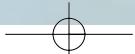


Jairo Gonzalez

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# BAD BOYS

From fraud to alleged rape, almost any sin may be overlooked by an employer when a superstar is delivering results.

BY DANIEL LYONS

**J**AIRO GONZALEZ CAN DO NO WRONG. AT HYPERCOM CORP, A PHOENIX-BASED MAKER OF CARD SWIPES FOR CHECKOUT counters, he has cracked open new markets in places like Brazil, Colombia and Turkey, driving huge sales growth and taking market shares of up to 80%. His successes helped build Hypercom into the world's second-largest vendor of the swipes. Sales climbed sixfold in seven years, to \$327 million by 2000. Twenty months ago Gonzalez was promoted to president of Hypercom's biggest division, which generates 85% of total revenue. Now he is taking aim at China and India. He is also in line to become chief executive. Hypercom's chairman, George Wallner, 51, who founded Hypercom in 1978 and took it public in 1997, says: "Jairo is brilliant, absolutely brilliant. He's a rock star."

But Hypercom's rock star has a behavior problem. Gonzalez has been accused of rape by his former secretary, who was paid nearly \$100,000 by Hypercom to keep quiet about the matter. He has been accused of sexual harassment or verbal abuse by three other women at Hypercom, one of whom also won a \$100,000 payoff. Gonzalez also has shown a penchant for self-dealing. In the early 1990s he set up his own business—with a branch office inside a Hypercom warehouse managed by his father—to charge the company for shipping orders to overseas markets. A year and a half ago he got a job for a girlfriend at a video production firm Hypercom had hired in Miami; then she moved to Phoenix, his home base, and joined a second video firm, and Hypercom hired that company.

None of this was enough to derail Gonzalez's career—not even the potential liability Hypercom could face if he is accused of

# “He needs help. He attacks women. He’s got a bad temper. Do you want your daughter working for him?”

harassment by other women at the company. George Wallner says holding on to Jairo was a cold but smart business decision. Worldwide, Hypercom has a 20% share and trails only Ingenico of France. On Gonzalez’s home turf in Latin America, Hypercom holds a 42% share. In Europe its share grew twentyfold in four years to 10%. Gonzalez gets much of the credit for all of this.

“He was bringing in \$70 million a year. Do you fire your top rock star because he’s difficult? I thought we could redeem him,” says Wallner, adding that if he believed the allegations, “I would fire his ass on the spot.” In settling the rape charge, “the \$100,000 we spent was well worth the [sales] he was bringing in,” Wallner says. “That’s as a business decision—not on a moral level. On a moral level this is confusing. But if you think of only the business decision, it was dead right.”

At some point, though, morals count for something. Many companies face the dilemma: If a top producer gets in an embarrassing scrape, should he be fired? What if a terrific salesman cheats on his expense account, or a key executive is sued for sexual harassment or arrested for drunk driving? To set the threshold of indignation too high runs the risk that the miscreant’s next misdeed will cost your company a devastating legal settlement. To set it too low means losing talent to a rival. After all, even troubled souls can turn their lives around. As a stockbroker Jonathan Ornstein was fired for unauthorized trading and other sins, but then he went on to great success as an airline executive (FORBES, Aug. 9, 1999).

**OFTEN, HOWEVER,** misdeeds—even criminality—are tolerated in high places. Cowen & Co. may have reacted too mildly when broker Frank Gruttadauria was investigated for fraud in the early 1990s; in February he was charged with pilfering \$40 million from clients over the past 15 years. Shoe-biz impresario Steven Madden just got sentenced to 41 months in prison for stock manipulation, but he still gets \$700,000 a year plus bonuses as creative chief. Shopping mall magnate A. Alfred Taubman is appealing a 12-month sentence for price-fixing at Sotheby’s, yet he has just been reelected to the board of media company Hollinger International (see box, above).

In 1999 *Vogue* publisher Richard Beckman broke an employee’s nose while jokingly trying to make her kiss another woman at a sales meeting. Condé Nast paid off the woman, Beckman kept his job—and in January he received a promotion to chief marketing officer of Condé Nast. Milan Panic, former chief executive of ICN Pharmaceuticals, hung on to the corner office even after settling several harassment cases since 1993 and being accused of fraud by the Securities & Exchange Commis-



## Accusing the Boss

**S**EXUAL HARASSMENT LITIGATION IS a big business, with 15,000 cases a year filed at the Equal Employment Opportunity Commission. Since 1995 dollars paid in EEOC settlements have more than doubled, to \$53 million last year. Typically firms pay but admit no wrongdoing; the accused in the cases below denied the charges.

