

the facts  
of in-house

LIFE

In-House

by philip r. strauss







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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. 1985)**

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=MC<sup>2</sup>,” *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. 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-

tomers 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 new 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 1983)

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 pterodactyl!”**

**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.”**

**“It’s a quiche.” “How do you spell?” “You don’t spell it, son, you eat it!”**

**movie, *Sixteen Candles* (Universal Studios 1984)**

Remember that contracts, like quiches, have a purpose, and it is not to show off your drafting skills.

**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 contest 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 (Electra 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 1983)

“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 1983)

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, “30 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. 1983)

**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 “ACC.”

**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 Matthew 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)*

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