intended to provide in-house counsel with information focused on strategic planning issues. www.acc.com/resource/v6813
- *Technology Primer*
Designed for use by law departments with between one and five lawyers, this **InfoPAK** is intended to provide information on technology issues within the in-house legal department. www.acc.com/resource/v4832
- *Law Department Management*
This **InfoPAK** is organized by key topical issues that we have found to frequently arise in the management of law departments. www.acc.com/resource/v6014

Other Resources

- *Law Department Models*
This **quick reference** material includes: Centralized Law Department Model, Decentralized Law Department Model, Hybrid Model. www.acc.com/resource/v7918
- *Altman Weil Law Department Compensation Benchmarking Survey 2006*
Altman Weil Law Department Compensation Benchmarking **Survey** is a comprehensive analytical resource for reviewing and setting law department compensation. Data is reported using key variables including geographic region, industry type, size of organization, annual revenues, size of law department, years of experience, and more. www.acc.com/resource/v4810

- *Altman Weil Law Department Management Benchmarks Survey 2006*
The Altman Weil Law Department Management Benchmarks **Survey** provides benchmarks on staffing, expenses, operations, and functional areas of interest to individuals responsible for law department management. This survey serves as a companion study to the Altman Weil Law Department Compensation Benchmarking Survey. www.acc.com/resource/v5205
- *Issues to Consider When Starting a Law Department*
This **checklist** highlights issues to consider when starting a law department. www.acc.com/resource/v7653
- *Meeting the Challenges of Practicing in a Small Law Department*
2006 ACC Annual Meeting material. www.acc.com/resource/v7275
- *Effective Budgeting for the Law Department*
Learn how experienced practitioners have approached and conducted their internal negotiations for resources in the face of business and legal uncertainties. This **online CLE program** includes topics such as making the case for bringing work inside, billing back for time, establishing metrics, using benchmarking effectively, increasing the number and/or experience levels of non-lawyer staff, and using contract or temporary lawyers for specific projects. www.acc.com/resource/v7759

Webcasts


- *Managing to Motivate and Maximize Productivity*
This **webcast** highlights a panel of in-house counsel and career management advisors who share their strategies for creating and sustaining a highly productive environment in the corporate legal workplace. www.acc.com/resource/v7161

what resources you will need. Also, if part of your plan involves hiring additional attorneys, be sure to clearly define the scope of their authority so that it's clear to the attorney, and to the business units, when your attorneys need to escalate matters to your attention. It definitely pays to be ahead of the curve on this one.

Obtain Regular Reviews from Your Clients

Use a regular review process to obtain feedback from your clients about how you are doing. Is the department's response time adequate? Are you providing the practical advice they need? Be willing to take an objective look at how your department is performing and consider ways in which you can improve the service you provide. Collecting and acting on this feedback will put your department on a solid footing within the company. It's also important to use Key Performance Indicators (KPIs) as part of this process. Which ones you use will vary, but you should embrace them. You should review these KPIs with the CEO and senior management to help benchmark your progress. Business people measure themselves with KPIs and will expect you to do the same.

Maintain a Thick Skin

This may be the most important advice of all. Building a legal department from scratch is not an easy task, nor is serving as a new CLO. Inevitably, by creating a new function, you will take responsibility and authority away from other departments (finance, operations, etc.). You will deliver advice that is not always welcome and have the authority to veto certain actions where this power did not exist before. This may create tension at times, but remember that this comes with the territory. Keeping your client out of trouble may not make you the most popular person in the company, but providing sound, practical legal solutions will ensure that your client appreciates the value you bring. 

Have a comment on this article? Email editorinchief@acc.com.

Note:

1. For example, if a law firm became aware of an ethical violation by the CLO, such as fraud, outside counsel would go directly to the CEO and/or the board.



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Top Ten Tips for Keeping Up without Burning Out

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William T. Price, Sr. Vice President, General Counsel & Assistant Secretary USInternetworking, Inc., an AT&T Company, **Deanne M. Tully**, Vice President & General Counsel, Tier Technologies, Inc.
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March 2007

A recent survey showed that the number one concern of in-house counsel, for the second year in a row, is keeping track of company activities that might have legal implications (cited by 86% of the respondents). But how do you keep up with it all without burning out? Here are our top ten tips.

1. Prioritize and Triage (i.e., work smarter, not harder)

This process is so instinctive that we almost forgot we do it. There is only one of you so be mindful that you need to preserve this precious resource. Be wary; the problem that is making the loudest noise may not be the one that needs your immediate attention. It is the one that is truly on fire and has significant implications for your clients that requires your focus. Prioritization and triage, however, are not just tactics you apply in emergencies. If you utilize them on a regular basis, there may not be a fire at all. For example, if your clients manufacture widgets and the manufacturing process has potential environmental impact-- your overall focus should be to assure that environmental legal and regulatory requirements are consistently met so the leakage/exposure/you name it-- never occurs. Also, learn to delegate: either to others in your department or to other departments if the issue is not truly a legal issue.

2. Develop Issue Antenna

Learn to be an issue spotter. It is probably one of the most important skills you can acquire. You don't need to (and you can't possibly) know everything about all subjects, but you should develop antenna that will immediately sense that important emerging issue or that trouble may be brewing. Then you need to determine what happens next: does it require your attention, do you need to bring in outside counsel, do you need to alert senior management immediately or is there further analysis which needs to be completed first? This is the opportunity to address important matters (hopefully) before they catch fire.

3. Establish a Good Relationship with Outside Counsel

When an important issue arises and you have determined that outside counsel needs to be consulted, this is no time to be trying to figure out who that is. You should already have a well-established relationship with outside counsel (and by that we mean relationship with an individual lawyer ---not a law firm) with expertise in areas that are relevant to your company. That relationship should be characterized by candor, responsiveness, trust, and flexibility. Moreover, you want to establish a relationship with outside counsel who has capabilities that will be beneficial to you and your clients, including the ability to: spot and size issues, thoroughly understand your business and its needs, provide business-like solutions or options, communicate succinctly and under pressure, and work at different speeds (some issues need a “quick and dirty” response, others require more careful analysis; can your counsel do both?). And if the skill set of your outside counsel is not the one required by the circumstances at hand, you want someone who will not only readily concede that point, but who will also help you find appropriate counsel even if that counsel is outside his/her law firm. Notice that “cost” is not one of the elements specified here; it is always cheaper in the long run to hire the outside counsel best suited for your needs and those of your company, even if that counsel charges a higher hourly rate.

4. Teach Your Clients When to Involve You and to Involve You Early

Teach your clients to let you know what is coming down the pike. That way you can avoid being hit by a truck. Nothing is more frustrating than to have an issue go unidentified or addressed, or to have a product inadequately developed because your client did not involve you in the process at the early stages. Moreover, when they don't, the result can be a disaster or cause you to become the “bad guy” because you are forced to throw up a road block or are forced to respond with limited -- and likely unpopular-- options.

And seize opportunities to become involved early. Get out of your office and go to inside and outside business meetings. Get a place at the table. Understand that one of the best ways to teach your clients when and how to involve you is to show them the benefits of doing so. Be a positive and creative full team member when they engage you —use your legal skills and knowledge of their business to avoid or eliminate problems in a way that is both legally acceptable and serves their needs. If you can demonstrate to your clients your ability as a business leader (see tip 10 below) who also happens to have the added benefit of legal acumen, you will no longer be the last to know.

5. Establish Appropriate Policies

Having relevant policies in place that establish the parameters of appropriate behavior and activities is essential. It also provides for mitigation with the applicable government agency should an issue arise. If employees know what is expected of them, it may avoid the creation of a disaster situation that you have to address. Of paramount importance is a code of conduct. Most codes of conduct address a variety of subjects that are often addressed in more depth in internal policies and procedures. A laundry list of the subjects typically covered by codes of conduct and/or related policies that you may want to consider includes:

- Conflicts of Interest (including corporate opportunities)
- Gifts & Entertainment
- Antitrust & Fair Competition
- Document Retention
- Prohibition Against Workplace Violence
- Interaction with the Government
- Political Activities
- Confidential and Propriety Information
- Books and Record-Keeping
- Use of Corporate Technology & monitoring of emails
- Reporting misconduct Mechanisms (of
- Intellectual Property Matters
- Hotlines
- Use of Company Resources
- Substance Abuse
- Prohibition against Insider Trading
- Internal Investigations (includes non—retaliation policy)
- Equal Opportunity
- Health Safety & Working Environment
- Employment Requirements (e.g., Wage and Hour Laws)

Companies with international operations may want to address additional requirements including:

- Foreign Corrupt Practices Act
- Export & Import Controls
- Customs
- Country Requirements where conducting business

Companies also may want to address issues specific to their particular business activities and operations, including such matters as:

- Consumer or patient privacy
- Hazardous materials or product liability matters
- Anti-Money Laundering
- Other relevant legal and regulatory matters

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6. Network, Network, Network

Effectively multiply your human resources by establishing a network of in-house colleagues available to you for consultation and assistance. Most legal problems/questions are not unique and other counsel can provide guidance. For almost any document that you would create there are other documents that will guide the way and supply clauses that you can adapt to your circumstances without re-inventing the wheel. Joining a listserv, such as the listserv for the Small Law Departments that will provide you with ready access to such a network (www.acc.com/listserv). Attending local ACC chapter meetings and national educational conferences will extend those opportunities--- and getting out of the office and commiserating with colleagues is a real stress breaker!

