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What United And Fox Can Teach Cos. About Victim Blaming

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One of United Airline's initial responses to the April 9, 2017, forcible removal of Dr. David Dao was to blame him for the inappropriate actions taken. An internal email sent by United CEO Oscar Munoz to all of its employees, that unsurprisingly was released to the press and the public, stated that Dao had been "disruptive and belligerent," thus implicitly condoning the force used to remove him as United "st[oo]d behind all of [its employees]." This playbook is familiar to almost anyone who has made a complaint at a corporation for sexual harassment. Frequently the tactic taken in a sexual harassment complaint is to accuse the victim of some sort of misconduct to undermine credibility or to try to demonstrate that the alleged victim was essentially asking for it.

Often, for corporations, this "blame the victim" tactic works. However, when it goes wrong, as it regularly does, the result is increased damages, liabilities and additional retaliation claims. In United Airlines' case, the "blame the victim" tactic greatly contributed to public angst, keeping a multiweek-long press fiasco going and costing the corporation 1.4 billion in stock value, not to mention resulting in a settlement with Dao that was likely significant. In sum, if you hear of a corporation blaming the victim, you might want to think of short selling its stock.

Fox News

The recent Fox News scandals while building over a number of years are producing a similar result. The "public housecleaning" that is unfolding is the result of years of blaming the victim, but, in this case, the victims kept coming, and, ultimately, the corporate climate of sexual harassment became too hard to hide. The latest individual to get the Fox boot is Co-president Bill Shine. While Shine was not accused of any sexual harassment claims himself, he is cited in many lawsuits involving Roger Ailes, former Fox News chairman, as one who covered up Ailes' behavior and dismissed the concerns of women who complained about how they were treated on the job.

The biggest ouster was the departing of cable news' top-rated host, Bill O'Reilly. O'Reilly has been called the "victim-blamer-in-chief." After the revelation that the company reached five settlements totaling \$13 million with five women who had previously complained about inappropriate behavior, the unraveling began. Advertising dollars were pulled, an investigation followed, and O'Reilly was dismissed. Over the years, O'Reilly has been criticized for his many instances of victim blaming.[1]

At Fox, you do not have to be a chief executive or even the star of the highest-rated show to become a part of victim-blaming culture. Former contributor, **Sarah Palin**, stated that the "corporate culture there obviously has to change," but she also stated that "[i]f a woman believes that she is being intimidated and harassed, she needs to stand up and do something about it and not stick around for a paycheck for years and years and years, and then after the fact complain about what she went through."

Importantly, research shows that it may not be easy "to stand up and do something about it." While Palin had other options besides Fox News, many women are worried about a number of consequences, including professional retaliation or the loss of a job, which go hand in hand with blaming the victim. A meta-analysis of studies by Lilia Cortina of the University of Michigan and the University of British Columbia Sauder School of Business show that only one-quarter to one-third of people who have been harassed at work report it to a supervisor or union representative. And of those women, only 2 to 13 percent file a formal complaint. Fear of being professionally trashed can cause **inaction**, making a corporation's human resources hotline for formal complaints useless. While this failure to report such misconduct, a direct result of fear of victim blaming, may help corporations' coffers initially by providing it with a defense, the buildup when such misconduct isn't reported or handled properly over an extended period of time, as Fox News demonstrates, can lead to catastrophic consequences.

United Overcompensates

As everyone is aware, the video of Dao's "reaccommodation" was looped in the press and on social media repeatedly. After initially blaming Dao because he was "disruptive and belligerent," United has had to publicly eat a lot of crow. United has announced 10 customer service policy changes and is planning to release more.

Some of those **new policies** include the discontinuation of the use of law enforcement outside of safety and security risks, increased compensation incentives of up to \$10,000, and the ending of deboarding passengers that have been seated. On May 2, 2017, major airline executives, including Munoz, testified before the House Transportation Committee and many vowed to reexamine their policies and enhance the consumer experience in what appeared to be a humiliating and uncomfortable few hours.

Lessons to be Learned

Both Fox News and United Airlines are examples that blaming alleged victims is often a

risky and unwise long-term strategy. So, what lessons are learned for corporations besides not blaming the alleged victim?

- Focus on getting to the truth, not on digging up dirt about the complainant.
- In order to remain completely objective, inquiries into harassment claims should be done by an independent entity such as an investigation service or law firm that is not your usual law firm, which may be more concerned about maintaining client relationships and its own bottom line.
- Consistent enforcement of policies for all employees from your biggest rainmaker down to your lowest level employee, no exceptions.
- Use outside marketing firms to help you admit mistakes without admitting liability.
- Have routine training on your policies and harassment issues beyond employees' orientation.
- Finally, try to have some empathy for the alleged victim. If you look at the situation from the alleged victim's viewpoint, that might allow you to resolve the matter quickly by ascertaining what they want, which is usually for the harassment to stop. This empathy can often preclude litigation or bad press.

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[1] Katherine Tarbox, appeared on "The O'Reilly Factor" at age 19 discussing being the victim of sexual assault at the age of 13; O'Reilly challenged Tarbox on why she would meet someone she only knew online, to which Tarbox replied "You've never made mistakes at 13?" His answer: "Well, that's a really big one to make."

<http://www.chicagotribune.com/news/opinion/commentary/ct-bill-oreilly-sexual-harassment-women-20170420-story.html>; In 2006, O'Reilly referred to Jennifer Moore, an 18-year-old

rape and murder victim, as “moronic” for getting her car towed in New York City while intoxicated. He insinuated that her inebriation and manner of dress were to blame for her death: “She was 5-foot-2, 105 pounds, wearing a miniskirt and a halter top with a bare midriff. Now, again, there you go. So every predator in the world is gonna pick that up at two in the morning.” <http://variety.com/2017/tv/news/bill-oreilly-wildest-quotes-1202390457/>