

8 Steps Companies Should Take After An Internal Investigation

By **Jonathan Aronie and Joseph Jay** (June 4, 2024)

Aristotle said, "Well begun is half done." About 2,300 years later, Mary Poppins shared the same advice with her young charges, Jane and Michael. The adage generally is understood to mean that a thoughtful and disciplined start puts a project in a good position for success.

With apologies to Aristotle and Mary Poppins, the same adage can serve as an important warning for companies undertaking internal investigations: Well begun is only half the battle.

This adage has become all the more important with the U.S. Department of Justice's increased focus on compliance and remediation based upon conduct identified in investigations. This is coupled with the risk of potential individual voluntary disclosures by corporate actors, as announced by the DOJ's Criminal Division, which launched a pilot program on voluntary self-disclosure for individuals on April 15.[1]

The pilot program is designed to encourage voluntary self-disclosure by individual participants in certain types of criminal conduct involving corporations.

This article focuses on the importance of the activities that take place toward the end of — or after — an internal investigation or other response to an organizational crisis. While there is no harm taking a moment and a breath following the conclusion of a stressful investigation, after that rest, it's important to remember there is more to be done, including the following.

1. Collateral Consequences

It has been said that to a hammer, every problem is a nail. This is an important axiom to keep in mind throughout an investigation, as well as upon its completion. We always should be asking whether our mindsets are too narrow.

If the investigation focused on a violation of procurement rules, is someone also thinking about U.S. Securities and Exchange Commission, tax, and public relations consequences? If the investigation is criminal in nature, is someone thinking about the civil implications?

These questions are more likely to be raised and answered when a broad collection of experts with diverse experiences and skills are part of the investigation team.

2. Remedial Measures

Almost every investigation includes recommendations to reduce the chances of a recurrence. The energy with which folks support such recommendations during the investigation often ebbs once the investigation — and the adrenaline comes — to an end.

But it is essential that all recommended and approved remedial actions be completed —



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especially where those actions have been shared with government enforcement officials.

3. Post-Mortem

In the 2018 book "The Culture Code," author Daniel Coyle looks inside a number of high-functioning organizations, such as the U.S. Navy SEALs, to identify common strategies that have made these organizations successful.

Among many lessons, Coyle found that the most successful organizations are extremely disciplined in examining what went wrong — and what went right. "Unsuccessful teams," he found, "tended not to do this."

Meaningful self-reflection is critical. And importantly, this should be done whether the operation was successful or not.

4. Lessons Learned

One of the best ways to reduce the chance of a recurrence of a problem is to have a meaningful effort to identify lessons learned following the investigation.

While similar to a focused post-mortem, a lessons-learned project is broader. Nonetheless, it should be a formal, disciplined process; it should not be ad hoc.

If possible, it should be conducted under the protections of the attorney-client privilege. And the process should include a broad range of stakeholders from across the organization who will contribute a multitude of perspectives.

5. Follow-Up Audit

Once root causes have been identified and corrective actions have been implemented, a thoughtful organization should check whether the remedial actions are effective. Accordingly, a meaningful, targeted follow-up audit after an appropriate time period is a must.

6. Close Out Debriefing

In a recent blog post, Sheppard Mullin Richter & Hampton LLP partner David Douglass reminded us that "[i]nvestigations are stressful for an organization's leadership. But what is often overlooked is that they are stressful for an organization's employees as well."^[2]

Douglass is right. He wrote, "[E]mployees who fall within the scope of an investigation often know little about what's going on, which can generate anxiety, impair morale, and create tensions in the workplace."

To mitigate the potential future negative impacts of these stresses, organizations should plan for a post-investigation debrief, which, he noted, "can serve to bring closure for employees, relieve anxiety, and restore trust in the organization."

7. Reputation Rebuilding

Internal investigations are often undertaken in the context of events that become, or already are, public. Accordingly, companies need to think through the steps that will be necessary to rebuild their reputations — internally and externally.

Some companies engage professionals to help with this, while others rely upon their internal experts. Regardless of the resources brought to the table, focusing on the short-term and long-term reputational impact of enforcement matters and lawsuits is critical.

8. Investigation Fatigue and Resiliency

Internal investigations can be disruptive, distracting and difficult for organizations and their constituents. At some point, organizations may begin to experience investigation fatigue and seek to short-circuit post-investigation activities.

It's critical to fight this, demonstrate resiliency, remediate the findings of the investigation and steer the organization back to its core business.

Conclusion

While certainly not an exhaustive list of post-investigation considerations, these steps will help ensure organizations secure the full benefit of their investigative efforts.

To close out this article, let's return to ancient Greece. Aristotle is often quoted as saying, "We are what we repeatedly do. Excellence, then, is not an act, but a habit."

Putting aside that the quote more likely comes from historian Will Durant, the sentiment is worth remembering. If we are disciplined not only in conducting our investigations, but in taking the appropriate steps following our investigations, and doing so consistently and repeatedly, we can achieve excellence more routinely.

Not following through after an investigation, on the other hand, will make it far more likely that history will repeat itself.

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[1] <https://www.justice.gov/criminal/criminal-division-pilot-program-voluntary-self-disclosures-individuals>.

[2] <https://www.organizationalintegrity.com/2024/01/the-close-out-debrief/>.