7. You Can Never Have Too Much Education

Keeping abreast of relevant issues is also much easier if you let someone else assist you in identifying and summarizing them. Yes, it may eventually require additional work on your part to analyze these issues as they apply to your company, but the educational opportunities presented through ACC and other organizations serve as a good base. ACC's resources such as InfoPAKSSM, Practice ProfilesSM, Top Ten, The *ACC Docket*, sample forms and policies, and ACC conference materials available on its website at www.acc.com are very useful and address a wide range of subjects. Take advantage of ACC's Webcasts; learn at your desk while munching on your lunch! Finally, get on all those law firm e-mail distribution lists—they are quick, economical (free!) and virtually painless ways to learn about current matters.

8. Get a Good Insurance Broker

Insurance is a complex, technical subject matter that critically impacts your company. If this is not your forté, "outsource" your insurance risk management to a highly qualified broker. Develop a relationship with a broker you can trust and who can provide the expertise required to assure your company is fully covered. Use someone that:

- is knowledgeable and routinely works in your industry so he/she can identify and cover unique needs, as well as send you relevant risk mitigation articles applicable to your Company (see tip 7);
- fully understands and accepts his/her role as your day-to-day risk manager (i.e., not just responsible for placing the coverage once a year);
- has the resources to be responsive to your needs and questions, no matter how seemingly minor; and
- has the experience and relationships with the carriers to deliver carefully crafted insurance coverage at a fair price.

Note that this is not the area to try and save a few bucks by going with the broker with the cheapest commission rate. You get what you pay for!

9. Use Technology and other Shortcut Tools to Your Advantage

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You don't have to be a technology wiz to take advantage of some easy to use tools that will make you more effective and efficient. There are several solutions that are available at low cost with high payoff. In addition, there are some tools you can create that will take some initial upfront investment either in money or time or both, but will yield an excellent return on investment once implemented.

- Create toolkits. Think about what the major areas are that you routinely deal with in your company and create a toolkit that gives summaries, roadmaps and guidance for how to tackle them. Some toolkits to consider creating include your: (i) primary agreement with customers, (ii) agreements with vendors, (iii) nondisclosure agreement, and (iv) corporate documents (e.g., articles of incorporation, by-laws, major lending agreements, investors' agreements, etc.). The toolkit helps the current members of your department (especially if you all are not in the same location) follow a similar set of guidelines, aids other departments who may work closely with you (for instance the corporate toolkit will help the finance, accounting, treasury, and tax departments), standardizes the way your company approaches certain key areas in terms of risk management, and provides a quick training tool to new hires in the department and new outside counsel who need to learn your business and your transacting philosophies.
- Digitize and use technology. Digitize key documents and make them searchable. This will save you a substantial amount of time later when you need to search that 150 page lending document for the one keyword you know you need for that meeting in 5 minutes. It also allows you to have all of your key documents accessible remotely without carrying large binders or paper files. And the next time you have a due diligence assignment – emailing documents or burning CDs becomes a very quick and easy exercise. The hardware and software investments you will need to accomplish this are not huge and are worth every penny. What is the game plan for getting this all in place? Once you have the hardware and software you need, start digitizing certain documents as they are created and establish a list of older documents that are worth taking the time to digitize. The documents you should consider digitizing include your important corporate documents, major customer agreements, major vendor agreements, lending documents and important ERISA plan documents.
- Use software systems. There are some very inexpensive software tools on the market that can enhance your workflow. One product to consider is ElectraSoft's Multi-Clipboard (<http://www.electrasoft.com/mcb.htm>), which can be used as a clause library for all of your favorite and frequently used clauses. Stop searching old agreements for those great indemnity provisions you drafted and stick it on your easy to use clipboard. Or the next time you are reviewing a contract and see a great way of drafting that audit clause you have struggled with, copy and paste it into your clipboard and use it at will. This particular software allows you to save multiple clipboards, so you can have one for NDA clauses, one for customer agreements, or even one for letters or paragraphs you frequently type into e-mails. You have complete flexibility in what you name the clipboards and the clauses you save into them. The text from the clipboard can be selected and pasted into any software program including Word, Excel, PowerPoint and e-mail programs. The best part is that the cost is around \$20. Another worthwhile product

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to consider purchasing is DeltaView PE. It is extremely simple to operate and it will create helpful redlines when comparing two documents or allows you to send a very professional looking redline to the other side to clearly show your changes since the last draft. The price of this product is very reasonable and varies depending on the number of your users. It's a worthwhile investment for any small law department.

10. Know Your Business and Wear Different Hats

Be a true partner. Understand your business and its risks because that analysis will drive your legal and regulatory priorities. The only way to truly get to know your business is to follow tip 4 and get out of your office and into business meetings. If the business leaders don't initially invite you, invite yourself by offering, as an inducement, the added benefit of providing the protection and privilege of confidentiality if and when needed. Once you get into the business meetings, be prepared to take advantage of the situation by knowing the agenda and the issues at hand and potential solutions so that you can provide business, as well as legal advice. Be willing and prepared to offer counsel and provide assistance to your clients beyond legal advice. Remember, your title as "counsel" should have more than just legal meaning. You should endeavor to become the "trusted advisor" to your Company so that your clients come to you not just with legal issues, but business or human resource issues as well. Even if you don't have the time or even the inclination to assist every person who comes through your door, by keeping an "open door policy", your clients will keep you better informed, which will help you recognize and resolve issues before they become a legal headache (see tip 2).

Using these tips may help you to accomplish what we consider the most important tip for keeping up without burning out: **STOP!** At some point you just have to stop working and go to your kid's recital, take that long planned for vacation and leave your access to e-mail at the office, or just take the weekend off. We admit to not being particularly good at this one ourselves, but we're trying and urge you to do the same.

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Additional Resources

Effective Compliance and Ethics for the Small Law Department (ACC InfoPAKsm)
acc.com/resource/v7518

Strategic Planning for In-house Counsel (ACC InfoPAKsm)
acc.com/resource/v6813

Law Department Management (ACC InfoPAKsm)
acc.com/resource/v6014

Small Law Department (ACC InfoPAKsm)
acc.com/resource/v4858

Achieving Balance: A Recipe For High-Quality Work Life For In-House (ACC Docket)
acc.com/resource/v449

Career Path- Maximums of Corporate Success: General (ACC Docket)
acc.com/resource/v7113

Career Path- Maximums of Corporate Success (Part Two): Managing Relationships (ACC Docket)
acc.com/resource/v7247

Career Path- Maximums of Corporate Success (Part Three): Managing Projects (ACC Docket)
acc.com/resource/v7321

Career Path- Maximums of Corporate Success (Part Four): Managing Yourself (ACC Docket)
acc.com/resource/v7537

Other ACC Resources

Small Law Department Committee
<http://www.acc.com/php/cms/index.php?id=116>

Members of ACC's Small Law Department Committee work diligently to develop and explore practice methods by which attorneys in small law departments and generalists in larger departments can most effectively and efficiently provide legal services to their corporate clients. Information about the Committee can be found on the SLD Committee webpage.

Small Law Listserv
<http://www.acca.com/php/cms/index.php?id=55>

Join the Small Law Listserv and converse with your peers. ACC provides listservs to provide a vehicle for communicating within practice areas. The listservs are voluntary and are only open to members.

