



## 102 Corporate Governance & Cross Border Compliance-What Applies to Your Company?

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Ethics & Privilege | Business Ethics  
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TIAA-CREF is a complex of insurance and investment companies including two separate entities, TIAA and CREF operates with a legal and compliance staff in excess of 200 people, including 75 attorneys.

With a Board of Overseers at the top of TIAA and two operating boards at TIAA and CREF, members include Nobel Prize winners, university presidents, professors at law schools, and CEOs of major companies.

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*Tips & Insights on:*  
**Board Training with  
George Madison**

### The Importance of Board Training

In a post-Sarbanes world, board training may not be new, but a lot of companies feel like they're still not getting it right. After the shake out of the initial rush to training, who's got a formula that makes sense? What kind of training is best? And how do you plan training that appeals to your directors, but isn't a boondoggle?

### The Board Training Formula

Although no one today may have the perfect formula, there are a number of entities that are good at board training. The best ones tend to be run by nonprofits, universities, and professional associations, but there are some quality commercially-sponsored programs run or sponsored by service providers and executive search firms as well. (See "Effective Programs," this page).

### Down to the Specifics...

- **Orientation.** A comprehensive, structured orientation program for new directors and trustees is essential. It should be very specific to the company, its issues, challenges, and strategy, and its regulatory compliance and governance structures. Use this orientation as a vehicle to get everybody on the same page with the same kind of information. Bring new people up to

## Effective Programs

### Nonprofit

American Bar Association  
[www.abanet.org](http://www.abanet.org)

The Conference Board  
[www.conference-board.org](http://www.conference-board.org)

The Investment Company Institute and  
The Independent Directors Council  
[www.ici.org](http://www.ici.org)

The Mutual Fund Directors Forum  
[www.mfdf.com](http://www.mfdf.com)

The National Association of  
Corporate Directors  
[www.nacdonline.org](http://www.nacdonline.org)

NASDAQ  
[www.nasdaq.com](http://www.nasdaq.com)

The National Investor Relations Institute  
[www.niri.org](http://www.niri.org)

The New York Stock Exchange  
[www.nyse.com](http://www.nyse.com)

The Society of Corporate Secretaries  
& Governance Professionals  
[www.governanceprofessionals.org](http://www.governanceprofessionals.org)

### Academic

Columbia Law School's Center on  
Corporate Governance  
[http://www.law.columbia.edu/center\\_program/corp\\_gov](http://www.law.columbia.edu/center_program/corp_gov)

Duke University School of Law  
<http://www.law.duke.edu>

Emory Law School  
<http://www.law.emory.edu/cms/site>

Harvard Law School  
<http://www.law.harvard.edu>

Pace Law School's directors program  
[http://www.pace.edu/lawschool/legal\\_resources/index.html](http://www.pace.edu/lawschool/legal_resources/index.html)

Stanford Law School's Directors' College  
<http://www.law.stanford.edu/programs/academic/leb/roberts/execed.html>

Yale Law School  
<http://www.law.yale.edu/outside/html/home/index.htm>

Yale School of Management  
<http://mba.yale.edu>

speed with the issues that have been on the table for the last couple of years, what's been done about them, and where they currently stand.

- **Annual Retreats.** Your trustees and directors are busy—getting them together in person for a retreat is going to be difficult, so use every opportunity that you have them assembled to provide some kind of training. Accomplish your annual training as part of your retreat process. If you're on a two- or three-day retreat, try to spend half a day of training on issues that are specific to the company.
- **Periodic Programs.** Internally orga-

nized training should address new issues that arise—issues that maybe weren't on the radar in the past but that people really need to focus on now. In TIAA-CREF's case, auditor independence, email, and records retention issues, as well as the duties of the directors, have recently come to the forefront.

- **Specific, Varied Training.** Your individual directors or trustees should attend external training based on their perceived needs—different training for different committees is essential.
- **Interaction with Peers from Other Organizations.** Often the real benefit

in training is in folks exchanging ideas. Sharing experiences with your colleagues will benefit them, and hearing another company's questions will get you thinking about your own. You can have a skilled moderator facilitate sessions or just have live situations with peer involvement.

