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The perils of investigative report writing, Part 1

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Rare is the occasion that a public spectacle results in a compliance-oriented investigative report for the world to read. Most investigative efforts are shrouded in confidentiality, with limited public exposure. The National Football League's (NFL) "Deflategate" controversy is a golden opportunity for compliance professionals to evaluate how that very public investigative report can inform us...and teach us.

Background

Admittedly, though an NFL football fan, I found Deflategate rather uninteresting and did not follow it much. For those who may know little about this topic, allow me a short discourse to set the stage. The NFL reports about \$13 billion in annual revenues. It is the largest professional sports league in the world, and as a corporate entity, it has a market cap that surpasses companies such as Netflix, United Airlines, Time Warner Cable, and CBS television. One of the storied teams that make up the NFL is the New England Patriots—a team that has won five championships since 2002 and been to the Big Game 10 times since 1986, more than any other team. The last eight Super Bowls were quarterbacked by Tom Brady, who some would argue is the best quarterback in NFL history.

During the course of the 2014/2015 season, the Patriots advanced to the Conference championship game, the winner of which moves on to the Super Bowl. That game, against the Indianapolis Colts, was played on a cold, rainy day in Massachusetts. The rules of the game dictate that game footballs must be inflated to between 12 and 13 pounds per square inch of air pressure. Shortly before halftime of the game, the Colts intercepted a Tom Brady pass and thus had possession of one of the game footballs in play by the Patriots. The Colts sideline measured the air pressure after feeling that the ball was "soft," discovering a pressure reading below the 12-psi mark. This resulted in an unusual step for the NFL to measure game balls during halftime. According to this measurement process, all of the Patriot's footballs were below league minimums, but the Colts balls were all within the required parameters. Thus, Deflategate was born, and Tom Brady was branded a cheater.

Just in case you think compliance investigations don't matter much, consider this: Deflategate cost the NFL at least \$14.7 million, including the \$2.5 million it paid for the Wells Report. The union that represents NFL players spent \$7.1 million. It cost the Patriots at least \$750,000 in legal expenses. Beyond that, the NFL levied harsh punishments against both Brady and the Patriots team. The team lost two major draft picks (a big deal in football, worth an indeterminable amount of money) and levied a monster fine of \$1 million, the largest in NFL history.

Brady's four-game suspension had muted financial consequences because of some fancy footwork by the NFL quarterback. By appealing the initial suspension decision for a season, he was able to restructure his contract in the offseason. Because his base salary was \$8 million before the restructuring, Brady would have lost \$2.1 million

in game checks for the four-game suspension. After restructuring, his base salary was a mere \$1 million, so the suspension personally cost him around \$235,000. We can assume he likely spent at least that much on his own attorneys. No one can quantify the damage to the reputation of those involved (including the NFL), what endorsements it might have cost, and how over the course of history people will “asterisk” the accomplishments. The takeaway ought to be that investigative results have real consequences, some of which can reach epic proportions in the lives of real people. Investigations, and how they are reported, matter.

Limitations and disclosures

First, I am a Broncos fan. I live in the Denver area, think John Elway was one of the best quarterbacks of all time, and believe the sunrises are orange and blue because God is a Broncos fan. All jesting aside, my point is I have no allegiance to either the Patriots or Tom Brady.

Neither do I picture the NFL through rose-colored glasses. They are a business first, with personalities that no doubt have agendas. They chose to carry out compliance activities in this instance by hiring outside counsel to conduct the investigation, which was led by Theodore V. Wells, Jr., a partner in a law firm. Mr. Wells has an impeccable résumé, including a couple of Harvard degrees, an impressive clerkship, and a list of successful legal defenses for names we would all recognize. The law firm itself lists a plethora of practice areas. Notable in both Mr. Wells’ and the firm’s list of many specialty areas is the lack of a compliance background, though they do list “internal investigations.” All of the eight people on Mr. Wells’ team have similar Ivy League educations and substantial credentials as litigators, but not as compliance professionals. Perhaps this is obvious, but bearing the moniker of attorney does not make one a professional investigator or compliance expert any more than having a motor vehicle license qualifies one to race an Indy car. Although I do not know if the Wells Report intended to meet any particular standards that are recognized in the compliance or investigative world, I nevertheless offer some key standards to consider in this article.

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