the facts
of in-house

LiFe

In-House

by philip r. strauss

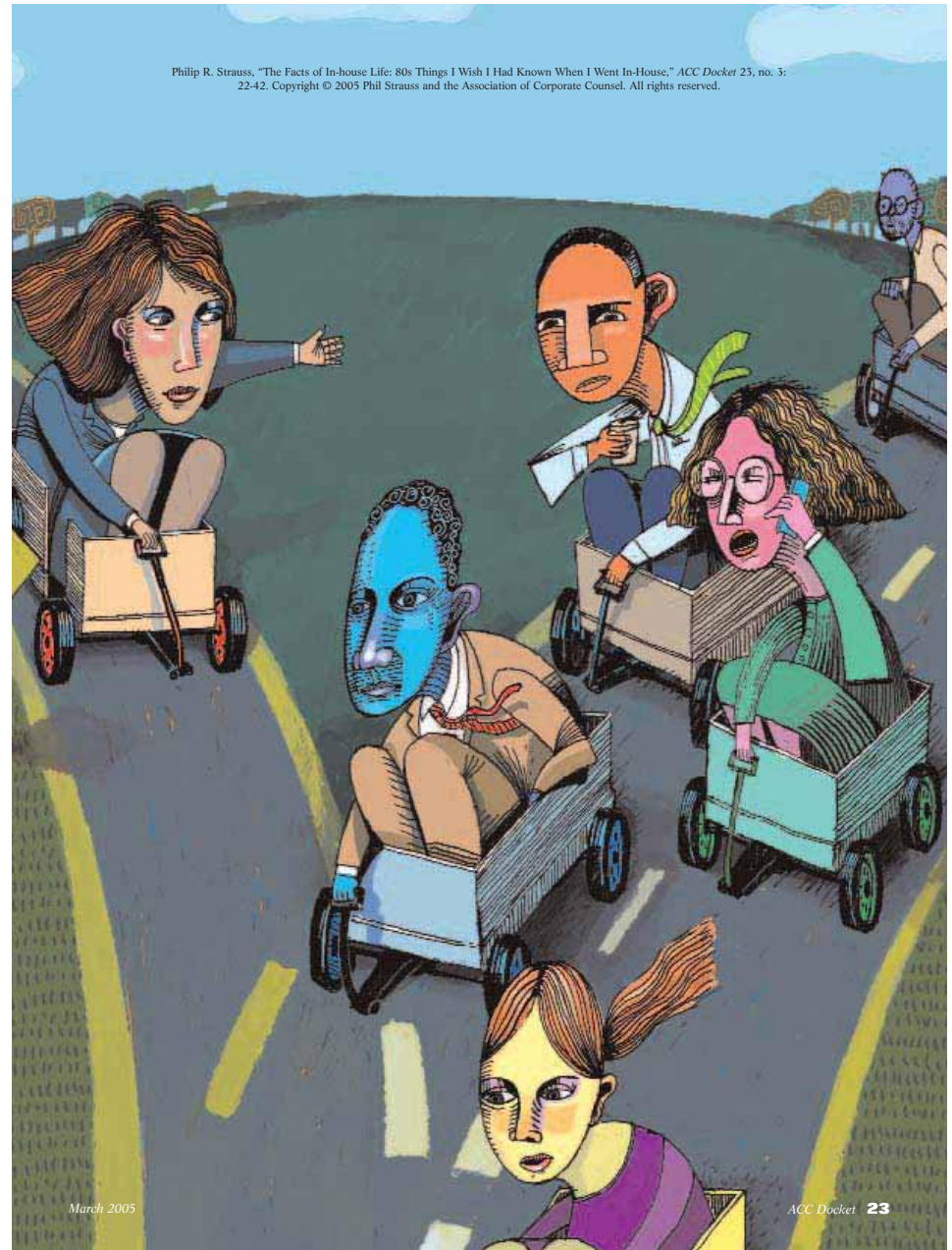
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March 2005



Philip R. Strauss, "The Facts of In-house Life: 80s Things I Wish I Had Known When I Went In-House," ACC Docket 23, no. 3: 22-42. Copyright © 2005 Phil Strauss and the Association of Corporate Counsel. All rights reserved.



March 2005

ACC Docket 23



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"I was dreaming when I wrote this; forgive me if it goes astray.

But when I woke up this morning, could have sworn it was Judgment Day.

The sky was all purple, there were people running everywhere.

Trying to run from my destruction, you know I didn't even care."

song, "1999," 1999, *Prince* (Warner Bros. 1983)
After several years of private practice and one year after Prince's prediction, I decided to go in-house. The sky was not all purple, but there were people (including me) running everywhere. In fact, I found it to be quite a culture shock. So, trying to run from my destruction, I had to find some way to translate the lessons that I had learned in private practice to in-house life, but I was looking in the wrong place.

"Somebody I never met, but in a way I know, didn't think that you could get so much from a picture show."

song, "E=MC²," *This Is Big Audio Dynamite, Big Audio Dynamite* (Sony 1985)

Turns out, I had learned everything I needed to know for success in-house from the movies, music, and books of my junior high, high school, and college years. Those years spanned the 1980s. So without further ado, here are the 80s things I wish I had known (or remembered) when I went in-house.

THE IN-HOUSE ENVIRONMENT

"I'm looking for a new direction. Where in the world am I?"

"New Direction," *Echo & The Bunnymen, Echo & The Bunnymen* (Warner Bros. 1987)

1. "People are afraid to merge onto the freeway in Los Angeles."

book, *Less Than Zero*, Bret Easton Ellis (Random House Value Publishing 1987)

These opening lines of *Less Than Zero* are repeated by the protagonist throughout the book and are relevant to in-house practice in two ways. First, they illustrate a tendency to generalize. Unlike the law firm, many of your clients will not have dealt with lawyers very often and will bring generalizations—positive and negative—about lawyers. Some will be positive; more will be negative. You have to be keenly aware of people's perceptions. Second, they express the protagonist's feelings that he doesn't quite fit into his Los Angeles life anymore. Lawyers just don't fit perfectly into the corporate institution. Many of these 80s things address how to improve that imperfect fit.

2. "All you want to hear is the audience's applause. You can't get onstage for a contract clause."

song, "On Through the Night," *Def Leppard* (Mercury/Universal 1981)

All of us have been accused of being part of "the department of business prevention" or some similar in-house slur. Unfortunately, some people view legal departments as a necessary impediment to doing business. Even if you are lucky enough to join a department that has overcome this reputation, new hires outside the department may enter with legal department prejudices developed at other companies. An unacceptable contract clause will rarely justify the lack of business progress for any nonlegal business professional. The best way to change this situation is to frame issues in terms of business realities rather than contractual provisions. "This 'work for hire' clause is not acceptable" means nothing to a product manager. "Under the proposed business arrangement, you will not own or be able to sell the XYZ project" highlights the same problem, but frames it as a business issue rather than a contract issue.

3. "It's kinda social. Demented and sad, but social." movie, *The Breakfast Club* (Universal Studios 1985)

Unlike a law firm, the majority of people in a corporation have no connection to law. As a result, the legal department may be somewhat isolated, both socially and professionally. The legal department may be regarded with the same mix of awe and pity

accorded to the physics club in *The Breakfast Club*. Be an ambassador for the legal department and get to know folks outside the department. Often, knowing the name of somebody's child or how somebody spends their free time will help you get things done more effectively by adding a human element to your legal duties.

4. "Here in my car I feel safest of all. I can lock all my doors. It's the only way to live—in cars." song, "Cars," *The Pleasure Principle, Gary Numan* (Beggars Banquet Us 1979)

As you get out to meet folks outside the legal department, you will need other lawyers with whom you can commiserate and celebrate. Don't lock yourself in your car, and don't be a hermit within the legal community! For whatever reason—overwork, the thrill of freedom from law firm serfdom, general disinterest—there is a tendency to shut out the rest of the legal world after you go in-house. ACC, local bar associations, your old private-practice colleagues, your informal network, and trade associations are all good places to meet other lawyers. Keep in touch! The networking may just come in handy someday.

5. "I don't want to sell anything, buy anything, or process anything as a career. I don't want to sell anything bought or processed, or buy anything sold or processed, or process anything sold, bought, or processed, or repair anything sold, bought, or processed. You know, as a career, I don't want to do that."

movie, *Say Anything* (20th Century Fox 1989)
Lloyd Dobler, the main character in *Say Anything*, could have made it as outside counsel, but not as in-house counsel. To avoid being mere scribes, in-house lawyers must examine and define their roles in the corporation. Most in-house lawyers *buy, process, or sell* stuff. I have sold software for over five years. I wasn't out there in the field visiting customers, but I helped with the contracts that memorialized those transactions, and I ensured that my clients had the rights to embed the necessary third-party intellectual property in the software that I sold. The more closely you can associate yourself and your role with your company's core business, the better counselor you can be.

6. "I should have learned to play the guitar. I should have learned to play them drums."

song, "Money for Nothing," *Money for Nothing, Dire Straits* (Warner Bros. 1990)

The great thing about private practice was getting to know a little about a lot of different industries and corporations. In my first year of private practice, I worked on cases involving defective operating tables, recalled antibiotics, foreign currency trading, medical device patents, and diet powder sales compensation, to name a few. I learned a little about limited aspects of those businesses at discrete moments in time. The great thing about in-house is getting to know a lot about one industry over a long period of time. The better you know the business, the better you can serve your clients. Go on a sales call to understand the competitive landscape your salespeople face. Visit the research and development department when a production deadline is approaching. Learn about the amount of work that goes into developing a national advertising campaign. Round out your business side as you round out your legal skills.

7. "When I get high, I get high on speed. Top-fuel funny car's a drug for me. My heart, my heart, kickstart my heart."

song, "Kickstart My Heart," *Dr. Feelgood, Motley Crüe* (Hip-O Records 1999)

It is a fundamental principle of finance that high rewards come from high-risk business opportunities. Usually, your job is not to convince your clients not to enter a race; it is to make sure that they have considered the risks and taken (or know about) any available precautions. Because you cannot eliminate all possible risk, approach all decisions as a risk manager.

8. "Mr. Gorbachev, open this gate! Mr. Gorbachev, tear down this wall!"

speech, *President Ronald Reagan, Remarks at the Brandenburg Gate* (1987)

As in-house counsel, you will be called upon to work in or lead cross-functional teams of HR, finance, sales, marketing, and R&D folks; building consensus among these key stakeholders—all of whom are your clients—is critical to your success. Like any institution, there are some natural and artificial walls between these departments. If you can institute your own *perestroika* and get those departments to share information more freely and cooperate more often, you will be hailed as a great leader. (One would hope that you would not

fall to a coup soon thereafter, however.) As in diplomacy, calling a “summit” may be your best hope. While getting all stakeholders or their delegates into a room may not immediately resolve all conflicts, it may set in motion a process of conflict resolution.

9. “You gotta learn to kick ass if you want to be a peacemaker.”

movie, *Superman 2* (Warner Bros. 1981)

Lawyers have excellent execution skills. Sometimes, on your cross-functional teams, despite your best efforts to be diplomatic, the need for consensus causes paralysis. I call this “consensalysis.” At that point, take the lead, assign tasks, and execute!

