

## Column: NFL Probe Into Rice's Conduct Should Follow Corporate Model

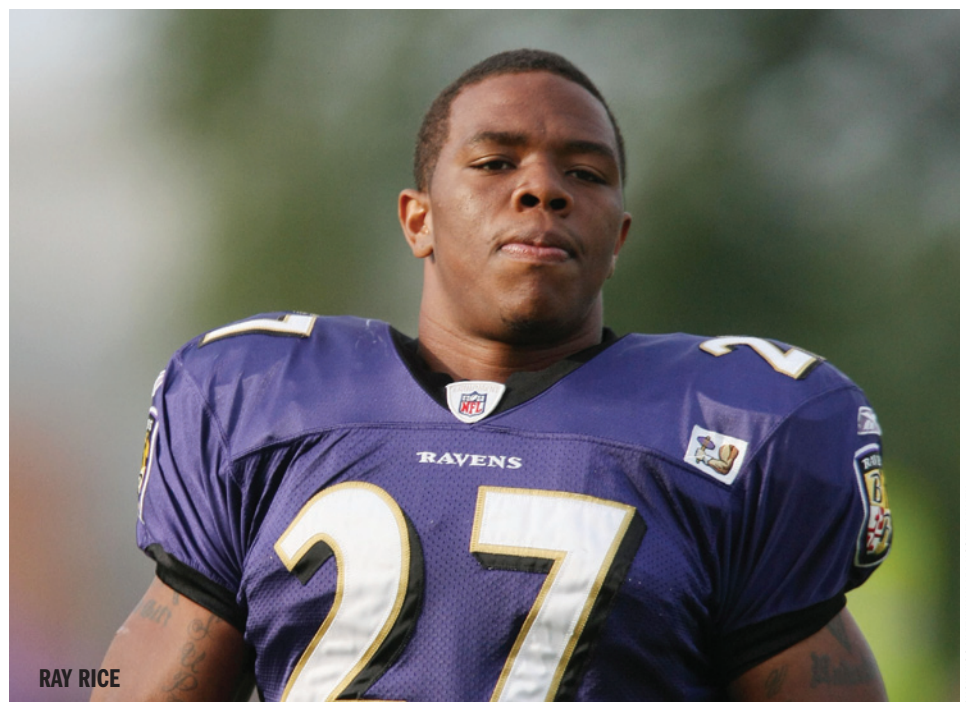
BY GEORGE J. TERWILLIGER III

Commissioning an outside investigation into the Ray Rice matter is a good strategic play call by the National Football League.

Investigations can be valued tools used by corporations and other institutions facing complex challenges where both their legal interests and reputations are at great risk. Used correctly, these inquiries can help establish essential facts and reassure constituencies. And given the recent media coverage of other domestic violence cases involving NFL players, such inquiries can demonstrate that the organization is committed to disclosing the truth and adhering to high ethical principles.

But, just as in many corporate investigations, to accomplish those objectives, the NFL inquiry will likely be aimed more broadly than perhaps initially indicated. The NFL's problem is now much more complex than finding out what its commissioner knew and when did he know it about the Rice incident.

While that may be the focus of immediate media inquiry, good governance principles suggest



KEITH ALLISON VIA WIKIMEDIA COMMONS

that the league and its owners will want to learn more. The fundamental question is what did league officials *want to know* and how diligent were they in pursuing that information? Like a corporate board charged with oversight of a company's systems and controls, NFL owners will want to know whether the league's policies and procedures for addressing player misconduct issues are up to the task. Getting an answer requires an inquiry that would include a "process

review." The procedure would first look at what is prescribed as current league policy and practice. Next it would examine whether prescribed procedures were fully executed, not just in this instance, but in similar matters. With that information in hand, the league and the owners can assess whether that process works or needs improvement.

It is a judgment call whether a given circumstance demonstrates a need for an in-depth review that goes beyond digging out

the immediate facts of the given incident. The NFL player conduct matter provides a good example of how the results of a process review can be critical to reassuring all concerned that an organization is committed to high standards. One only has to look at how player business sponsors have reacted to the player conduct issue to understand how quickly the league's economic relationships could be adversely impacted if its commitment is in question.

Like a corporate board, the league ownership has an obvious interest in protecting the valuable brand represented by the league as a whole. Just as corporations can be thrust into a crisis of broader proportion by circumstances of a seemingly singular occurrence, the issues the league now must deal with go beyond the underlying incidents. A spotlight has been thrown on fundamental questions of how the league should best address criminal activity by its players. Whatever the answer may be, using corporate experience as a model, it seems likely that the league's policy and practice will have to change. Corporations and other institutions whose internal actions are put in controversy are usually forced to intensely scrutinize internal policies and practices. Tightening and improving is typically part of the

necessary ritual of undertaking remedial measures.

### APPRECIATING THE RISKS

Years of corporate investment in reputation can be lost in a relative instant when a company does not see around the corner and appreciate a looming risk to its interests. Can organizations take measures to see ahead to where such intense troubles may lie in wait? Seeing the need to address change in advance of crisis proportion problems is not easy, but it is far more productive than cleaning up after the fact. Thus, there is instructional value for organizations in looking at this painful episode for the NFL. Player misconduct issues have no doubt been among the most difficult the owners and league have faced, but also are not uncommon occurrences. For businesses, risk can arise also in relatively common occurrences such as a product safety issue or recall, a health or safety incident, a data breach or attack, or one of the other myriad incidents companies manage on a daily basis. Ongoing examination of policies and procedures that are used to address an organization's most challenging issues can go a long way toward looking ahead of the risk curve. By seeking out and examining routine practices that carry a relatively greater risk of giving birth to a crisis

incident, companies can have a looking glass to a future that then might be avoided.

But can a process review also help even after circumstances like those now facing the NFL have surfaced? The league has taken steps to face the issues head on and to lay the groundwork to effectuate change. That is needed to remediate its standing with fans, the public and business partners. For a corporation in analogous circumstances, a comprehensive factual inquiry and process review can also start to repair damage. Moreover, just as a corporation does a service to its loyal employees by dealing effectively with internal misconduct, the league's response to current challenges can be a service to the vast majority of players whose personal conduct is beyond reproach.

*George J. Terwilliger III is the global co-chairman of the white-collar litigation and government-investigations practice at Morgan, Lewis & Bockius. He served for 15 years in the Justice Department, including as the acting attorney general and as deputy attorney general. The views expressed are his own.*