

CAREFUL WHAT YOU WISH FOR - BILL O'REILLY VERSION

By: Jack Greiner on October 30, 2017 on graydon.law

Former Fox News personality Bill O'Reilly has filed [a defamation lawsuit](#) against a man named Michael Painter, based on this post that Mr. Painter put up on Facebook last week:

Like a lot of men, I've had a sinking feeling when I see how many friends have posted using the [#MeToo](#) tag. I've also read suggestions on how men can play a role, and sadly I've had several ex-partners who were victims. One is well-known, but hasn't shared her story (so neither will I). Another has publicly settled her case against Bill O'Reilly at Fox News.

I read a blurb today that referenced her being bound by a non-disclosure agreement. However, I hear O'Reilly spinning his falsehoods almost daily. This week he again said he did nothing wrong, while suggesting he's been persecuted and had very few complaints "to Human Resources" during his decades at Fox. Bill should be aware that not everyone is bound by a non-disclosure ... I am not.

My ex's career was largely dependent on staying in O'Reilly's good graces. For that reason, she was always hesitant to tell me some details - likely out of fear than I could jeopardize her career by becoming involved. Sometimes information would slip out ... she'd come home stressed and reference O'Reilly, and only after some prodding would she reveal that he asked her out, adding that she should not tell anyone - that other women at the network would question it or be jealous.

I was also there on several occasions when a late night call would come from O'Reilly, which would create tension and make her clearly uncomfortable (I believe she later said in her suit that she believed he was masturbating). All as she was laying next to her boyfriend, and worried what hanging up could do to her career.

What stuck in my mind this week was a phone call I remember almost verbatim. We were in my car and parked at an ice cream shop, after bringing our dogs to the park. The first call came from a woman at Fox who I believe was the HEAD of HR (or Fox's chief corporate counsel). She stated that she had met with O'Reilly and Bill Shine, who was the Co-President of Fox News.

She said there was a sensitive matter that they wanted my ex to speak with O'Reilly about, confidentially. I don't think anyone would decline when the head of their company made such a "request".

We sat for a minute discussing how odd the call was, and what it might be about.

60 seconds later, O'Reilly was calling (clearly after getting the green light from HR/Shine). I heard every word, as we sat in the car with the windows up.

He explained that a new accuser was suing him for sexual harassment. This latest victim was someone my ex knew, and lived in the same complex. He got to the point immediately: give me anything you have on this woman, which we "can use against her."

He asked if anything was known about her sex life. He asked if she used any illegal drugs. He also asked if anything was known about her financial situation and marriage. In essence, the leadership of Fox, including their "HR" head/counsel and O'Reilly, who held my ex's career in their hands (and whom O'Reilly was also harassing) was demanding information to attack another victim.

Think about that in light of him stating that very few women ever went to HR to complain about him, and how hollow those words ring.

To her credit, my ex didn't tell him anything. She instead relayed an innocuous story about the fact that we had seen her in the building just that week. She didn't know her that well or have anything to offer him.

O'Reilly was dismissive and stated "none of that is helpful" - signaling to another victim and subordinate that he wasn't happy with what she had to offer, and again instructing her not to speak about the call.

So in a small way, I am just trying as a man to call bullshit on another "man" when I see it, and to do so publicly and non-anonymously.

It is always difficult to predict how a lawsuit will turn out. There are too many variables and personality quirks that can determine the case's outcome. And it's impossible to know which will affect any given case.

But here's [an analysis](#) that raises the question whether O'Reilly really wants to "go there."

O'Reilly has at least two risks facing him in light of the lawsuit. First, he has to prove the statements he's complaining about are false. There's a cliché that "truth is a defense to libel." That is not entirely accurate. Because the plaintiff, in this case Mr. O'Reilly has the burden of proving the statement false. If he can't do that, there's no need for a defense. He loses. And in a "he said/she said" case like this (although, I guess technically this is a "he said/she said/and then her boyfriend said" case) proving the account of the phone call could be tough.

But the bigger issue in play here is that a libel case centers on the plaintiff's reputation. Which means the plaintiff has to prove not only that the specific account is false, but that the effect of the false account on the plaintiff's reputation is worse than the truth. In other words, if Mr. Painter can prove that Mr. O'Reilly has a reputation for being a sexual predator who bullies women in the workplace, then even if this specific account is false, it doesn't change his reputation.

Putting it another way, Mr. O'Reilly loses if the specific account is true, or if the general "gist" is true. This makes his lawsuit similar to a forward pass - three things can happen and two of them are bad. But that may not even be the worst part.

In every civil lawsuit, the defendant is allowed to conduct "discovery." That means if this case actually moves ahead, Mr. Painter will be able to compel Mr. O'Reilly (and Fox News) to turn over piles of records (including e-mails) that have anything to do with Mr. O'Reilly's interactions with female employees. Mr. Painter will be able to compel Mr. O'Reilly to give a deposition - which consists of sitting under oath and fielding all relevant questions. And given the nature of the case, the relevant scope will be broad.

There really doesn't seem to be any upside for Mr. O'Reilly. Maybe he should call an audible.