10. “When a problem comes along, you must whip it.”

song, “Whip It,” *Are We Not Men? Devo* (Warner Bros. 1980)

Often, when you are in-house, the proverbial buck stops with you. Enjoy a bit of authority; you’ve earned it!

11. “I don’t think there are any Russians, and there ain’t no Yanks. Just corporate criminals playing with tanks.”

song, “The Walls Came Down,” *The Call, The Call* (Mercury Records 1980)

This band captured a certain anticorporate backlash of the 1980s that seems to be repeated here two decades later. Whatever corporate issue your company may be dealing with—government contracting scandals, labor conditions in Asia, leading the charge against stock option expensing—expect to confront the anticorporation movement. And be prepared to defend your corporation within the bounds of the law and ethics.

12. “If you break the law, you got to pay your dues, Ain’t it much better if you play it by the rules?”

song, “No Parking (On the Dance Floor),” *No Parking on the Dance Floor, Midnight Star* (Capitol 1983)

A quick survey of the corporate scandals of the past two years (or the 1980s, for that matter) saw plenty of in-house lawyers (but few outside counsel) in handcuffs. Simply put, the stakes are higher in-house.

13. “Darling you’ve got to let me know. Should I stay or should I go? If I go there will be trouble, and if I stay it will be double.”

song, “Should I Stay or Should I Go?,” *Combat Rock, The Clash* (Sony 1982)

The rules on your duty to report corporate misconduct or resign depend on your state’s professional responsibility rules, the SEC’s up-the-ladder reporting regime, and the more draconian proposed “noisy withdrawal” rules. This is especially difficult if you are the sole or chief legal officer and have no senior lawyer to whom you can report up. Know these rules and engage in some scenario planning. What would you do if ABC situation happens? What about XYZ situation?

14. “Don’t say no.”
song, “Don’t Say No,” *Don’t Say No, Billy Squier* (Capitol 1981)

and
15. “Well I kept saying no. No, no, no, no, no.”
song, “No No No,” *No No No, Def Leppard* (Mercury/Universal 1981)

Again, the classic conundrum of the in-house lawyer is not to be tagged the “department of business prevention,” but still to prevent bad (*i.e.*, unnecessarily risky or illegal) business. Thus, I have juxtaposed quotes representing the extremes of this conundrum. In general, heed Billy Squier’s caveat: “Don’t Say No,” but say it a little more productively: “No, but we can do it this way...” and come up with one or more alternatives that drive business and protect the company. But remember that there are situations where the proposed action and all alternatives are simply unacceptable. In those cases, you have to be firm and heed Def Leppard’s words: “No no no no no.”

16. “And I’m looking in the mirror all the time, wondering what she don’t see in me. I’ve been funny, I’ve been cool with the lines. Ain’t that the way life’s supposed to be?”

song, “Jessie’s Girl,” *Working Class Dog, Rick Springfield* (RCA 1981)

The envy in this song is similar to the envy you will find in-house. As a lawyer, you are definitely “cool with the lines,” but you are in a *supporting* role. The founders of the company, the top salespeople, the award-winning engineers, these are the people who get to date the proverbial prom king/queen. You may read your proxy statement and say “how did that idiot get

such a big bonus?” You may toil nights and weekends to close a deal without much sales support while somebody else gets the fat commission check. Back in your law firm, you were the product; you were the star. In-house, you are not. It is one of the toughest transitions and one that, like envy, can creep up years later if you lose sight of the benefits of being a lawyer in-house: not having your nosy office neighbor know your salary and not having to chase a quota every single quarter.

17. “Oh the heads that turn, make my back burn.”
song, “She Sells Sanctuary,” *Love, The Cult* (Beggars Banquet Us 1985)

Even though you are a supporting actor, you will be in the spotlight, usually at the worst possible moment. “That is stuck in legal” is the last desperate cry of a businessperson looking for an excuse for his boss. Of course, “stuck in legal” may mean (a) the matter is stuck in the customer’s legal department; (b) legal has expressed concerns about a concept raised by the business team; or, most likely, (c) the matter sat in the business person’s in-box for two weeks and was submitted to legal this morning. It takes less time to do something to get it “out of legal” than to argue why it isn’t really “in legal.” Call and email the customer’s legal department daily and cc your team to let them know you are working. Reiterate your conceptual concerns and offer to draft a term sheet that would address them. Pay attention to the time gaps in email strings forwarded to you and point them out early to prevent future delays.

18. “I’m sorry, who are you again?” “I’m Frieda’s boss.” “Who’s Frieda?” “My secretary.”

movie, *Fletch* (Universal Studios 1985)

Like Fletch, the enterprising investigative journalist of the eponymous film, you probably will not have a secretary or assistant. If you do, close your eyes, thank the in-house gods, and move on to the next paragraph. If you do not, then your choices are (1) to lie about it like Fletch did, or (2) to get yourself organized and learn how to work the fax machine. This should be easy; people love being able (for once) to show a lawyer something they don’t know. On a similar note, it may take a while to get used to being in a cubicle rather than an office, if those are your assigned digs. Invoke attorney-client privilege as a reason you should be located in a private office instead. If that doesn’t work, then schedule a conference call with the cus-

tomor who has the most ornery counsel. Take the call on speakerphone in your cubicle and get into a yelling match with your adversary. The people in the cubicles around you will complain and you will get that private office. Seriously, it worked for me!

19. “They come running just as fast as they can, ‘cause every girl’s crazy ‘bout a sharp dressed man.”
song, “Sharp Dressed Man,” *Eliminator, ZZ Top* (Warner Bros. 1983)

Depending on where you are, the cuff links and stickpin worn by the song’s hero may not be appropriate, but you should pay attention to your dress. Many people come in-house from firms that required business attire. Many legal departments, especially in my neighborhood (Silicon Valley) wear jeans daily. I will say more about unintentional messages in #48, but understand that the way you dress will send a message. Overdressing may alienate your clients. Underdressing may make you seem less professional. Be aware of this dynamic.

20. “Wild Thing, I think you move me. But I wanna know for sure. Everytime I kiss you I taste what other men had for lunch!”

song, “Wild Thing,” *Have You Seen Me Lately? Sam Kinison* (Warner Bros. 1990)

In a law firm, generally, a deal or a case may have had a few lawyers touch it over time. An in-house lawyer inherits the corporation’s (and any acquisition’s) problems dating back to formation. These include ineffective assistance of counsel or vastly different style of counsel. Be prepared to wince at what your predecessor may have done (or not done). When you have to amend or modify a contract that you did not originally do, look at the contract well in advance to identify any problems or ambiguities.

21. “Better get a bucket. I’m going to throw up.”
“A bucket for monsieur!”

movie, *Monty Python’s The Meaning of Life* (Universal Studios 1983)

In-house practice is a customer service business. Accordingly, you need to emulate your favorite waiter in your favorite restaurant. Be present when needed; otherwise don’t get in their way. Know what is on the menu and be prepared to make recommendations. And always take notes, even if you know you will remember the order!

THE PEOPLE

"People are people so why should it be, you and I should get along so awfully?"
song, "People Are People," *Some Great Reward*, Depeche Mode (Warner Bros. 1984)

22. "When they say 'why? why?,' tell them that it's human nature."

song, "Human Nature," *Thriller*, Michael Jackson (Sony 1983)

You have to be attuned to human dynamics, more so as you become more involved in management. "Please" and "thank you," conspicuous in their absence in law firms, must bracket all requests you make of your colleagues inside and outside the legal department.

23. "I get along fine with them friends of mine but you have to make a choice, You're singing out of tune but the beat's in time and it's us who makes the noise."

song, "New Religion," *Rio*, Duran Duran (Capitol 1982)

If you heed my advice in #3, you will ultimately have friends outside the legal department. You will one day find yourself in a conflict position as a result of these relationships. Either you will know something that you would want to tell them as a friend (e.g., that they are on the list of employees considered for downsizing), or they will approach you with a matter "as a friend, not as a lawyer." As Duran Duran advises, you have to make a choice, keep the beat in time, and make the noise. You didn't need me (or Duran Duran) to tell you what to do. On second thought, maybe legal department isolation has its benefits....

24. "You consider me the young apprentice, caught between the Scylla and Charybdis... I have only come here seeking knowledge, things they would not teach me of in college."

song, "Wrapped Around Your Finger," *Synchronicity*, The Police (A&M Records 1983)

This one is simple. Mentors are more important in-house than they are in law firms. The bad news is that they are harder to find. The good news is that they don't necessarily have to be lawyers and they don't necessarily have to be at the same corporation.

My mentor is as great a resource as ever, even when he is working at a different company from me.

25. "My gang's my family, it's all that I have."
song, "Colors," *Power, Ice-T* (Warner Bros. 1988)

Like the streets of gangland, it is important to shore up allies in the corporation early. Don't be narrow in your selection; you might find help in unexpected places and at all levels. Back in the law firm, you probably learned that the paralegals knew more than the junior associates. It is the same in-house; hierarchy exists, but don't make more of it than it deserves.

