

From The Big Easy To The Big Ten, And Beyond

What The Process Of Reforming The New Orleans Police Department Can Teach Colleges and Universities

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In 2012, the Penn State Lions went 8-4 on the field, passing 3,283 yards, rushing 740 yards, and scoring 349 points. This credible performance earned it a respectable 38th ranking out of the 124 schools in the NCAA's Division I Football Bowl Subdivision. But few will remember Penn State's athletic performance in 2012. What people will remember instead is that 2012 was the year the University's Special Investigative Counsel issued its report into the actions of Penn State Coach Gerald Sandusky.

This experience, which captured the attention of the nation, is not unique to Penn State, and not even unique to big sports schools. Earlier this year, on September 4th, Brandeis University, a small private research institution in Waltham, Massachusetts, published its Independent Investigation Counsel's report following a review of alleged abuses by its Athletics Department. According to the University, the review took months to complete, and included more than 150 interviews of players, coaches, students, and faculty, and a review of more than 30,000 documents. The announcement accompanying the report noted that "a second report that focuses on a broader examination of campus climate . . . will be completed later this semester."

While Penn State and Brandeis University are quite different institutions athletically (indeed, Brandeis disbanded its football team in 1960), their interest in and need to implement

broad-based organizational reforms are the same. Implementing meaningful, lasting organizational reform, however, is no easy task. The Internet is littered with stories of institutions heading down the road to reform only to have their path blocked by one obstacle or another. As lawyers, we often are called upon to implement ethics and compliance programs in the corporate and higher education sectors – and as the judicially-appointed Monitors responsible for overseeing the New Orleans Police Department's (NOPD's) compliance with a 492-paragraph Federal Consent Decree – we constantly are exploring ways to implement sensible, practical, meaningful, and lasting change.

Over our 75 collective years helping institutions change the way they are viewed by others — and, frankly, the way they view themselves — we have learned a lot about how to implement and sustain organizational reform. We have drawn these lessons from a wide variety of experiences, including our experiences leading or co-leading a number of high profile investigations, from the much publicized White House Security Review following the 1994 crash of a private plane into the South Lawn in 1994, to the 2002 review of the District of Columbia's Police Department's compliance with a federal Memorandum of Agreement, to the academic/athletic scandal at the University of North Carolina in 2014, to countless corporate reform efforts spawned by hotline calls, federal investigations, and civil lawsuits.

Among the many lessons we have taken away from these diverse experiences is that the drivers of, and inhibitors to, organizational reform are surprisingly constant regardless of organization type and setting. In other words, the pathways to, and obstacles in the way of, success for a university struggling to reinvent itself (or even a small part of itself) are remarkably similar to the pathways and obstacles facing a Government agency, police department, or corporation. Sure, some of the hurdles are unique to a given culture, but, fundamentally, organizational reform is organizational reform.

Against this background, we offer the following tips to institutions of higher education that find themselves in need of change. They are useful for any organization interested in self-improvement, and they hold promise whether the reform effort is compelled by a directive from an enforcement authority, “suggested” by the results of an internal investigation, or a purely voluntary act of self-improvement.

- **Tip 1: Care about the reform as much as the perception of reform.**

There is an old saying in Hollywood that “it’s all about honesty, and once you learn to fake that, you’ve got it made.” The quote is variously attributed to George Burns, Groucho Marx, and Ed Nelson, a soap opera star from the 60s. While the advice is amusing regardless of who actually said it, it is horrible advice for anyone actually interested in meaningful reform. Thus, as our Tip Number 1, we say this: Fess up to your problems, commit to fixing them, and actually care about the outcome.

Our work in New Orleans monitoring the reform of the NOPD had a very slow start. Notwithstanding a scathing report by the U.S. Department of Justice cataloging a long history of constitutional abuses, the Police Department had not yet admitted it was in need of help when we arrived in Louisiana in August 2013. As a result, in the first year of the Consent Decree, the Department spent more time arguing with its monitors (i.e., us) than it did actually implementing reforms. That all changed in 2014 with the appointment of a new leadership team. In our first meeting with the new Superintendent, we heard the following words for the first time: “I understand why you’re here and agree we need you here.” With those words, the Department embarked upon a (so far) stunningly successful reform effort. Rather than spending time making it look like things were changing, the Department spent time actually changing

things. Consequently, in our last report to the federal judge overseeing the implementation of the Federal Consent Decree, we were able to report confidently that NOPD had made significant progress in almost every area of the Consent Decree. The Department’s focus on substance over perception has been a critical factor in taking the Department as far as it has come.

