



LEGAL SCHOLAR

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One strike and you're out

Question: Despite suspension over honor code violations and an ongoing investigation into his recruitment, Auburn's Cam Newton last week won the Heisman Trophy--an award meant to honor "pursuit of excellence with integrity." The award raises a dilemma faced by many organizations: In dealing with top performers, how much should leaders overlook corner cutting, rule breaking and other integrity issues?

When a first-order rule of an institution is violated, the approach is simple: "One strike and you're out."

When General Stanley McChrystal and his aides speak on the record to a reporter and deride American civilian leaders, they violate first-order traditions of military chain of command and civilian control of the military. McChrystal is forced to resign.

When Mark Hurd of HP lies about personal expense accounts, he violates a first-order rule of good corporations that financial data must be complete and accurate (even if the amounts are small and if other dynamics between Hurd and the HP board of directors were at play). Hurd is forced to resign.

In these and many other cases when first-order norms are ignored by important institutional players (not just by the troops or by work-a-day employees), there should not be a balancing test weighing their value to the organization against their violation of its rules (whether derived from law, policy or ethics). These rules--chain of command, financial honesty--are so central to the mission of the institution that when individuals cross those lines they can just keep going out the door. A culture that enshrines those rules could not long endure if the generals get favored treatment and the troops are dishonorably discharged, if the CEO gets a pass and the employees get whacked. Hypocrisy kills.

So---one strike and you're out. Full stop.

Well, not so fast. Leaders making these decisions still face complexities.

What are first-order rules that, when violated, require the death penalty of termination? Often this is clear. But if a pattern of religious or racial or gender harassment is a firing offense, what about a single remark? If a person makes a mistake on a financial filing, or was negligent, but did not intend to mislead and is properly disciplined, what should you do? Termination is not always the answer for lesser offenses.

How should decision-makers determine the veracity of the facts---which are so critical to determining whether a first-order rule is at play and whether it has been abridged? Taking a deep breath, not rushing to judgment and verifying allegations through a fair inquiry is often critical. And, how much process, should the target of the inquiry be given to tell his or her side of the story?

And then, even when there is a violation of first-order rules and separation is appropriate, what should constitute the "exit package?" This will turn on the severity, duration and impact of the first-order offense. Both McChrystal and Hurd had constructive careers, sullied by a single event that did not deeply injure the institution. They received most of the benefits they had earned. (For example, McChrystal was allowed to retire as a four star.) But if an individual commits major fraud over a number of years and leads to major inquiries, suits, restatements and other damages, then all unvested benefits should be canceled and, under contemporary "claw back" policies, certain vested benefits could be recovered (cash, stock, etc).

How does the leader communicate to the institution the first order transgression which caused separation? Honest and candid discussions of the fundamental norms, the key facts that support a violation, and the outlines of resolution are as important as the separation/resolution itself. People need to know. Otherwise rumor and innuendo will run rife. The lessons for the entity must be clearly drawn.

But the basic approach must never vary: no exceptions, no matter how high your station, no matter how important you are to the organization. When you violate the fundamental rules of the institutional culture, you're out.

BY BENJAMIN W. HEINEMAN, JR.

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