

# In-House Perspectives: Random Bits of Fun

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## **In-House Perspectives: Random Bits of Fun**

Compiled by Broc Romanek, our in-house readers share tips, anecdotes, and thoughts about topics that arise in their daily practice.

### **A. Confusing Areas of Securities Law**

1. “Confusing area? Proxy voting – seems I need to learn it again every year.”
2. “It may not be THE most confusing, but Section 16 – Romeo and Dye can have it!”
3. “Rule 144: affiliate definitions, holding periods, the basic purpose of the regulation...everything. Just has never clicked for me.”
4. “Why already-public companies can’t just issue more common stock without registering the specific offering. If the terms of the securities are the same as what’s already out there, and there is no non-public material information being held back, why all the extra rigamarole? Form S-3 is helpful but doesn’t go far enough in my opinion.”
5. “Private aircraft and perquisites. Telling C-suite execs and directors what flights they can and can’t take. NO upside!”
6. Related-party transactions – I have seen companies handle this several different ways in the proxy. It appears that some disclose any relationship between a director’s company and the company. But others take a more refined approach and note that as long as those transactions are conducted at arm’s length, they are not disclosable as related-party transactions. Where is the line?”
7. “To answer honestly would be an admission against interest. Suffice it to say, much of it is pretty painful.” “Each Board has its own personality, if yours has a good vibe try to let that come through in the proxy.”

### **B. The #1 Thing Freaking You Out at Work**

1. “The pace, scope, and volume of SEC regulatory proposals, coupled with uncertain enforceability due to *WV v. EPA*.”
2. “Whether we will be ready to comply with the SEC’s proposed climate-change rules by the effective date.”
3. “Why is it so overwhelmingly busy all of the time?!”
4. “The impact of inflation on margins.”
5. “For me, it’s a resource issue. We are down a number of people on our team and it’s creating all sorts of difficulties getting things done.”
6. “I don’t know that I am freaking out about it just yet, but I have spent more time in the last six months than I probably have in the prior six years thinking about how oversight responsibilities of the board and its committees should be divided among them with regard to ESG matters, and whether or not the traditional naming conventions still effectively capture each committee’s remit.”

7. "The number of SEC proposals to read and think through. My head is spinning like a top."
8. "I seem to complain to my kids daily about the number of ESG-related subjects that pop up almost daily to absorb and think about. They just roll their eyes and ask for more pizza."
9. "It's utterly bewildering: the infinite expansion of the term 'ESG' and consultants claiming they can 'simplify' the subject for clients."
10. "For me, I try not to complain. But sometimes I can't believe another year has gone by. When I think of my long career, the past few years swallow the other 20 because it's been so insane. Breakneck speed. I want to quit each and every day."
11. "I'm still worried about Covid. They made us come back to the office and everyday seems like a crapshoot about falling deathly ill."
12. "I'm freaking out about my attitude. I used to always love coming to work. Now it's a chore. Have I lost my mojo?"
13. "Whether I will have to return to the office on a full-time basis."
14. "The SEC's climate-change rules, if they are adopted and survive litigation. Sea change in terms of SEC disclosure philosophy. Going beyond even the remote bounds of reasonableness."
15. "ESG. Who would think an acronym could bring me to tears? It's just been such a wild three or four years and it's hard to keep up with the last set of changes. And then boom, here comes the biggest yet." "I wouldn't say I cry myself to sleep every night. But more often than I would tell my wife. It's so busy that I don't have time to interview people to hire them. And it's been like this for years."
16. "Climate Disclosure!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!"
17. "The possibility of final rules being adopted by the SEC regarding climate-related disclosures. Is addressing climate change important to society? Absolutely. As an experienced securities lawyer, am I professionally prepared to lead that charge? Absolutely not."
18. "How bad and how long the coming recession will be..."
19. "I am freaking out about the volume of work I have to do and manage just to prepare for all of these new SEC rules. Even the simple ones like rules on stock repurchases and 10b5-1 plans. Who has time to coordinate and file a form every day? Because we are buying shares almost every day. And we have to formalize our procedures for entering into 10b5-1 plans and clearing insiders to trade which are tightly controlled processes, but not currently written up as a procedure.

Also revamp our insider trading policy as currently it applies only to a fairly narrow leadership group and the two sentences in our business conduct guidelines applicable to everyone else may not be perceived as adequate. And don't get me started on internal controls for ESG data and the climate change rule. This information is coming from departments and people that in large part haven't been subject to internal controls or audit processes. It's a lot."