### Be All That You Can Be

Review your training program from time to time. How effective is it? If you're the general counsel or corporate secretary, hopefully you are already sitting in on the board and committee meetings and have a sense of the current, important issues. Does your

## In My World...

### Advocating Board Training

We have a Committee on Corporate Governance and Social Responsibility [on our board]. From time to time we have been promulgating positions on best practices in corporate governance that we advocate for our portfolio companies. So it is not unusual for us to be engaging corporate America and, in fact, the world in conversations on a wide range of issues from poison pills to executive compensation. We look at the problems of Enron and other things that have happened to try to figure out what happened to the boards. Why didn't they understand their duties to their shareholders? An understanding of their role as a board member in the context of the company as a whole is an essential ingredient to satisfying their duties and responsibilities.

### Prior Financial Experience

Often, a board's threshold for prior financial experience is relatively low. SOX has tried to address that issue, but financial literacy essentially means being able to read and understand a financial report, and people of this ilk typically can and have done that. However, the annual, internal training involved is still critical; your organization is unique, and directors need to understand the ins and outs of the company's financial statements, the organization as a whole, and its important business, legal, and regulatory issues. Start with more general programs available to businesses like those provided by KPMG or PWC, or at a university for broad background purposes, or if you're dealing with somebody on the board who doesn't have any real financial background.

### Quiet Diplomacy

If we are really excited about or don't like something a company is doing, we contact the CEO, the board chair, or a committee chair. We see if they will amend their ways or be responsive to us in some way as a shareholder. Typically, this will work. If it doesn't and we feel strongly about it, then we might file a shareholder proposal during the next proxy season to engage all shareholders in resolution of the issue. TIAA-CREF has used this process rather successfully. We've learned that we actually get further by talking to people and explaining our perspective on their actions, and if we are being ignored, then we have the hammer that we can always use. Companies not only need to listen to their customers, but also their shareholders.

### Unique Training for Unique Organizations

Every organization has its own nuances—make an effort to address these in board training programs in order for it to be real. We try to look at our own structure even though it's not a clear cut kind of corporate structure, and try to find ways to improve what we do internally. So we're not only engaged in the business of giving external advice, or advice externally on corporate governance, but also trying to use these best practices internally. One best practice for boards is the quality and frequency of training for directors, and it has become more and more important as time goes on, if directors expect to avail themselves of the business judgment rule.

training program do an adequate job addressing these concerns? What kinds of questions are your committees asking? Try as best you can to learn about their individual backgrounds, and therefore the kind of training that would be necessary for them. Have a sense of what tweaks should be made, and then take that to your governance committee. Discuss with them what your proposals for changes are, and get the input of the chair and the committee on what they think is appropriate.

On the front end, it is a good idea to periodically survey your directors to determine what kind of training they believe would be useful and which programs they feel are unnecessary. Make yourself available to discuss

programs board members would like to see offered.

Your directors are concerned about their liability posture and their level of diligence, especially in light of World-Com, Disney, and the like. Your role, in turn, becomes that of a facilitator, an observer, a surveyor, and a proposer of enhancements.

### Two Cents

Don't just rely on what's been in place for a long time to be good enough. You need to constantly look at your training program, update it, and stay current with the world around you—regulatory, legal, and otherwise. General counsel have become the stewards of their company's reputation and

integrity, so it's your job to keep your directors and trustees out of trouble and well-educated.