The same was true at the University of North Carolina when it appointed a new Chancellor for its flagship Chapel Hill campus. For more than two years prior to her appointment, UNC had been struggling to defend itself against mounting allegations of “fake classes” that aided students and student athletes in its premier athletics program. The new Chancellor, in conjunction with the University President, recognized the need to once and for all determine what had happened and how to move forward. The ensuing investigation – a probing look at conduct over an 18-year period that involved millions of documents and hundreds of witnesses – culminated with a definitive account of what happened, how it happened, and why it happened. The findings of the report led to permanent and meaningful reform.



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- **Tip 2: Change who is on the bus.**

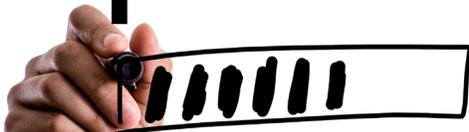
In his book *Good To Great*, Jim Collins explains how great companies invest time and energy getting the “right people on the bus.” The potential beneficiaries of this principle are not limited to corporations, and the benefits are not limited to profitability and corporate longevity. Ensuring the right people are on the bus can help an organization institutionalize cultural and procedural reforms.

As Federal Monitors, we do not make personnel decisions for the NOPD. Likewise, as outside counsel, we do not make personnel decisions for our corporate clients. But we do make our views known when, in the course of our reform efforts, we encounter an individual or group of individuals who support reform, just as we point out those acting inconsistent with the ethical ideals being promoted by the organization.

Following the publication of the Brandeis investigation report, the University announced a significant shuffling of its key athletic staff. The men's basketball coach was terminated, several administrators were demoted, and others were put on probation. Penn State also underwent major personnel changes following its scandal – the biggest being the firing of the winningest coach in major college football, Joe Paterno, after his record 46th season. UNC terminated, or took other employment action, against employees implicated in the paper class scheme – including stripping a professor of his emeritus title, firing at least one professor, and firing student athlete academic advisors.

While new leadership is no guarantee an organization's culture will change — and also no guarantee changes will be sustained over time — the more compliance-minded individuals are in leadership positions, the more difficult reforms will be to dismantle.

expectations



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• Tip 3: Set expectations and lock in transparency.

Over the past few years, the New Orleans Police Department has made an unprecedented volume of data publicly available. Calls for service data and Use of Force data, for example, now are accessible at the click of a mouse. As a

result, the New Orleans community has come to expect this sort of openness from its police department. This expectation will make it tough for a future leader to reverse course. What police chief wants to be the one to tell the community, “I’m going to take away the data you have come to expect from us”?

Universities can benefit from the same level of transparency. For example, UNC was accused of failing to respond timely and sufficiently to public records requests from the media and community. Rather than simply respond “we get a lot of these,” UNC developed and deployed a website that listed information about each request it received, and the status of its response. Similarly, there are a myriad of regulatory obligations on educational institutions – including universities – that impose public disclosure requirements on key topics, including student health and safety statistics. Embracing such requirements – rather than merely “complying” with them – sets a positive tone to encourage transparency.

• Tip 4: Establish institutions that are difficult to dismantle.

As Newton famously observed, objects in motion tend to stay in motion. Our experience in the public and private sector has taught us this law applies in the Dean’s Suite just as in the physics classroom. Like the rest of us, leaders do not like creating extra work for themselves. This trait can be used to help institutionalize cultural and procedural reforms. The recent improvements surrounding the NOPD Police Academy provide an apt illustration of this principle at work.

The New Orleans Consent Decree demanded a lot from the NOPD in terms of Academy reforms, including new structures, programs, courses, and lesson plans. As the Police Department and the Monitoring Team worked together to implement these reforms, we looked for ways to ensure the programs put in place would be hard to dismantle by a future administration. Adding new courses to the curriculum and developing compliant lesson plans was part of our reform strategy, of course, but we supplemented the creation of those courses and lesson plans with the creation of a *process* for the ongoing development, review, and promulgation of new programs. That process integrated the efforts of multiple departments beyond the Academy itself, including patrol units, supervisors, district commanders, internal affairs, and more. The highly integrated nature of the resulting reforms will make it hard for future leaders to move in a different direction because the absence of any

one element of the new structure will cause a disruption in a number of other areas – thus, creating more work for more people.