20. “Hiring—the need is great, job market is tight, and our group is not supporting fully remote employees; makes for a very discouraging search process.”

21. “Staffing shortages and turnover and a resurgence of COVID cases while HR spins it as ‘the new normal.’”

22. “The lack of human connection is taking its toll. Sometimes I feel like I can’t remember what ‘normal’ was like.”

### **C. Summer Doings**

1. “Get outside as much as possible. Don’t put off doing summer things that you enjoy; you might never get to them. Summer goes fast.”

2. “I heard a bad joke on CNBC this morning. Andrew Ross Sorkin said that his kids had been asking to see Europe this summer. He told them to look in the mirror the next morning and they could see ‘You’re up.’ It’s almost funny. After being attacked by horseflies last summer in a wildlife refuge, I am looking for low adventure ideas on summer fun.”

3. “When I was young, summer meant no responsibilities and seemed endless. Now it doesn’t feel that much different than the rest of the year. Maybe a need to find a summer love!”

4. “Spend as much time outside as possible.”

5. “First, be sure to take time to recharge. Then, as you have thoughts about improvement opportunities throughout the year, prioritize only a few. Plan and execute. Summer is also a good time to do some deep reading on emerging topics. Always be learning. Stay current.”

6. “I always take my two-week shore vacation mid-August. This way when someone says how was your summer, I always say ‘great.’”

7. “Sun, warm weather, the beach and baseball! What’s not to like?”

8. “I like everything about summer.”

9. “Summer sure seems shorter than when I was a kid.”

10. “Summer is incredible because it marks the end of proxy season and the beginning of BBQ smoking season.”

### **D. Working During Vacations/Holidays**

1. “It’s simply inevitable, especially if you support tax or do any M&A. Eventually you get used to it, although it would be nice to once in a while start the year feeling refreshed heading into the reporting season!”

2. “One personal annoyance is that often the “lawyers” are never considered when factoring in whether or not someone is being interrupted on their vacation. For example, I recently (and despite my ‘out of office’ notice) was on a family vacation, yet got dragged into a meeting where the other

members were specifically called out for 'thanks for making themselves available to attend' even though it was Thanksgiving week.

When I noted after the call to the meeting organizer that he neglected to note me in the same way, he said, "well, you're a lawyer so you're expected to be available." This is a consistent theme since I started practicing 20+ years ago, but I think that sometimes the attitudes towards are profession can be border-line offensive.

On a funny anecdote, I had a counter-party recently decide to tell a brutally offensive lawyer joke (literally the punch line was making fun of killing lawyers). I smiled and said that I had heard it differently and then retold the same joke but inserted his profession. Watching the rigid appearance of a strained smile on his face showed that the point was made. Didn't hear another 'lawyer joke' from him for the rest of our multiple interactions."

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**3.** "I've really gotten used to always being 'on.' When you start out as a young lawyer, you think, "When I'm senior enough, I won't have to work so late or work so hard," because you don't usually see the partners up sending emails at 2 or 3 am. As you become a more senior lawyer, whether at a firm or in-house, you sadly realize that the need to be available only intensifies as you progress in your career.

Corporate general counsels don't go offline when they leave the office – calls and emails from the CEO, CFO, directors, and business leaders come at all hours and on any day. The company continues to operate and critical issues arise even if the GC is out 'on vacation.' If you aspire to those greater ranks, you just get used to it. You may even take pride in being able to 'be of service.' We truly are a client service industry, after all."

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**4.** "Both of these have happened to me in the past couple of months. No good story here but a reminder for myself that I won't ever get the moments I miss with family (or friends) back, so it's imperative to draw boundaries even where it feels impossible. I'm working to become more creative in leveraging teams and outside counsel to do that."

**5.** "My thought is that it is probably inevitable that you will be working over your vacation or holiday. As you become more senior, you will become more responsible for things and be in the 'middle' of more.

With that said, I would set a specific time (or times) of day where you open and handle messages and issues. Perhaps it is first thing in the morning before you start your day. Maybe it's at lunchtime or early evening. Or it can be a combination of things. This way, people know that they will be able to reach you at some point in the day and not necessarily bother you at random times during the day."

**6.** "Holidays and vacations have a magnetic pull that attract deadlines. I fought it early in my career, but at this point, I welcome the occasional work over holidays or vacations. Maybe the grass is greener somewhere, but from my perspective the only realistic alternative is to work for a sleepy company where rarely anything exciting happens. I think that would be far worse from a personal and career growth standpoint than the occasional interruption.