26. "Do you know where there are any person-ages of historical significance around here?"
movie, *Bill & Ted's Excellent Adventure* (MGM/UA Studios 1989)

Critical among your base of allies is to find out who has institutional memory in all of the areas where you are likely to need information: HR, sales, R&D, and marketing. Similarly, you are ideally situated to become the institutional memory of legal, if not the whole corporation, which ultimately will vault you to the top of other folks' allies lists.

27. "The 1961 Ferrari 250GT California. Less than a hundred were made. My father spent three years restoring this car. It is his love, it is his passion..."

"It is his fault he didn't lock the garage."
movie, *Ferris Bueller's Day Off* (Paramount Studio 1986)

People will rationalize anything in business. "We need to do this to get their business," or "we really need this deal to make the quarter." Those may be perfectly legitimate business reasons and, if true, may ultimately drive shareholder value. But they may be unethical or illegal. Expect this behavior; don't leave the garage unlocked on days your son is home from school and don't give the sales team an excuse for bypassing your review on the last day of the quarter.

SETTING YOUR AND YOUR CLIENTS' EXPECTATIONS

"Captain, maybe we ought to turn on the search lights now?"

"No. That's just what they will be expecting us to do."

movie, *Airplane* (Paramount Studios 1980)

28. "I am, I am, I am Superman, and I can do anything."

song, "Superman," *Life's Rich Pageant*, REM (Capitol 1986)

Even if you don't think you are superman (or superwoman), your clients may expect you to be superperson. There is more pressure when you are in-house to present a solution to any legal barrier you identify than there is for a law firm lawyer who is not part of the ongoing business. Most of your clients will not know that a copyright specialist is very different from a patent specialist and that you wouldn't want either one of them anywhere near a 10-K. They think "you are a lawyer, this is legal, ergo you should know this." I frequently use the analogy that I am a primary-care physician and I can diagnose a brain problem, but they wouldn't want me doing brain surgery. Hopefully, they still think I am Superman, but realize that there are some tall buildings that I cannot leap in a single bound.

29. "You were going to set the world on fire. When will you ever learn?"

song, "You Give Love a Bad Name," *Slippery When Wet*, Bon Jovi (Mercury/Universal 1986)

In a law firm, your clients are generally smart, diligent, and motivated. At the very least, the better ones have learned to maximize the use of your time because they ultimately receive a bill for it. When you go in-house, you cannot have Wall Street expectations of Main Street clients. You will set yourself up for failure and it will reinforce the perceptions of isolation and arrogance against which you are constantly fighting. So start with low expectations and then train your clients to help you do your job better. I use a self-deprecating PowerPoint presentation analogizing the client-lawyer relationship to an owner-puppy relationship (see #55 for more on this point). If you can do it in a way that is not preachy or condescending, most of them will give you the information you need up front with realistic deadlines. And Bon Jovi would say, that gives in-house law a good name!

30. "You made me, promises promises, I knew you'd never keep."

song, "Promises Promises," *Naked Eyes*, Naked Eyes (1983)

As a lawyer, you have been trained to deliver on

your promises. But you cannot expect your nonlawyer colleagues to be so diligent. Set your expectations and deadlines so that you can overcome the inevitable broken promise from the Biz Dev team. If that team is the one checking whether you can meet a technical deadline and you have not heard back from them, you want to leave enough time to get the information for yourself.

31. "You are a neo-maxie zoom dweebie."
movie, *The Breakfast Club* (Universal Studios 1985)

If you have been hired to do licensing and you aren't a neo-maxie zoom dweebie (i.e., expert) when it comes to licensing, you need to find a way to become one quickly. My first in-house position was as a licensing lawyer, but my background was as a litigator-turned-corporate lawyer. I pled Socratic ignorance with respect to licensing, but was able, through my diligence and my mentor's patience, to become a neo-maxie zoom licensing dweebie. You will become a dweebie in many areas over time. After all, nothing we do is rocket science. (By the way, while I am being a dweebie, what do the folks at Boeing say when they want to express a relative lack of difficulty, because the task to which they are referring may, indeed, be "rocket science"?) The point is to realize that it only takes a couple of times to become an export filing dweebie. Remember, being more of a generalist and learning new areas of the law are probably some of the reasons you went in-house.

32. "Nobody ever told me, I found out for myself... Don't look at me for answers. Don't ask me, I don't know!"

song, "I Don't Know," *Ozzy Osbourne, Blizzard of Ozz* (Sony 1980)

Even the neo-est maxi-est zoom-est dweebie cannot possibly know everything, so don't be afraid to admit that you don't know an answer, but remember that even the Ozzman had the good sense to go find stuff out for himself. Constantly take inventory of your internal and external sources of information. If you are unsure, the ACC website and network are great places to start.

33. "Not many girls in contemporary American society would give their underwear to help a geek like me."

movie, *Sixteen Candles* (Universal Studios 1984)

This is simple. Express appreciation to your in-house clients and your outside counsel at every possible opportunity. This is possibly the highest ROI investment you can make in-house.

GETTING THE JOB DONE

"Say 'Hello' to my little friend."

movie, *Scarface* (Universal Studios 1985)

34. "I straddle the line of discord and rhyme and I'm hungry like the wolf."

song, "Hungry Like the Wolf," *Rio, Duran Duran* (Capitol 1982)

The primary key to success in-house is to drive business (to rhyme) while protecting the business (to maintain a healthy degree of discord). There are no simple rules for when each is appropriate. But you need to be sensitive to this dynamic and you will, over time, develop a feel for when to be discordant or harmonious. For example, I was in a legal department that had a knee-jerk reaction against approving nonbinding letters of intent, reasoning that there was no need to go through the formality of negotiating and signing a document that ultimately was not enforceable. When the business team convinced me that a nonbinding LOI had an important "moral" importance to the business relationship, my discord turned to rhyme and I commented on and approved the document, only to receive pushback from my superiors. Other times, when I have struck a discordant note in deference to corporate policy, I have received pushback to relax policy to drive business. As you undertake bigger challenges in your career, straddling this line will remain difficult.

35. "I'm a fool in your game . . . You're just wasting my time. All you do is talk talk."
song, "Talk Talk," *Talk Talk* (EMI International 1982)

An economist looking at in-house practice would say that it suffers from a "free rider" or "negative externality" problem, insofar as your clients don't bear the true cost of the legal services they get from you. A noneconomist would say that some clients will waste your valuable time. Perceived importance

does not equal true importance; this goes both ways. Your clients may wrongly see something as important and then talk talk talk about it. At the very least, they will see their task as more "mission critical" than that of one of your other clients. On the other hand, you may not fully appreciate that a simple, routine NDA is holding up a major strategic partnership. The key is to get credibility with respect to the prioritization of clients' assignments and to determine the credibility of your clients when they make requests of you. One of my colleagues takes the approach of expediting a client's first project to gain credibility, then prioritizing subsequent projects.

36. "Don't rush me sonny. You rush a miracle man, you get rotten miracles."

movie, *The Princess Bride* (MGM/UA Studios 1987)

Time demands in-house are very different from those in a law firm. Most likely, you will be working far fewer hours on far more matters. Time management is critical. You will have a lot more leeway in terms of what, when, and at what pace to do your assignments. I'd suggest enjoying your freedom from billing hours for a while, but at some point, keep track of your time for a month to get a real idea how you spend your days and to look for ways to be more efficient. How much of what you are doing could be done faster by outside counsel? How much could be done cheaper by an in-house paralegal? Do a "checkup" every month or so.

37. "I push, I struggle, I'm living in the Eighties."
song, "Eighties," *Night Time, Killing Joke* (E.G. Records 1985)

If you are always pushing and struggling, you are most definitely not living in the eighties, *i.e.*, on the right side of the "80-20 Rule." (If you want to sound erudite, you can call it the (Vilfredo) Pareto Principle, though it was applied in common parlance by Dr. Joseph Juran.) The Pareto Principle says that 80 percent of the work can be done in 20 percent of the time. The most important thing for in-house counsel is to recognize which tasks require a less-than-perfect effort to both drive business and minimize risk. Save the virtuoso lawyer performance for IP ownership clauses, M&A indemnities, and resolving SarbOx whistleblower complaints.

38. "It's 106 miles to Chicago. We've got a full tank of gas, half a pack of cigarettes, it's dark, and we're wearing sunglasses. Hit it!"

movie, *The Blues Brothers* (Universal Studios 1980)

Resources in-house are finite. Often, you cannot hire consultants or outside counsel for a project and you don't have the luxury of time. In such cases, you must, like Jake and Elwood Blues, take inventory of the resources that you *do* have, and "Hit it." Hint: there are a lot of great resources within ACC.

39. "What do you make of this?" "I can make a hat, a brooch, or a pterodauctyl!"

movie, *Airplane* (Paramount Studios 1980)

In-house you will find much less deference to forms and transaction precedent than you do in a law firm. So exercise that creative side that you have ignored since 5th grade art class. If you can draft a nonsolicitation clause that works for you, your client, and the customer, then why spend an hour looking for that perfect model clause? And, as stated in #50, it is preferable to craft your words in the "modern minimalist" style; the shorter and more clear you can make your contracts, the better.