There are plenty of corollaries to this approach in the university context. Taking our work with the University of North Carolina as an example, the University enacted over 70 reforms aimed at preventing (and/or detecting) the same or similar conduct that had been uncovered in the investigation. Among these reforms was the creation of standing faculty committees to oversee, for example, student athlete academic performance and advising. These committees now provide academic oversight to functions and activities that historically were outside the academy's purview. And, with faculty members serving on these committees, it would be difficult, if not impossible, for the University to terminate this oversight in the future.

The bottom line is reform programs that integrate the efforts of multiple groups are harder to dismantle than programs that are siloed within a single group.



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• **Tip 5: Establish institutions that the organization's personnel do not want to dismantle.**

An organization's personnel, whether police officers, corporate executives, or athletics coaches, have no interest in dismantling reforms that have made their jobs safer, their work easier, or their reputation stronger. We put this principle into play throughout our work in New Orleans and in the private sector.

To take but one example from New Orleans, in 2016, the NOPD developed a trailblazing peer intervention program

called EPIC (for Ethical Policing Is Courageous). The EPIC program teaches officers strategies and tactics for effectively intervening in another officer's conduct to prevent mistakes and misconduct before they occur. The program has received broad support within the Department and the community, and coverage by the *New York Times*. Few officers would have any interest in dismantling a program so widely supported and so clearly of benefit to the officers themselves.

Universities and other organizations can apply this same strategy to increase the sustainability of their reform efforts. Sometimes, of course, this will require educating employees as to the benefits of the reforms. Some infrastructure and process changes within an organization at first are viewed by the employees charged with implementing them as "just more work for us." But with a robust education campaign, candor, and transparency, the benefits of long-lasting reform usually can be brought to light. Additionally, combining the reform measures with changes employees see as directly benefitting them can be the "spoonful of sugar" that helps the reform medicine go down.

• **Tip 6: Promote reform initiatives and successes publicly.**

It is a challenge to back away from commitments when you share those commitments with others. Last year, a friend of ours was determined to run a half marathon. She never had run one before and embarked upon an impressive training schedule. To help her stay the course, she shared her plans with everyone. Later she confessed she had thought about abandoning her goal several times during the training program, but kept at it to avoid the "public shame" of admitting defeat.

The same sense of pride (or fear of failure) that drove our friend to complete her training and run her half marathon can help an organization carry through with its reform commitments. When an organization starts along the path of implementing change, it should be as open about its plans as possible. Such openness not only gives the organization well-deserved credit for its goals, it makes it harder to back away from those goals as time goes on. Here again, what CEO wants to admit he or she is abandoning a reform initiative to which the company already has committed itself publicly?

The University of North Carolina fully embraced this ideal. In connection with the independent investigation and the attendant reforms, the University launched a microsite, “Carolina Commitment,” to gather and promote all information related to these matters. The microsite included copies of all relevant reports, transcripts of media briefings, and listings of reforms, including status of implementation, making it the one-stop shop for any stakeholder with interest in the matter.

The New Orleans Police Department also has taken advantage of this strategy with great success. It shares its reform initiatives with its personnel and with the community, provides frequent public updates, and publicizes its successes (and challenges). The NOPD, of course, is under a federal Consent Decree and, consequently, has certain legal obligations to publicize its efforts. Obviously, there are times when an organization may not want to share (or cannot share) its reform plans with the world, or even with its own employees. This is understandable. But if an entity’s goal is to achieve meaningful and sustained reform, being public about the effort, in appropriate cases, can pay big dividends.

• **Tip 7: Formalize reform initiatives into policy.**

Whether an organization is implementing reforms due to an enforcement proceeding, as the result of pressure from the public, or voluntarily, at the end of the day, reform initiatives are only as good as the reform-minded leaders in place to enforce them. A change in leadership can bring about a change in organizational direction.

The Pittsburgh Police Department found this out the hard way following years of impressive reforms spawned by a federal Consent Decree. Four years after the Pittsburgh Consent Decree came to a successful end in 2002, a new mayor dismissed the police chief who had championed the reform process and rolled back many of the changes he had put in place. “Over time,” according to the *New York Times*, “various aspects of the consent decree fell out of use.” Indeed, it appears “fell out of use” may have been an understatement as one of the later police chiefs went to prison during a post-Consent Decree corruption scandal.