Of course, there are times when everyone should be able to put down the phone and unplug, and certainly not every holiday and vacation should be filled with work. It is also hugely important as a manager to recognize that just because you are thinking about something when you have a free moment during a holiday, your team may not be.

So if the email or call can wait, then wait. If you want to send it anyway and it is not urgent, make that clear. Your team will appreciate that you understand your time is not more important than theirs.”

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**7.** “I don’t know what to say about this. As a law firm associate in the early aughts, I never had a break. Being from a marginalized group, I felt like I needed to be a workaholic to be valued or seen at all. During this time, I also gave birth to my two children.

I survived those years, but I wouldn’t recommend it. Eventually I went in-house where I have more control over my team’s workload. We use lean principles to optimize the team’s talents and prevent burnout. We focus on business outcomes not volumes of work or “butts in seats.” Our mindset is: how do we get to the best business outcome while eliminating the human struggle? Eliminating the type of waste that seems endemic to how legal work is traditionally done (e.g., over production, defects, waiting, non-utilized resources and excess processing), has been a game-changer for us.”

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**8.** “Sometimes it’s good to work on the holidays. After a long career at a law firm, my father became an assistant county prosecutor (his idea of retirement). On holidays, he carried the office pager so colleagues with young kids could spend the day with their young kids – uninterrupted by calls from the police for legal advice. It was a much-appreciated gift to his colleagues and a model for his adult children.”

**9.** “Gotta get some perspective. Most matters can wait until the holiday is over.”

**10.** “I used to work during every holiday and vacation. I got on the computer after everyone else went to bed at night and then in the morning while everyone else was sleeping in. I figured that these were hours when nobody would notice, so I wouldn’t be robbing myself of quality vacation time with my family.

A few years ago, my kids (then pre-teens) saw me looking up something on my iPad on Fathers Day. It wasn’t even work related. My son came up to me and said, “I can’t believe you have to work, even on Fathers Day!” My daughter chimed in very matter-of-factly, “Of course he has to work on Fathers Day. He even works every day when we’re on vacation.” I didn’t realize what a warped perspective on work and adult life that my kids had gotten during all of those years when I thought I was sneaking in some work when nobody cared. I started to get emotional and told them that from that Fathers Day on, I wouldn’t do that anymore. This ends now. And I lived up to that promise. I left the laptop at home over the next long vacation and nothing at work cratered because of it.

So, the next time you are packing your laptop and documents to take with you on vacation, think about whether you’ll really need them and what it may tell your family about your priorities. When you are writing that soft out-of-office email that says you’ll be checking your emails and voicemails throughout the day while in Florida, write something that actually establishes firm boundaries.

You may feel obligated to your clients over vacation. You may feel like vacation is a great time to catch up on all of those unread emails at the side of the pool while everyone else is in the water. Don't do that. Vacation exists for a reason. Take it. While you may be willing to sacrifice your personal rest and relaxation time, realize that you may be modeling behavior that will adversely impact your kids as they grow up.

Of course, you want to teach your kids to work hard and be responsible. But also think about the seeds of outsized pressure and unreasonable expectations that you may be planting. Unhealthy behaviors are learned from an early age. Your kids are taking their cues from you on what constitutes "work-life balance."

It's a deliberate choice to break workaholic habits that you have formed – habits that got you to where you are. It will feel unnatural and be (perversely) easier to revert back to what you've done your whole career. But at some point, you have to think about the subliminal impact of this type of sidestream smoke. You know you should do it for your own good, but you never do. Going forward, consider doing it for the wellbeing of your kids. They will notice. One day you will be proud of how they are able to balance their life and work."

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11. "Trust your team. They will have your back if you have their back when they go on vacation."

12. "I truly love my job and working with boards, executives, deals, crisis, breakthroughs, MNPI. You learn that you have to work night and weekends. I think it's part of the excitement. I just had to learn to differentiate between the issues that needed focus off-hours and those that could wait or were coming from crazy superiors who could not tell the difference. So I have weaved my work and personal lives together to take account of this."

13. "Do as I say, not as I do. Take the time. Arrange for someone(s) to cover you. In these pandemic times, we are all on the edge of burnout and we need to be better to ourselves."

14. "It's a huge problem if you never get a chance to truly "unplug." I think as lawyers we have been conditioned to always be incredibly responsive, but if you and your staff never get a real break, I think burnout will happen and the end result will be much worse than if you had just found a way to allow for true time off. At my company, we have started to try really hard to make it happen both during the holidays and when people are on PTO."