40. "What did we have for dinner?" "We had a choice: fish or steak." "Ahhh, yes, I remember now... I had lasagna."

movie, *Airplane* (Paramount Studios 1980)

In business and in-house, you are expected to think outside of the box. This goes hand-in-hand with creative problem-solving. Just remember to think outside the box but within those other boxes they call the law and ethics. Engage in brainstorming, where you suggest and solicit options and list them without discussing the merit (or lack thereof) until all possibilities have been listed. Only then do you begin to weigh risk/reward/reality of the options. Make it clear that you are merely brainstorming and that you have not thought through the options but will give each one due consideration.

41. "We have a pond in the back. We have a pool and a pond. The pond would be good for you."
movie, *Caddyshack* (Warner Studios 1980)

As inviting as the pool may have been in your days of private practice, as in-house counsel you have to roll up your sleeves, get your hands dirty,

and jump in an occasional pond. As a lawyer responsible for a matter, you will generally have to do all of the "associate-level" tasks as well as the "senior partner-level" tasks. Aside from sending your own faxes and opening your own mail, as detailed in #18, you will have to do your own NDAs and slog through discovery documents before sending them to outside counsel. Just remember that the free fish live in the pond, not the aquarium pools.

42. "I asked of my reflection, 'tell me what is there to do?'"

song, "Tempted," *Singles 45's and Under, Squeeze* (A&M Records 1981)

I have worked in three very different in-house legal departments and, as great as each was, there were a lot of improvements that could be made in each one. When you start at a new company, you have the unjaded perspective of an overpriced strategy consultant. Take note of what you would change before you become assimilated. Put your list away until you become credible. And when you get a free moment, get out that list and start making your department better. Profile and put all of your contracts online. Make that signature policy a flowchart or a matrix so that it's easier to read. Pull out that rarely used Referral Agreement and see if you can make it half a page shorter.

43. "The most valuable commodity I know of is information."

movie, *Wall Street* (Twentieth Century Fox 1987)

The more you know, the more valuable you will be and the more you will get done. Knowledge of the law, knowledge of the company, knowledge of the industry, knowledge of the economy, and even, sometimes, knowledge of pop culture. Your goal should be that if they had a Trivial Pursuit® contest at your corporation, you would be one of the first people picked.

44. "So let me take you by the hand and lead you on this dance, 'cause what I've got is because I took a chance."

song, "Control," *Control, Janet Jackson* (A&M Records 1986)

In-house, you will become a quick study in the corporate budget process. Here's a hint: focus on controlling your variable costs, the largest of which

will be outside counsel expense. You need to control and focus your outside counsel or you will crash and burn in Budget 101. Lead your outside counsel on the dance—tell them how long to dance and with whom. That said, don't micromanage them. And I urge you, if you can, take a chance and experiment with alternative billing arrangements.

45. "[Bob Hope] doesn't play police actions, just wars..." "How about if it escalated?..." "We are not going to escalate a whole war just so we can book a big name comedian!"

movie, *Good Morning, Vietnam* (Touchstone 1988)

Often, you will find that you are "accountable without authority." In such cases, you have to determine where you will get your authority. For each such matter, work with your client to agree on an appropriate escalation path for issues outside your (or their) authority.

46. "You broke my nose!" "It looks better that way."

movie, *My Bodyguard* (Fox Home Entertainment 1980)

Use outside counsel as your own personal bodyguard. If the CEO's good friend is the VP of Sales, your longevity may be best served by letting outside counsel investigate alleged policy violations. If you are negotiating a merger and hope to join the merged company, you may do well to let outside counsel take a firm position (and most of the heat) on certain contentious issues.

47. "What you gonna do when things go wrong? What you gonna do when it all cracks up? What you gonna do when the love burns down? What you gonna do when the flames go up? Who is gonna come and turn the tide? What's it gonna take to make a dream survive? Who's got the touch to calm the storm inside? Who's gonna save you? Alive and kicking." song, "Alive and Kicking," *Once Upon a Time, Simple Minds* (A&M Records 1985)

This is simple. Plan ahead for specific, relevant scenarios. What would you do if there were a terrorist incident near your office? What would you do if the CEO called you from jail at midnight? What would you do if you got an SEC Wells Notice? What would you do if your company's

critical component supplier declared bankruptcy? Though the relevant questions will be unique to each company, two universal and fundamental scenarios are: (1) what would you need to do to be ready to respond to a due diligence request from a potential acquirer and (2) what would you need to do to be ready to defend your company in whatever is the most likely litigation it would face?

COMMUNICATING WITH CLIENTS

"You see it your way, I'll see it mine. Well, conversation is a useless change of line." song, "Lack of Communication," *Out of the Cellar, Ratt* (Atlantic 1984)

48. "And in the silence, I think of you. I send a message, hope it gets through." song, "I Send a Message," *The Swing, INXS* (Atlantic 1984)

Pay constant attention to the unintentional messages you want to send and don't want to send. This advice goes for all of your client communications, but especially for meetings. Looking at your watch, interrupting a meeting to look over at the email that just chimed on your computer, checking the caller ID on an incoming phone call, looking at your BlackBerry, all of these things may send the unintentional message that you don't feel your client's problem is very important. On the other hand, orienting your office so that you meet with clients at a table where your back is to your desk, computer, and phone sends a message that they have your full attention for the time of the meeting. When you know you may be interrupted for another high-priority matter, warn the client with whom you are meeting in advance and be sure to be extra-attentive the next time you meet with him or her.

49. "Hush hush. Keep it down now. Voices carry." song, "Voices Carry," *Voices Carry, Til Tuesday* (Sony 1985)

It may come as a surprise, but the halls of your company are just full of *nonessential third parties!* As true as that may be, I wouldn't recommend walking down the hall and pointing to folks and calling them "nonessential;" those who have not been to law school may take offense. But you (continued on page 38)

(continued from page 35) do need to know that you cannot assume attorney-client privilege applies like it does in the hallowed halls of your old law firm. Constantly pay attention to privilege—do I want privilege for this and am I taking the correct steps to preserve it?

50. "And there are simply too many notes. Just cut a few and it will be perfect."

movie, *Amadeus* (Warner Studios 1984)

Shorter documents and correspondence will serve you well. By using short, user-friendly forms and focusing only on what really matters, you can reinforce the message that your company is easy to do business with. I'd say more, but that would violate this principle.

51. "Dream of better lives, the kind which never hate, wrapped in a state of imaginary grace." song, "I Melt with You," *After the Snow, Modern English* (Warner Bros 1982)

As lawyers we all (should) know that the "which" in the foregoing line is an erroneous use of a nonrestrictive qualifier in a clearly restrictive context. But the song is probably one of the best of the 80s and would not be improved by the use of "that" instead of "which." The point is, some things may be ok, even with arcane grammatical errors, such as the preposition at the end of the sentence in the penultimate sentence of the preceding paragraph.

52. "Very clever dinner. Appetizing food fit neatly into interesting round pie." song, "Psycho Killer," 77, *The Talking Heads* (Warner Bros. 1977)

This is simple, but often forgotten. Shut up and listen before you speak. A client may approach you with a problem and you may think you know the answer 10 seconds into her speech. Let her finish. At the very least, it will give her a chance to show

53. "When I have nothing to say, my lips are sealed."

song, "Psycho Killer," 77, *The Talking Heads* (Warner Bros. 1977)

This is simple, but often forgotten. Shut up and listen before you speak. A client may approach you with a problem and you may think you know the answer 10 seconds into her speech. Let her finish. At the very least, it will give her a chance to show

you, and you a chance to express, what a great client she is. In some cases, you may hear some relevant information that would change your initial assessment.

54. "Sorry folks, we're closed for two weeks to clean and repair America's favorite family fun park. Sorry..." "Now you listen to me . . . We just drove 2,460 miles, just for [Wally World]. The Moose says you're closed, I say you're open." movie, *National Lampoon's Vacation* (Warner Studios 1983)

Management, and people in general, can handle bad news, but they do not want to be surprised. Surprises make for good horror and comedy, but not for a productive in-house career. If there is something that could prevent consummation of a business opportunity at the last minute, warn them early and often.

55. "I think of all the education that I missed, but then my homework was never quite like this!" song, "Hot for Teacher," 1984, *Van Halen* (Warner Bros. 1984)

You have to train your clients to be good clients; be creative how you do this and avoid condescension. A great way to train clients about contracts is to take the worst contract draft you have seen, doctor it to make it worse, and give it to your clients—whom you have divided into teams—as a competition to see which team can spot the most errors. One point for identifying the error and a bonus point for explaining why the clause is problematic. Treat the winning team to lunch. At the company that instituted this competition (at the annual sales kickoff), the teams took it very seriously, had fun, and referred back to the contract several times in the year after as we discussed real contract issues.

56. "I'm gonna get myself connected. I ain't gonna go blind for the light which is reflected." song, "Connected," *Connected, Stereo MCs* (Island, 1993)

Make an effort to stay in the loop. Don't get so consumed by your own inbox that you neglect the important nonlegal issues facing the company, the big problems to solve, the worries and fears. At some point, some element of those issues will land on your desk. And make sure you reciprocate; identify the key stakeholders for a matter and keep

them in the loop about your big legal issues, worries, and fears.