Don't sit on your hands. Don't assume that just because there's training already in place that you've checked the box and that's enough. Look at your program constantly. Survey your board members to find out what their needs are. Just because they're not complaining about it or they haven't raised a question yet, don't assume that everything is okay. It's your responsibility to bring training issues to them just as you would any other issue. Give them your advice, and then go through the process of having your board consider it. That is my two cents; hopefully it is worth more than that. 🚩

## ACC Resources on . . . Board Training

TITLE	LINK	DESCRIPTION
<b>Ethics and Compliance Manager</b>	<a href="http://www.acca.com/protected/forms/jobdescription/ethics_mgr.pdf">http://www.acca.com/protected/forms/jobdescription/ethics_mgr.pdf</a>	This sample policy is useful to consult when looking to hire an ethics and compliance manager.
<b>Compensation and Leadership Development Committee Charter</b>	<a href="http://www.acca.com/protected/forms/governance/compensation.pdf">http://www.acca.com/protected/forms/governance/compensation.pdf</a>	This sample charter sets forth the purpose, membership requirements, duties and responsibilities of a leadership development committee.
<b>Was it Legal? A Case Study of Corporate Governance Practices</b>	<a href="https://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=2298915">https://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=2298915</a>	This program discusses high-profile cases where specific corporate governance changes could have helped avoid damaging outcomes.
<b>Director's Self-Assessment Questionnaire</b>	<a href="http://www.acca.com/protected/forms/governance/corporate.pdf">http://www.acca.com/protected/forms/governance/corporate.pdf</a>	This sample form provides self-assessment.
<b>Governance and Nominating Committee Performance Questionnaire</b>	<a href="http://www.acca.com/protected/reference/corplaw/governance.pdf">http://www.acca.com/protected/reference/corplaw/governance.pdf</a>	This questionnaire, to be completed by individual committee members, is part of a self-evaluation review to aid the board in evaluating and assuring the adequacy and effectiveness of its governance process.
<b>Corporate Governance and Directors' Duties</b>	<a href="http://practicallaw.com/4-200-1468">http://practicallaw.com/4-200-1468</a>	In addition to covering all the major jurisdictions and many other influential markets, the Handbook also includes in the cross-border section an analysis of recent benchmarking survey results relating to corporate social responsibility.

SCOTT ROBINS graduated from Hofstra School of Law with distinction in 1985 and was admitted to the bar in Maryland and the District of Columbia. He began his career in law firms, working primarily in employee benefits. Robins came in-house in 1998 when he joined Sodexho, Inc., the leading provider of food and facilities management in the United States and a fully owned subsidiary

of the French corporation Sodexho Alliance, which has over 300,000 employees in about 80 countries. With a central team in France that makes policy decisions on compliance issues and another team at their financial services center in Buffalo, NY, that carries out and coordinates policies, Sodexho, Inc. has \$6 billion in annual revenue and over 110,000 employees.

Currently, Robins is vice president, associate general counsel, and corporate secretary at Sodexho, Inc., and his chief responsibilities include all aspects of corporate governance, as well as providing support and counsel to human resources with respect to benefits and compensation.

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*Tips & Insights on:*

## International SOX Compliance, with Scott Robins

### The Importance of International SOX Compliance

Sarbanes-Oxley compliance is one thing when you work for an American company—and something entirely different when you work for an international company. While US companies often require employees to anonymously report suspicious behavior, hotlines and mandatory reporting rules are discouraged or prohibited by much of Europe, especially Germany and France. With cultural differences like this and more, how can in-house counsel at multinational companies bridge the gap? Identify the inherent challenges outlined below, and you'll at least have a head start.

### Down to the specifics ...

- **The Fundamental Difference.** Attorneys in Europe, and specifically France, have generally had a whole different role than in the United States. One of the biggest differences is that attorneys in the United States are more proactive in their approach. Traditionally, European attorneys are asked, "Can we do this?," and the answer is generally yes or no. In the United States it goes beyond that; it becomes, "What can we do?"