One step the City of New Orleans took to help lock in its police department’s reforms was to incorporate the core components of its Consent Decree into a formal City regulation. While a regulation can be undone by a future

City Council, it cannot be undone in secret by a new police chief. Consequently, the community would be made aware of any backsliding and would have the opportunity to weigh in on the legislative process to fight for the continuation of the reforms.

While universities may not have regulations or ordinances per se, reform initiatives still can be formalized through written policies, university bylaws, or even charter amendments. Such formalization does not guarantee reforms will be sustained over time, but it will make it less likely they fall prey to the ever-shifting political imperatives of new leadership.



“if you can’t measure it, you can’t manage it.”

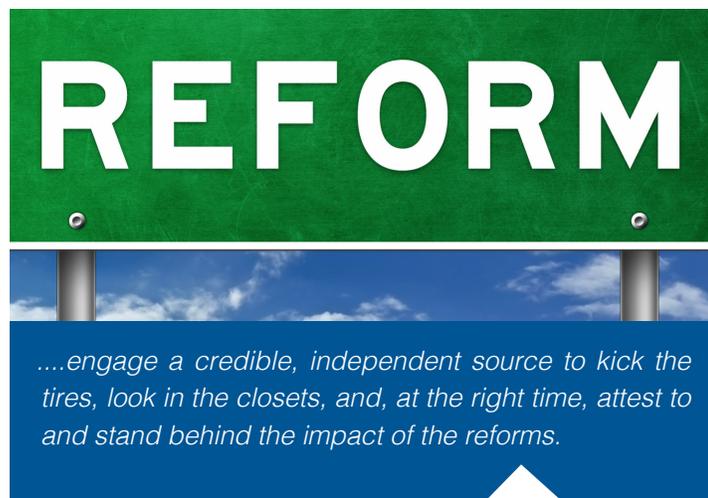
• **Strategy 8: Implement meaningful measurement techniques, including audits and evaluations.**

Peter Drucker, the famed business management consultant, is credited with having said, “if you can’t measure it, you can’t manage it.” The concept is a critical one for sustaining organizational reforms over time. A university’s ethics and compliance program, for example, is far more likely to have legs if the university has the means regularly to audit and measure its effectiveness.

We use this strategy continuously in New Orleans. We measure everything, from uses of force to pedestrian stops and citizen complaints. We do this not only to evaluate the current state of NOPD compliance with its Consent Decree, but also to evaluate how likely those reforms are to be sustained over time. Indeed, to help sustain the Department’s reforms, the New Orleans City Council has committed to maintain a “Compliance Bureau” within the police department. This Compliance Bureau is charged with evaluating, on an ongoing basis, the full range of NOPD programs, including all Consent Decree-driven reform initiatives.

Among the changes at the University of North Carolina were periodic assessments and audits to measure the effectiveness of its reforms. For example, UNC's faculty athletics committee now receives regular reports that analyze course enrollment trends, major selection, and graduation rates for student athletes. The University uses this information both to ensure the reforms it has enacted are successful and to ensure there are no red flags of potential misconduct that would be apparent from unusual course enrollments or clustering of major selections.

Experience teaches us it is far too easy for a leader to lose interest in a reform program if he or she doesn't have to see the results of his or her inaction in black and white. Having to look at the data reveals successes or failures, and makes it harder to ignore the failures. To put a slight spin on Professor Drucker's management adage, if you want to manage something, measure it.



• **Tip 9: Find a credible independent source to stand behind your reforms.**

Over the years, we have seen far too many organizations undertake reform efforts and then, on their own, attempt to convince the public (whether that public be citizens, students and faculty, or shareholders and customers) that all now is well. Not surprisingly, most of us are not easily convinced when the institution alleged to have been deceptive in the first place stands up and says "trust me." While the assertion, in fact, may be correct, it nonetheless is unlikely to find a receptive ear.

The simple, albeit not entirely painless, solution to this problem is to engage a credible, independent source to kick

the tires, look in the closets, and, at the right time, attest to and stand behind the impact of the reforms.

NOPD presents a useful case-in-point. While being under a federal Consent Decree is no cake walk for the agency being monitored, independent oversight brings with it several advantages. One of these is that, when the New Orleans Police Department fully honors its reform commitments, we will stand up and tell the world it has done so. And along the path to that end goal, as we have been doing for several years now, we stand up and tell the world its progress. Sometimes our report brings smiles and sometimes it brings frowns, but it always is backed by the credibility of an outside, independent voice.

