

BLOG POST

Proactive Beats Reactive

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One thing that I find entertaining about pro football is that the sky is falling after every week. Week One, Dallas is manhandled by San Francisco and will be lucky to win a single game all season. Week Two, the 'Boys stand tall against a mediocre Tennessee team, and it's all "[how about them Cowboys!](#)" time again. Same with the Lions, the Vikings, and Seattle, who went from top of the world to the [pit of despair](#) in less than seven days. And the Giants ... well ... yes. The Giants are still atrocious. But that's okay, because nobody likes them anyway. (Disclaimer: I am a Cowboys fan. Deal with it.)

Note: one outcome does not a trend make. But the same kind of measured response to anecdotal examples should give way when the examples suggest a pattern of conduct. Like with a decidedly tragic situation: the National Football League and domestic violence. Greg Hardy, Adrian Peterson, Ray McDonald, and Ray Rice, for example – all high-profile players – come from different teams and were recently arrested, indicted, or convicted of some form of domestic violence. USA Today – the Cliff's Notes of journalism, has a [database that tracks](#) the arrests of NFL players from 2000 to present, sorted by category. According to the database, there were 86 arrests or charges for domestic violence of some kind during that time, or about six such incidents per year.

So, after the [Ray Rice incident](#), the league [hired domestic violence advisors and has expanded an existing vice presidential position](#) to include social responsibility. That's a good thing, right?

Well, hmmm. I think we find it hard to unequivocally say "yes" because we can't really separate remedial action from the *motivation* for remedial action. The question becomes whether the league was influenced altruistically or by public pressure. In our minds, one weighs more than the other.

So what in the world does any of this have to do with regulatory compliance, white collar work, or government investigations?

As tempted as I am to say, "[tune in tomorrow, same Bat-time, same Bat-channel!](#)" (Holy Segue, Batman!) I will spare you that. (I'm nice that way.) Instead, I'll give you the simple answer: acting proactively is much, much, *much* better than acting reactively. That's it. It's as simple as that.

The NFL finds itself *reacting* to what is happening right now. When the Chiefs' Javon Belcher shot and killed his girlfriend and himself in 2012, the league had [ample opportunity and a platform](#) to address domestic violence. But it did not avail itself of this opportunity. Imagine how different the narrative would have been had the league adopted a no tolerance policy for

domestic violence just after the Belcher tragedy. The commentary would be markedly different, changed from a focus on the league to a focus on the *perpetrator*.

What does all of this mean to in-house counsel or corporate executives? It's this: you've got to pay attention to the trends within your organization and address any issues right away. Do you see a consistent failure to employ cybersecurity in any one place in your company? Implement corrective training *before* you end up with a data breach and a Congressional inquiry. Do you see that one of your business entities struggles with FCPA compliance? Conduct the internal investigation and remove the responsible parties, pronto, *before* the DOJ says hello. Are you finding that several people are complaining about hiring practices in one of your business units? Better get to the bottom of this before the whistleblowers head out your door and onto the doorsteps of the DOJ, SEC or CFTC for a 30 percent share of your penalty.

Assessing your organization is not a task that ever ends. It is a constant analysis of what is going on and why things are happening, and your window of opportunity to fix issues is tighter than ***Miles Austin's hamstrings***. But by committing to proactively addressing issues within your organization, you start to accumulate benefit of the doubt. And that is a very valuable currency in the world of government regulation.

Everyone is looking at statistics and data right now, from Major League baseball ***to the SEC***. Do the same thing: look at your data, look at your anecdotes, and adopt a fluid and flexible approach so that you can fix problems as they come up instead of waiting for them to become so enormous that they subsume an entire organization.

That's what constitutes compliance – and risk management – in 2014.