- **Corporate Governance Approaches.** There may be different business philosophies in Europe and the United States in some areas. In terms of governance though, I think that we're basically on the same page. French and US regulations around corporate governance have much in common.
- **Whistleblower Hotlines.** In the United States, we're big on hotline use. If you see someone doing something wrong, you call it in, and you should be free to make that complaint. In Europe, they see hotlines as a violation of the privacy of the person you're complaining about. And so, the basic use of information and what's available are simply different there.
- **Payroll.** With respect to our Sarbanes-Oxley matters, our financial service center in Buffalo, NY, acts as the main point of contact with our parent company in France. Being an American sub of a foreign company provides a totally different perspective than that of an American company with a foreign sub. When the direction comes from a European country, there's a learning curve and

there are cultural differences, but it's also important to be able to share American practices and issues. Payroll is a good example, because it's just one small but important piece of Sarbanes-Oxley compliance, particularly in a company our size. Making sure your controls are in place is essential. In France, payroll is very simple; there is limited withholding for taxes and benefits. The burden of paying taxes is mostly on the employee, but the French government is the main source of benefits. In the United States, however, the employer provides most benefits. For us withholding is a major issue, and it's complicated—it drives a lot of other things. So our payroll issues in the United States are a little broader and more complicated than they would be in France. Luckily at Sodexho we have a team in the United States and a team in France that are both open to learning about the differences in how things are done.

- **Geography.** A similar, operational example would be doing unit-level controls and being verified by district managers or supervisors above the unit. In France it's fairly easy

because it's a smaller geographical area, but here in the United States, our district managers have huge areas. It's not easy to have the kinds of controls that you would have in a small area. You have to show that there are differences here in how things are done, just because of the culture and how we do things as far as benefits and compensation, and even for simple reasons like geography.


- **Training and Communication.** Educational programs are very difficult for us to organize as a company because we're so spread out, but I think Sodexho has done a very good job of unifying the company and establishing the effort throughout the world. There's a tremendous amount of work that's necessary. Our compliance team has been able

to bring this all together, which is not easy. I think the unification of an international company comes from all sides. With Sodexho, it comes from France as well as our team in Buffalo. And, you can't do something like this with as many people as we have, as spread out as we are, unless your executive team supports the effort. We participate in weekly calls with representatives from all of our divisions and different disciplines, and that plays an important part in understanding what's going on. A multinational company needs to be very good at tying things up and disseminating information.

- **The Sarbanes-Oxley Effort.** At different times at Sodexho, SOX compliance has taken different levels of effort for us, but there is a constant focus. When Sarbanes-Oxley

was first enacted, the law department was involved, supporting our finance teams in coordinating and rewriting policies and procedures; that was time consuming. Then we were working on flow charts on how controls would work. Now, the law department is involved in developing corporate-level controls.

### Two Cents

I think it's true for any counsel, whether employed with an international company or otherwise, that you have to learn about Sarbanes-Oxley and what it involves for your company. Basically, it means learning something about accounting procedures and controls. To be effective counsel, to understand this, and to actually be able to contribute, you have to go beyond the legal aspects of Sarbanes-Oxley. 

## In My World ...

### Creating a Role for Yourself

Because the leadership of our SOX compliance is in France, there was no prescribed role for American in-house counsel; my role evolved with the compliance effort. Whenever in-house counsel has a foreign parent and an American sub, it's important for them to establish the value they bring to the process. In-house counsel in the United States can offer a lot to the compliance process, but counsel cannot just sit back and wait to be consulted.

### The Burden of SOX


In and of itself, Sarbanes-Oxley is a burden, but I've come to understand the need for the controls and for creating adequate reporting. At Sodexho, we fine-tuned policies and created a few new ones. We updated our procedures and policies so that they are both responsive to our operators and effective in providing necessary guidance. While it is an effort, the result is better for business.

### Convincing Foreign Colleagues You Offer Value

It was incumbent on me to show how I could contribute

to the compliance effort. The general counsel allowed me to get involved in the SOX compliance project to the extent I felt necessary and to take risks. It was important to establish good relationships, especially with our team in Buffalo; as corporate secretary and in-house counsel I worked very closely with them on some compliance areas. There will always be some areas that no one wants to take ownership of, and I found myself involved in these areas, but it was an opportunity to learn some new things and contribute.

### Your Team's Nationality

One of Sodexho's two coordinators in France is American. He has been working in Paris for a while on a number of different projects, but he originally came from a big US accounting firm. We also have American executive representatives on a steering committee—our international offices are very open to that. This is certainly not an instance of, "We know what's right and we're going to tell you what to do." The input is there. Our French counterparts are not hands off, but instead there's a good balance. 



