The NFL Highlights Communication's Role in Compliance; Risky Business

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Recently the National Football League has committed some major fumbles when disciplining players for off-the-field behavior. As a compliance issue, the NFL lost as much yardage for how it communicated its policies and procedures as it did for the actual content of those policies. And the players (along with their lawyers) didn't do much better in managing the message of their messes.

Barbara Jones, a former federal judge, overturned the NFL's decision to suspend Ray Rice of the Baltimore Ravens indefinitely, after a horrific video surfaced in which a punch by Rice knocked his then-fiancée unconscious in a hotel elevator. The NFL initially suspended Rice for two games and fined him approximately half a million dollars. After the video aired, NFL commissioner Roger Goodell changed his mind and argued that the video revealed a "starkly different sequence of events" than what Rice had told him, so he suspended him indefinitely. But according to Jones, Rice had never misrepresented his actions and didn't deserve a second punishment.

Rice is not the only NFL player under the microscope in the past few months. The league disciplined Minnesota Viking Adrian Peterson after a Texas investigation into Peterson's mistreatment of his son. Peterson pleaded no contest to a misdemeanor for disciplining his 4-year-old son with a wooden switch. The NFL suspended him for the final six games of the regular season for violating the NFL Personal Conduct Policy.

In both cases, neither Peterson nor Rice made a concerted effort to manage the publicity around their case. Rice didn't apologize to his wife; Peterson stood by his discipline of his son. No apparent communication plan for either. And in both cases, Goodell decided that the player should be suspended. In both cases, counsel represented the players. But it is unclear why their lawyers did not try to manage communication and the media fallout for their actions.

The cases remind us as lawyers that we must consider both the direct and collateral consequences of actions. For compliance professionals, they highlight the importance of
communication—a key element of any corporate compliance program. Communication does not mean simply communicating policies and controls to employees or discussing compliance efforts across the organization. It also means managing external communications about the program, which may include speaking about the organization's compliance efforts at conferences or otherwise managing external communications about the program.

In the case of a compliance failure, the reputational damage often is worse than the regulatory penalty. Getting ahead of a compliance failure with effective communication can help avoid reputational damage. General Motors Corp. is facing lawsuits because of ignition-switch failures. Notwithstanding the innovations such as the new Corvette Z06, how many people won't buy a new GM car because they worry about whether their car will have an electrical issue? Or consider last year's data breach involving Target Corp. Will shoppers looking for a holiday-shopping deal think twice about Target because of the company's data breach? Anyone who has ever dealt with identify theft knows that the problem can take days, weeks or months to fix. Compliance failures can have reputational consequences that far outweigh regulatory penalties.

For any business, customer trust is a key ingredient to success. People go to banks because they believe their money will be safe. They drive cars that they think are reliable. Consumers eat at restaurants where they believe the food is safe. Peterson and Rice remind us that sometimes we can win the battle but lose the war by not focusing on the big picture. Managing communication efforts about an incident can help maintain customer trust.

Both Rice and Peterson faced modest regulatory consequences for their behavior (a no contest plea for Peterson and a pre-trial intervention agreement for Rice), but neither will play professional football this season. Players like Michael Vick show that the public can forgive a damaged reputation, but as lawyers advising our clients (whether companies or individuals), we must focus not only on the immediate regulatory consequences, but also on the collateral reputational consequences.

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