57. "There are 178 parent languages on our planet with over 1,000 dialects. . . It's amazing we communicate at all. . . Languages and dialects with this one thing in common: AEIOU sometimes Y." song, "AEIOU Sometimes Y." AEIOU Sometimes, Ebn Ozn (Elektra Records 1984)

If your company is multinational, then you absolutely will have contact with people from different cultures. More often than not, due to time differences, this diplomacy will occur in written emails. Though languages and cultures are different, they share a few things in common: clearly written emails that eschew legalese (hint: don't use the word "eschew," even with Americans), bear some resemblance to formal business communication, and include some pleasantries, will get you far. Courtesy, clarity, and conciseness are universally appreciated in business correspondence.

58. "Please please tell me now, is there something I should know?" song, "Is There Something I Should Know?" Duran Duran, Duran Duran (Capitol)

Don't be afraid to ask questions. When a client comes to you with a problem, you may get a sense that there is something playing behind the scenes. Trust your instinct; don't be afraid to ask them (or others) if there is something else going on.

59. "99 red balloons floating in the summer sky Panic bells it's red alert There's something here from somewhere else." song, "99 Luftballons," 99 Luftballons, Nena (Sony, 1984)

Your clients may not start a nuclear war because they see some balloons floating in the sky, but they will overreact at times. When they do, you need to take them back down to Defcon One and get them focused on explaining and solving the problem, if there really is one. I find that, when appropriate, the best thing to do is tell a story from your experience to illustrate that there really is no problem.

60. "Do you hear me? Do you care? Do you hear me? Do you care? My lips are moving but no

sound is coming out. The words are audible but I have my doubts that you realize what has been said. You look at me as if you're in a daze. It's like the feeling at the end of the page when you realize you don't know what you just read. What are words for? When no one listens anymore."

song, "Words," Spring Session M, Missing Persons (One Way Records Inc. 1982)

The worst assumption that you can make in-house is that your client has read the document. Most people assume "that's the lawyer's job." While clients need not be reading late-payment, governing law, integration, notice, and other provisions, they should be reading relevant representations and warranties, indemnities, license grants, or statements of work. After you complete your review, close your memo with "as you read through this document, you may want to pay particular attention to Section X because . . ." Then assume they won't read anything else but that section.

61. "What I really need is a droid that understands the binary language of moisture vaporators." movie, *Star Wars* (Twentieth Century Fox 1977)

I know, I know, *Star Wars* was made in 1977, but everybody would agree that it was before its time. In any event, I challenge the reader to find any 80s quote with the word "binary" in it. The point is that just as Uncle Owen needed a droid who could speak a binary language, so do corporate executives. Clients want bottom-line options and recommendations; they don't want a recitation of all the issues (*i.e.*, how smart you are to find so many interesting little issues in the contract!). Identify the available courses of action and present them succinctly to your client.

62. "When you came in here, didn't you have a plan for getting me out?"

"He's the brains, sweetheart." movie, *Star Wars* (Twentieth Century Fox 1977)

Occasionally, after presenting a succinct binary choice, and despite your best efforts to sell option A, your client will pick option B, which may land you in the trash compactor. You're the brains, sweetheart, so always have a back-up plan. This may mean doing what is necessary to keep option A open for when your client does see the light or it may mean mitigating all of the damage that you know will come under option B.

63. "Let me give you a little advice so you know. In times of economic uncertainty, never ever [mess] with another man's livelihood. Go have fun now. You know fun, time of your life? Maybe if you follow that, I won't have to come back here."

movie, *Risky Business* (Warner Studios 1985)

"Guido, the killer pimp" may be able to give advice about his core business in the same line with general advice. You do not have that luxury. You can give legal advice—which is your core business—and you should give general business advice where relevant. You do not want to appear to overstep your authority and you want to be clear when you think something is both perfectly legal but plain stupid. When you give advice, make it very clear what part is legal advice and what part is business advice. If you want privilege to apply to the legal part, put it in a separate memorandum and mark it appropriately.

GETTING AHEAD

"Keep feeling fascination, looking, learning, moving on." song, "(Keep Feeling) Fascination," *Best of the Human League, The Human League* (A&M 1985)

64. "I want my two dollars!" movie, *Better Off Dead* (20th Century Fox 1985)

In the movie, this line is repeated by a zealous newspaper delivery boy attempting to collect on his route. He chases the debtor all over the ski slopes trying to get his money. You're not in private practice anymore. On September 1, you will not be automatically promoted from "third-year associate" to "fourth-year associate," and your pay will not ratchet up simultaneously with all of your peers. If you think you deserve it, don't be afraid to ask for a raise.

65. "You know you're missing out on something. Well, that something depends on you." song, "The Look of Love, Pt. 1" *The Lexicon of Love, ABC* (Polygram Records 1982)

Most legal departments do not have a Career Development Committee. You need to work with your bosses inside and outside the legal department

to make the most of your experience. And even before that, you have to think about what you really want to get out of your in-house career, because a good manager will ask you that precise question. The answer may be "I want to get more M&A experience," or "I'd like to do anything but what I am doing now." The important thing is to have a thoughtful answer that fits with your short- and long-term career development plans.

66. "Video killed the radio star." song, "Video Killed the Radio Star," *Age of Plastic, The Buggles* (Polygram Records 1980)

Stay current with technology or go the way of the radio star. This includes mobile connectivity, email retention, electronic discovery, online data rooms, and automated contract management. The more you know technology, and the more your bosses know that you know technology, the more influence you will have in shaping your department's technology resources. You also may get some cool gadgets out of the deal!

67. "I fought the law and the law won." song, "I Fought the Law," *The Clash, The Clash* (Sony 1979)

At times in-house, for a number of reasons, you may be tempted to move over to the business side. Maybe it is for the money, maybe it is to be making the deals before the lawyers get involved, maybe it is just a need for change. Just be sure you know what you are giving up on the legal side before you make a rash move.

68. "Act like wherever you are, that's the place to be. 'Isn't this great?'" movie, *Fast Times at Ridgemont High* (Universal Studios 1982)

Venting and complaining is commonplace among law firm associates. Outside the law firm, it is much less prevalent. Innocent venting in a small law department may be perceived as a serious attitude problem. Similarly, in a law firm it was accepted for a case or deal team to bash its adversaries. In-house, as unreasonable as your opponents may be, they are also your company's customers, and if you badmouth them to your client in sales, they will use your "hostile attitude" as a reason the deal fell apart. It is okay to point out concrete ways

in which your opponent is being unreasonable, but always do it in a civil manner, without getting personal, and frame it as a business issue.

69. "And if you find you don't like my ways, well you can send me back in 30 days!"
song, "50 Days," *Run D.M.C., Run D.M.C.* (Profile Records, Inc. 1984)

In-house, you generally don't get the chance to see your new hires in action (at work and at the cocktail parties) as a summer associate. When I showed up to one of my first in-house interviews, I received (and passed) a *written test*, a horrible software license agreement in which I had to spot problematic provisions. As a candidate, know that in-house interviews are more difficult than law firm interviews. As a hiring manager, know that you must be creative in doing your due diligence to hire the right folks. Whether that involves a written test, a "case-interview" or dozens of behavioral questions is up to you, just be prepared to ask (or answer) tough questions. Talk to friends who have gone through business school or management consulting interviews for advice on non-traditional interviews.

70. "Because your kiss is on my list of the best things in life."
song, "Kiss on My List," *Hall & Oates* (RCA 1980)

Keep track of your accomplishments. If people start using tougher, behavioral in-house interviews, you will be asked to discuss how you resolved a contentious issue in a particular negotiation. If you have a running list of the parties, the subject matter, the date, the dollars, and noteworthy facts, you will be well-prepared to discuss your experiences.

71. "We are the ones who make a brighter day, so let's start giving."
song, "We Are the World," (The Live Aid Concert), *USA for Africa* (Polygram Records 1985)

Most private firms have ample opportunity for pro bono projects—interesting cases for nonprofits, amnesty cases, legal aid clinics, etc. Most legal departments are too small to have a regular flow of pro bono work. Stay involved with pro bono through ACC, through your local bar association, or get involved in nonlegal pro bono through

your company. Painting a low-income housing project with that obnoxious salesman may be just the bonding experience you need to develop a good working relationship.

72. "I got lots of money, but it isn't what I need. Gonna take more than a shot to get this poison out of me."

song, "Bad Medicine," *New Jersey, Bon Jovi* (Polygram Records 1988)

Remember that your in-house lawyers are motivated much more by challenging work than by money. If one of your lawyers is unhappy, it will probably take more than a raise to satisfy him or her professionally.

73. "I am the son and the heir of a shyness that is criminally vulgar."

song, "How Soon Is Now?," *The Smiths, The Smiths* (Warner Bros 1984)

Especially in a small law department, succession planning is important. Look at the organization chart for your department. Everybody in the department should be able to step up, down, or over in case of voluntary or involuntary turnover or illness/emergency. Know how you would access somebody's working files and work email short-term. When a vacancy arises, let the department know as soon as possible how you will fill the spot long-term (promote from within or recruit from outside).

74. "The numbers all go to eleven...." "Oh, I see. And most amps go up to ten?" "Exactly...." "Why don't you just make ten louder and make ten be the top number and make that a little louder?" "These go to eleven."

movie, *This Is Spinal Tap* (Columbia Tristar 1984)

There is always room for improvement. You can always draft a better, shorter, more customer-friendly license agreement. You can always learn wages and hours laws for another country. You can always prepare for a smoother due diligence review. On a scale of 1 to 10, don't be afraid to take it to 11.