**ACC Resources on . . . International Sox Compliance**

<b>TITLE</b>	<b>LINK</b>	<b>DESCRIPTION</b>
<b>Hot SOX: Executive Compensation and Other Sarbanes-Oxley Developments</b>	<a href="http://www.acca.com/resource/v6761">www.acca.com/resource/v6761</a>	This program builds upon the ACC Sarbanes-Oxley Primer for the Small Law Department distributed in September 2005 by reviewing recent Sarbanes-Oxley and related developments.
<b>Whistleblower Anonymous Hotlines and SOX—Dealing with the French and German Decisions</b>	<a href="http://www.acca.com/resource/v6469">www.acca.com/resource/v6469</a>	This webcast will bring you right up to date with guidance on how to address your SOX anonymity requirements in the wake of the recent decisions against the operation of anonymous reporting hotlines from the German courts and the French CNIL.
<b>ACC Europe 2006 Annual Conference</b>	<a href="http://www.acca.com/acce/06/">www.acca.com/acce/06/</a>	Join us for ACC Europe's 2006 Annual Conference: Taking the Lead as In-house Counsel (14–16 May, Athenaeum Intercontinental Hotel, Athens, Greece). Programs will feature legal updates, management advice, and leadership thinking, and will open opportunities to network with the best and brightest in the in-house legal profession in Europe.
<b>EU Competition Law Compliance Pledge</b>	<a href="http://www.acca.com/resource/v3111">www.acca.com/resource/v3111</a>	A sample form containing guidelines that are designed to ensure that neither corporate members nor their representatives knowingly and willfully enter into any activity which may violate the competition law of the EU.
<b>ACC InfoPAK: Data Protection—A Practical Guide</b>	<a href="http://www.acca.com/resource/v6283">www.acca.com/resource/v6283</a>	This InfoPAK is intended to provide a general overview of the key issues that all US businesses should be aware of if they are requesting that information about individuals (whether employees of subsidiaries or in third-party databases) be transferred from Europe or Canada into the United States.

STASIA KELLY started her legal career in Texas at the Dallas law firm of Carrington, Coleman, Sloman & Blumenthal. She then moved to Washington and joined Wilmer, Cutler & Pickering (now Wilmer Hale) where she spent 10 years, first as an associate and then as

a partner. Kelly went in-house in 1995 for Fannie Mae and stayed until 1999. She was then recruited to be the general counsel of Sears, Roebuck and relocated to Chicago for four years. In 2003, Kelly was recruited to be part of the turnaround team for WorldCom,

where she stayed until this past January, when Verizon acquired the company.

Kelly is currently “between opportunities” but can be reached at stasia@kellyva.com.



*Tips & Insights on:*

## How to Manage Smoking Guns, with Stasia Kelly

### The Importance of Managing Smoking Guns

Smoking guns in today’s corporate world are the red flags that mean that someone needs to take immediate action—and that someone is likely to be or include inside counsel. But there are things inside counsel can do in advance to save time and energy, minimize the fallout of a corporate crisis, and perhaps even keep the smoking gun from going off.

### Down to the Specifics ...

- **Accounting.** When I started out as a general counsel 10 years ago, most general and inside counsel were not expected to understand the accounting rules that applied in their industry or to their company or to approve their company’s accounting policies. The corporate scandals of the last several years and Sarbanes-Oxley have changed all that. All in-house counsel, from the general counsel on down, need to understand their industry’s and their company’s accounting rules and policies. Ten years ago, I would read an earnings release and trust that the CFO and the accounting folks knew what they were doing. Now, I make sure that I understand all the accounting items in the

release, and I ask the questions: Are the one-time events truly one-time events? Are the reserve releases appropriate? Is there an earnings management issue? It is critical that the GC and the CFO have honest and frequent communications. At WorldCom, I could not have done my job without a close relationship with the CFO, and I think that is as important as the relationship between the GC and the CEO. I also believe that lawyers need more than the basic training in accounting principles that is commonplace in the industry. There should be higher-level financial and accounting training on an on-going basis for inside counsel who deal with these issues. Just as CEOs expect their directors to understand the company’s finances and business model, the inside lawyers need the same or an even deeper level of understanding.