## **E. New Year's Resolutions**

1. "A couple of things: First, keep up my de-acquisition efforts. I find that over the years I have accumulated 'stuff' that others have more and better use for. I am trying to intentionally get that stuff into the hands of those people, often through intermediaries. Nothing to landfills! Paper gets recycled. Second, keep paying it forward. Nothing is more gratifying. Third, I once again will intend to take better care of myself. I know what I need to do, I just need to do it."

2. "We start house renovations just after the new year (just in time to draft the proxy!) and are adding a puppy in April, so my mantra for 2023 is 'Patience through chaos.' I think that will work well for both personal and work."

3. "Try to be compassionate. Love myself. Cherish my family and friends. And, oh yes, try to stop looking at my cellphone so much."
4. "I'm planning on keeping a journal to capture the moments of joy that I find. Particularly those moments in my job that frankly aren't that rewarding. I figure if I pay greater attention to how I'm feeling in the job from moment to moment, perhaps I will realize it's not such a bad job."
5. "Just thinking about this, I realize that I need to really focus and take more time off for myself. I rarely take my vacation time and I probably am too good of an employee. I know they say that 'you can't take it with you' but not sure anyone really pays that any mind. At least not in this profession."
6. "I have almost never made a New Year's resolution, but I think I'm ready to try it. With some baby steps. Just picking one this year. I resolve to focus more on marketing myself in my field and exploring my potential in a way that I haven't before."
7. "I absolutely love new beginnings and these resolutions. For me, the key to a successful New Year's resolution is accountability and consistency. I set several New Year's goals this year but only accomplished the one where I also set a clear path to achievement (month-by-month) and partnered with a friend to keep me motivated. As a result, I was able to finish my goal of walking/running 2021 miles this year by mid-October, and I'm now on my way to 2400+ miles by New Year's Eve!"
8. "I'm a bit methodical about the year-end. I write out an annual assessment of how I performed against various personal goals I had established in my prior annual assessment. So I do set new goals each year. I find that writing this out in a multi-page letter each year is both cathartic and useful to assessing whether a particular goal is realistic and truly desirable."
9. "I divide my resolutions into three types. First, I have my short-term resolutions. Something that I want to work on right now and have it be a temporary reset. Then I pick one or two long-term resolutions where I want to make a change in my life on an ongoing basis. Finally, I set a few intentions – things that would be nice to change but I'll be compassionate with myself if it doesn't work out."
10. "New Year's resolutions are a strange bird. There will surely be scant resolve to see them through. But the thought was nice. And you can do it all over again next year."
11. "Instead of making resolutions, I pick a word to inspire my intention that year. For this year, my word is 'connection.'"
12. "I generally bat .300 for my intentions. About a third of them make it to the finish line. In baseball, that batting average would make me worth \$20 million a year. So not bad."
13. "I don't do New Year's resolutions. I do goals. I also avoid the gym during regular times of the month for January to avoid those that have a different philosophy."
14. "I love them! I make a bunch every year, write them down and if I achieve even a single one, I chalk that up as a successful year. I ended up getting an online MBA from Quantic during the pandemic. Graduated in September. A resolution for several years, finally achieved!"
15. "I set goals, but I don't make 'New Year's Resolutions.' Rather than waiting for January 1st, I prefer to get started on a new goal whenever the idea crystalizes in my mind."



**16.** “I’m not a big resolution person in the New Year. Despite best intentions, it always felt half-hearted, as if set up to later be ignored.”

**17.** “Not too long ago, I participated in a mini-retreat held on New Year’s Day. We reflected on the past year to identify something to release – with gratitude for having lived it, learned from it. Then we meditated on the coming year and any aspirations that felt right, ending up with a ‘word for the year.’ I referenced that word throughout the year and found the whole process suited me.

Just writing this, I realize that I want to ritualize this and do it every New Year’s Day – a letting go of the old and welcoming in something new as we did at the retreat. In fact, I hereby resolve...”

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**18.** “I applaud people who make and commit to New Year’s resolutions. I’ve never had the interest or discipline to really commit to one.”

**19.** “I think taking stock on a regular basis, and observing my life and my person is a good idea, so in principle, I find New Year’s resolutions a fine idea.

However, often, in American culture, I find there is a banal aspect to the exercise, where many promise to lose weight or some other such thing, which in and of itself may not be a bad idea for many of us – but doesn’t do much moving the world forward in a positive light, particularly when such resolutions are begging to be broken by the way we live. I like the concepts of the Jewish New Year, where you assess the year past, own your mistakes, vow not to make them again, and make restitution to those to whom it is owed. That seems like a good way to resolve to evolve.”