The University of North Carolina received the same benefit from its independent investigation and report. The investigation served as the final book end to a scandal that had plagued the institution for more than three years. It provided the much needed definitive accounting of what had happened and ended the "drip-drip-drip" of media reports and stories. The University also was able to point to the investigation and report as evidence of its commitment to ensuring academic integrity and high standards during reviews by its accrediting body and the NCAA.

Penn State, it can be assumed, ultimately will recognize the same advantage from its engagement of former FBI director Louis Freeh, who led the investigation team and authored the resulting report. Brandeis likewise will gain credibility from its engagement of a former Assistant United States Attorney and a retired Massachusetts Appeals Court Judge to lead its investigation and publish its report. Presumably, these independent voices also will be called upon to continue that transparency as their recommendations are implemented by the universities. While the price one pays for this sort of independence can be high, the price one pays for the absence of independence typically is much, much higher.

• **Tip 10: Undertake the Reform Initiative Before Being Told To Do So.**

In May 2010, then-mayor of New Orleans Mitch Landrieu invited the U.S. Department of Justice into New Orleans to investigate allegations of constitutional abuses by the NOPD. Many said the writing was on the wall such that Mayor Landrieu had little choice in the matter, but the fact remains — and history forever will remember — that the Mayor took the reform initiative on his own.

More often than not, however, it is the Government (or plaintiffs) who force reform upon an institution rather than the institution embracing reform from within. Penn State, for example, appears not to have undertaken significant organizational reforms until well after the allegations into sexual abuse became public, notwithstanding the University's alleged knowledge of the need for reform years before.

Self-initiated reform, however, gives the initiator initial credibility. In some cases, when the reforms are meaningful and transparent enough, self-initiation even can avoid the involvement of outside parties (think state or federal prosecutors). But self-initiated reforms have another significant benefit as well: They can serve as a formal mitigating factor in any subsequent Government investigation. The Government regulations that govern the exclusion of entities from receiving federal funds (called the Suspension/Debarment regulations), for example, list as mitigating factors whether the entity "brought the activity . . . to the attention of the appropriate Government agency in a timely manner," and whether the entity "fully investigated the circumstances surrounding" the activity.

The U.S. Department of Justice guidelines for prosecuting organizations likewise make clear that prosecutors may consider an entity's "timely and voluntary disclosure" of the alleged wrongdoing in deciding whether to prosecute the entity for a crime or not. The prosecution guidelines for organizations also list as potential mitigation factors the seriousness of the offense, the pervasiveness of wrongdoing within the organization, the organization's willingness to cooperate in the Government's investigation, and the organization's remedial actions.

Even in the absence of these "legal incentives" to self-disclose, experience teaches us being the first to stand up and say "we have a problem, we recognize it, and we are fixing it" can offer great rewards. It may signal the start down a painful road, but it will increase the likelihood there will be light at the end of that road. The bottom line is this: Identifying the need for and undertaking the initiative to implement institutional reform on one's own can offer significant advantages over being commanded to do so by outsiders.



Universities — like corporations and governments — make mistakes, some understandable, some inexplicable. As long as humans are fallible, there will be organizations in need of reform. And as long as there are organizations in need of reform, there will be a need to sustain those reforms. The strategies discussed above offer a roadmap to sustainment. While this roadmap will not guarantee an organization will arrive at its intended destination, it should help minimize dangerous and costly detours along the way.

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Jonathan Aronie, David Douglass, and Joseph Jay are partners in the Washington, DC office of Sheppard Mullin. Jonathan is the leader of the firm's Government Contracts and Internal Investigations Practice Group. David is the managing partner of the firm's DC office. Jonathan, David, and Joe are among the co-founders of Sheppard Mullin's Organizational Integrity Group. In 2013, Jonathan and David were appointed by the U.S. District Court for the Eastern District of Louisiana to serve as the Federal Monitors over the NOPD Consent Decree. When not promoting constitutional policing in New Orleans, Jonathan, David, and Joe represent corporations in classified and unclassified Government Contracts and False Claims Act matters. Jonathan can be reached at jaronie@sheppardmullin.com. David can be reached at ddouglass@sheppardmullin.com. Joe can be reached at jjay@sheppardmullin.com.