- **Internal Controls.** One of the most important new areas for in-house counsel arising from SOX is a company’s internal controls. Again, 10 years ago, functional areas such as tax, IT, and accounting did not have much significance for inside counsel unless there was a legal issue. Even the tax department often reported to the CFO and was not considered

a legal function. Because SOX mandates internal controls in these and other areas, the lack of controls can give rise to significant legal and accounting issues. In the past three years, many companies have had to identify these areas as significant deficiencies or material weaknesses

### Managing Smoking Guns Checklist

- Make sure that one-time events really are one-time events.
- Make sure the release of reserves were appropriately released, and it is not an earnings management issue.
- Have open and free communication with the CFO.
- Get beyond-basic training in accounting issues.
- Have a handle on the company’s controls.
- Identify risks to the company when it comes to compliance issues.
- Perform a post-mortem on all issues to ensure everyone is on the same page and has learned from the experience.



under SOX and design controls that comply with the new law. This requires significant involvement from the legal, accounting, and finance teams as well as involvement by a company's outside auditors.

- **Compliance.** The traditional compliance function—that is, understanding the rules that apply to a company, training employees to follow these rules, and ensuring that the rules are followed—has long been a part of corporate cultures. However, a developing part of the compliance function is identifying a company's current risks, anticipating future risks, and developing strategies to mitigate these risks. Of course, some of these risks may be tradi-

tional legal risks, but many arise from all across the company. Recognizing the importance of this area, many companies are creating teams that draw from across the corporation to deal with the recognition and mitigation of risks. Whatever the danger, there is always reputational risk associated with it. Companies are increasingly aware that Wall Street analysts and investors want to understand a company's risks and be comfortable that they are being handled appropriately.

- **Sarbanes-Oxley Reporting Requirements.** SOX has been the subject of much criticism—that it was an overreaction to a few corporate bad apples. In my view, this

is unfair. In complying with SOX's internal control requirements, many companies uncovered significant flaws in their processes that would probably not have been recognized and resolved except for these requirements. This has resulted in increased awareness among internal management and directors of potential risk that would not have been recognized but for SOX. As painful and expensive as compliance with SOX has been, it has been a positive factor in refining processes to recognize and mitigate risk.

- **Communication.** When a crisis hits, the first actions almost always determine the success of the response. Well in advance, companies

## In My World ...

### Compliance

Many companies, like WorldCom, who have faced significant legal and accounting issues, have formed risk committees composed of the board of directors, who are charged with ensuring that the company is identifying and mitigating its risks appropriately. In addition, having an internal chief risk officer with a team that is comprised of professionals from across the company is of growing importance. In my view, both the risk committee at the board level and the internal risk team will become increasingly important in companies that want to manage their risks with best practices.

### Learning from Others' Mistakes

I am always amazed at how poorly many companies react to a crisis that other companies have already experienced. We are not very good in corporate America at learning from the experiences of others. Learning from this past history is relatively easy and can also lead to development of playbooks for how a company will react to a crisis.

When we think of companies that responded well in the face of a major crisis, we often think of Johnson & Johnson and the Tylenol scare—but that occurred decades ago. It is easy to think of companies that have responded poorly, at least initially, in the face of crisis, but it is much harder to identify companies that

have responded well. We need to get better at preparing for the crisis and at learning from the response of other companies. One important lesson I have learned in my experience with three companies in different industries is the importance of the relationship between the legal department and the communications or external affairs group. Having a well-established relationship can mean the difference between a well-coordinated and well-received response and a confused reaction that can generate negative responses from investors and Wall Street.