CONCLUSION

"Party over, oops, out of time..."
song, "1999," *1999, Prince* (Warner Bros. 1985)

75. "Relax! Don't do it."
song, "Relax," *Welcome to the Pleasuredome, Frankie Goes to Hollywood* (Island 1984)

This is an easy one. Your new environment, your first offshoring contract, your first termination in Brazil, and your first Sarbanes-Oxley whistleblower report will all be stressful and exciting moments. None of them prevents you from taking a moment to relax before you tackle them.

76. "I'm working out most everyday and watching what I eat. They tell me that it's good for me, but I don't even care."

song, "It's Hip to Be Square," *Fore! Huey Lewis and the News* (Capitol 1986)

All that time you used to spend at the printer or flying back from those depositions in Hartford? Use it wisely. Cook for your family, train for that marathon, or read the *Financial Times*.

77. "I don't care where we go. I don't care what we do. I don't care, pretty baby, just take me with U."

song, "Take Me With U," *Purple Rain, Prince* (Warner Bros. 1984)

Don't forget that none of this in-house stuff is as important as the ones you love.

78. "Ack!"
Common saying of Bloom County comic strip character Bill the Cat, authored by Berke Breathed

Just as Bill the Cat responded "Ack!" to everything, your initial response to an issue should be "Ack."

79. "'Never get involved in a land war in Asia', but only slightly less well known is this: 'Never go in against a Sicilian, when death is on the line.'" movie, *The Princess Bride* (MGM/UA Studios 1987)

This is generally good advice, whatever your profession.

80. "Now whip it, into shape, shape it up, get straight, go forward, move ahead, try to detect it, it's not to late, to whip it, whip it good."

song, "Whip It," *Are We Not Men? Devo* (Warner Bros. 1980)

If you only remember one thing from this article, remember the last few lines of the 80s classic "Whip

It." It really sums up your obligations and opportunities as an in-house lawyer solving a corporation's problems.



The author would like to dedicate this article to the memory of David Mattheu Bonnot, a true friend, philosopher, musician, athlete and fellow aficionado of the 1980s:

"You can be the Captain and I will draw the chart, sailing into destiny, closer to the heart."
song, "Closer to the Heart," *Moving Pictures, Rush* (Mercury/Universal 1977)

The author would like to thank his wife, Simona, for her valuable suggestions, edits, and support, and his friend, mentor, and colleague, Joe Ramirez, who ushered him through the private practice-to-in-house transition with the skill of an MTV VJ.

Special thanks to ACC colleagues Bruce D. Becker, VP Marketing, Verinform Systems, Inc.; Michael Carroll, VP, Medallion Financial; Bill Cosden; Amy Finch, GC, IASCO; Jack Isaacs, Wharton MBA student; and Francis Toldi, GC, Determined Productions, without whose collective contributions this article would have been entitled "50s Things I Wish I Knew..."

Finally, special thanks to Sirius satellite radio (especially the "Big 80s" and "First Wave" station DJs), lyred.com, lyrics.com, lyricsfreak.com, purelyrics.com (caveat for all—make sure you have a good pop-up blocker!), and the Internet Movie Database® (www.imdb.com), all of which were indispensable in refreshing my recollection of 1980s pop culture. ■



TOP TEN

1. **Avoid Being Seen as a Deal Buster**

- Advisor versus decision-maker
- Being the “gate-keeper”
- Lawyer-shopping



2. **Helping Client’s Use Counsel Effectively**

- Dealing with repetitive legal issues
- Legal education and training
- When and how to use external counsel



3. Managing Client

- Accessibility
- Communication



4. Maintaining your Objectivity

- How close is too close?



5. Legal Advice vs. Business Advice – Protecting Solicitor Client Privilege

- Know which hat you are wearing and communicate your role to your clients
- Effective use of a Solicitor Client Privilege Statement – saying it doesn't make it so
 - “This e-mail contains legal advice protected by lawyer and client privilege. Circulation of this e-mail is intended solely for the review of individuals to whom this e-mail is addressed and should not be forwarded or otherwise distributed without the prior written consent of the lawyer providing the advice.”



5. Legal Advice vs. Business Advice – Protecting Solicitor Client Privilege

- Implement a strict policy as to how Privilege may be waived – e.g. only in writing by the GC
- Educate your clients about Privilege and how to prevent inadvertent waiver
- Beware when giving legal advice to subsidiaries – the Teleglobe case



6. Understanding the Business

- Getting out to your client's locations and facilities
- Attending business meetings (including external – suppliers and customers)
- Culture
- Corporate speak
- Industry and regulatory environment



7. Legal Skills – Breadth versus Depth

- Areas of strength
- Size and structure of law department
- Complexity and needs of business



8. Losing your Edge

- Maintaining your networks
- Receiving updates
- Attending continuing education



9. Career Development

- Within corporation
- Outside of corporation



10. Living with the Results of your Advice

- Celebrating successes
- Managing disappointments and problem solving

ACC Handout
November 18, 2007

101. Managing the Transition to In-house Counsel

1. Avoid Being Seen as a Deal Buster

At a law firm you are clearly in a purely advisory position - sometimes you don't know what your client decided and/or how it all turned out once you hang up the phone. When you are in-house, there are some clients who want you to make the decision for them and/or only want you to give a "yes" or "no" answer - over time you become more comfortable with this role and/or start to teach your client how to assess legal risk and take on decision making.

If you become the "gatekeeper" within an organization, you can be perceived to be seen as a "deal buster". While this problem exists for external counsel it is a greater concern for inside counsel. If in-house counsel is consistently viewed as being a road block to business plans, some clients may look for inventive ways get around the opinion either by "lawyer-shopping" in a large legal department or to avoid involving the legal department at all. In-house lawyers need to help their internal clients come up with creative solutions to achieve their goals and be seen as a part of the team not a stumbling block or hurdle to overcome.

2. Helping Client's Use Counsel Effectively

As external counsel you'd rarely say to your client "You've asked me that question 5 times before and my legal advice is still the same". In fact you might not know your client has already received legal advice on the issue many times before. However, as in-house counsel in a large organization it's a waste of legal department resources to give repetitive advice and even a bigger waste when external counsel advice is sought by a client on an issue that has been dealt with many times before by the organization. As inside counsel you get a bird's eye view of the types of repetitive legal issues that arise and can add great value to your organization by educating clients so they don't need to ask the same legal questions again and again.

Also having a policy which prevents external opinions from being obtained without first seeking legal department advice helps to avoid wasting resources.

3. Managing Client

At a law firm you have the ability to control client contact and communication. When in-house, your client is often in your building, eating lunch beside you in the cafeteria etc. - you become completely accessible. As such, you need to manage this relationship so it is workable for you but still delivers a real benefit to your client.

4. Maintaining your Objectivity

As in-house counsel you need to maintain your objectivity when advising your client. As an employee of your client you have a real interest in having the business succeed (bonus, pay etc.). Sometimes being too close to the business can impact your ability to be impartial. As such, keeping a healthy distance and maintaining objectivity is more challenging in an in-house environment.

5. Legal Advice vs. Business Advice – Protecting Solicitor Client Privilege

Going in-house you need to be more cautious and purposeful in ensuring your legal advice maintains its status as privileged. You need to differentiate between business advice and legal advice.

This can be of critical importance particularly when your company engages in an internal investigation and you want to ensure the work product is protected by solicitor client privilege.

6. Understanding the Business

Our internal clients are part of business units. So much of what we do requires a very good understanding of the business we are in. How important is it to understand the business? How do you go about understanding the business?

All corporations have their own unique culture and corporate speak - it takes a while to understand this - as in-house your real benefit is your intimate knowledge of your client and so it is essential that you understand how the company works and how it communicates - need to attend business meetings, updates, conference, social events etc. to get exposure to these aspects of your company.

7. Legal Skills – Breadth versus Depth

Depending on the company you join and the size and structure of the in-house legal department, you need to be prepared to adapt your skills to suit the new requirements of your job. In many cases this will mean broadening your skills so as to deal with a variety of legal issues and practice areas (i.e. procurement, contracts, advertising/marketing, real estate, intellectual property, acquisitions/divestitures, human resources, pension, information systems, corporate governance, litigation, risk management, finance/insurance, sales, environment, government relations, crisis management). In some cases, and again depending on your business, you may need to become more specialized and develop deeper knowledge in specific areas.

8. Losing your Edge

In a law firm you have constant access to materials and persons to help you keep up with the most recent legal developments and news. In an in-house environment, it takes more effort to stay up to date. Just the same it is essential that you continue to stay up with recent news. You need to build new resources (co-workers, outside counsel, subscriptions, conferences) to help you keep up to date.

9. Career Development

The career path of in-house counsel is very different than the career path of a lawyer in private practice. Once an associate in private practice, you aspire to work on more sophisticated matters and, eventually, become partner. What career paths are available for in-house practitioners? How do you ensure that the work you do remains interesting and you are more than just a generalist?

10. Living with the results of your advice

As a lawyer working at a law firm your involvement in a matter may end after sending the opinion letter or ending your telephone conversation with your client. In an in-house environment, it does not - you actually get to live in the impact of your advice - good and bad - you learn how to celebrate your successes and do any damage control and fix-up if the matter does not go entirely as anticipated.