### Recognizing the Need to Make Changes

I have learned that it is sometimes difficult for a company, especially a bureaucratic organization, to move nimbly, even when there is a recognized need for change. At Sears, it had long been evident that there was no centralized response to customer complaints across businesses. As a result, some complaints were ignored, and others were responded to by multiple parties. There was a clear need for a system that worked, given the importance of customer satisfaction in the retail environment. Yet, because there was no one person or business responsible for customer complaints, no one had the budget, authority, or staff to assume this responsibility. Finally, the C Suite was convinced of the wisdom of this change and it was implemented—but not without much delay and expense.

## ACC Resources on . . . Managing Risk

TITLE	LINK	DESCRIPTION
<b>How to Manage Smoking Guns: the Ethical, Legal, &amp; Practical Guidelines for Document Retention (online CLE program)</b>	<a href="http://www.acca.com/resource/v6637">www.acca.com/resource/v6637</a>	Topics to be covered include education and document retention challenges, proper maintenance of files, teaching law to nonlawyers and making the law relevant, encouraging nonlawyers to use proper document creation processes, and much more.
<b>How to Manage Smoking Guns: The Ethical, Legal, &amp; Practical Guidelines for Document Retention (ACC webcast)</b>	<a href="http://www.acca.com/resource/v6405">www.acca.com/resource/v6405</a>	Listen in on this ACC webcast to hear discussions about practical guidelines for document retention and the legal and ethical fallout from the smoking gun.
<b>ACC InfoPAK<sup>SM</sup> on Records Retention</b>	<a href="http://www.acca.com/resource/v5206">www.acca.com/resource/v5206</a>	Enforced corporate records programs are a legal requirement and mandatory for in-house counsel seeking to protect corporate and executive interests and to mitigate legal risks.
<b>Creating a Blueprint for an Effective Records Retention Program</b>	<a href="http://www.acca.com/resource/v5872">www.acca.com/resource/v5872</a>	Read about management in the context of the SOX legislation, the changes in the sentencing guidelines, and proposed changes to e-discovery rules.
<b>Practical Solutions to E-discovery &amp; Records Retention (ACC webcast)</b>	<a href="http://www.acca.com/resource/v6392">www.acca.com/resource/v6392</a>	Recent legal trends regarding e-discovery and records retention have companies floundering. Learn the status of the law and solutions and best practices from your peers for how to deal with this hot issue, including setting guidelines, understanding what is reasonable and what isn't, implementing processes for archiving data, and much more.

should be prepared to ensure that the CEO, CFO, GC, relevant business execs, and the head of PR are all connected in real time within minutes. It is critical that these execs can get together in the face of a crisis. Crises don't generally occur between 9:00 and 5:00 on a workday, and with our world of instant communication, a delayed response may result in the company's losing control of the story before it can respond. In my experience, it is always better for the internal folks to control the response and therefore the story, at least at first. You also do not want your board of directors to be blindsided or to read about a crisis at the company from a third-party media source. Companies are getting better at realizing that the board needs immediate attention in a time of crisis.

- **The Media.** In my view, the best way for a company to deal with the media is through the company's PR or external affairs group. I have always had a rule that nobody talks to the press without the PR person in the room or on the phone, even if it is a "friendly" interview. I also believe that investment in media training for the executives who are likely to end up in front of a camera or talking to a reporter is money well spent. Also, inside counsel should make sure that outside lawyers let them know if they are contacted by the media in relation to the company. Many times, media inquiries are directed to outside counsel, particularly on litigation matters that are not being litigated in the company's headquarters city. Seeing a statement in the press that "the company could

not be reached for comment" because outside counsel did not alert in-house counsel is unforgivable, and can be avoided. And of course, it goes without saying that there are few situations where "no comment" is the appropriate response.

### Two Cents

Once a company has endured a crisis, conducting a post-mortem recording what you have learned from the situation is critical—what happened, what was done right, and what could be improved. This is not an exercise in finger-pointing, but it is a constructive way of learning from the past, both good and bad. Once this is done, it is easier to determine what changes to processes, policies, or communications might be needed to ensure a better response to the next, inevitable crisis. 