**Peter Karmanos Jr., 59, chief executive of Compuware.** Karmanos, co-founder of this \$1.7 billion (sales) software firm in Farmington Hills, Mich., was named in two sexual harassment cases brought in 1998 by

ex-employees. In 1999 Compuware settled one case, filed by a former personnel chief, a woman. The other case was dismissed in 2001. Karmanos kept his job.

**Dan K. Wassong, 71, chief executive of Del Laboratories.** An EEOC suit in 1994 accused him of verbally and physically abusing female workers. He allegedly grabbed a woman’s breasts, rubbed another’s backside and made graphic gestures. Del Labs paid \$1.2 million to settle the case in 1995 but didn’t seek reimbursement from Wassong, who kept his job running this \$332 million cosmetics

sion in 1999. Panic denied the claims; the SEC decision is pending. He recently retired in a shakeup. Gregory Brady kept his job at Dallas software shop I2 Technologies and later became its chief executive, after I2 paid to settle a sexual harassment complaint against him in 1999. He resigned in April for “personal reasons.”

At Hypercom, Wallner says the hell-bent pursuit of revenue pushed the company to extremes. It had taken 15 years to hit \$50 million in sales, but as the digital economy boomed in the late 1990s, Hypercom’s growth surged. “It was like a dot-com, except these guys were bringing in money,” he says. “It was a highly charged environment. That produced results, but it also produced some problems. It was a wild place.”

How wild? One exec married a temp in his department, then hired her full time. Albert Irato, chief executive from 1992 to 1999, borrowed \$220,000 from Hypercom. Wallner and his brother, Paul, borrowed \$4.5 million from Hypercom, some of it interest-free. The borrowings were disclosed in SEC filings—but it all reinforced an anything-goes ethos at the company.

George Wallner readily admits female employees had reason to complain about Gonzalez. “He was brash and abrasive. He would yell at people, intimidate people,” he says. “[Gonzalez] was a womanizer. He messed around with other women, or he

# Do you want him running your company?

—Mary Ann Lawson, who left Hypercom in 1997 because of Gonzalez



**Top dogs who kept the corner office:** Gregory Brady, former chief executive of I2 Technologies; A. Alfred Taubman, convicted of price-fixing, reelected to Hollinger International board; Sidney Frank, chief executive of Sidney Frank Importers; Milan Panic, former chief executive of ICN Pharmaceuticals; Shoe kingpin Steve Madden, convicted of stock manipulation, still affiliated with company; Peter Karmanos Jr. chief executive of Compuware.

company in Farmingdale, N.Y.

**Sidney Frank, 83, chief executive of Sidney Frank Importers.** Frank hired comely "Jagerettes" to promote Jagermeister, the frat-boy herbal liqueur imported by his privately held New Rochelle, N.Y. firm. They complained the boss tried to kiss them, grope them and solicit sex, an EEOC case states. In 1999 the company paid \$2.6 million to settle, and Frank still runs the show.

**James L. Blythe, Blythe-Nelson.** A string of four suits filed since 1999 did little to sidetrack Blythe and his

Dallas-based telecom consulting firm, which boasted big-name clients like J.C. Penney. Among the allegations: groping, incessant dirty jokes and asking women to flirt with customers. Blythe allegedly shoved a wine bottle under an employee's skirt. In the end the bad economy, not misbehavior, undid Blythe. Late last year his company declared bankruptcy. Two of the cases have been settled, one for \$125,000. The other two were put in limbo by the bankruptcy filing.

—Daniel Lyons and Lea Goldman

propositioned them. Going out with employees is just really not right." Gonzalez declined to comment on the allegations.

Jairo ("HI-ro") Gonzalez was born in the U.S. but grew up in Bogotá, Colombia. In 1990, at age 28, he joined Hypercom in Miami. He had approached Hypercom while shopping for retail equipment for a client in Bogotá. When he learned Hypercom had no Latin America unit, he offered to start one—and did, in the kitchen of his one-bedroom apartment.

Gonzalez was young and energetic, with a knack for building teams, motivating sales reps and forging contacts. Wallner liked the younger man so much he lent Gonzalez money to buy a sailboat. Within a few years the driven salesman was running a 50-person organization that fueled most of Hypercom's growth, winning big contracts throughout Latin America. In 1992 Gonzalez helped found a Miami-based freight company that handled Hypercom's overseas orders. First named Kapel Freight Forwarder and now known as Desert Enterprises, it shared space in a Hypercom warehouse in Phoenix managed by Gonzalez's father, Jairo Gonzalez Sr., who runs Hypercom's distribution.

**HYPERCOM INSISTS** Gonzalez Jr. severed his ties to Desert Enterprises in 1996, before Hypercom became a publicly traded company. The annual report that Desert Enterprises filed in mid-1997 with the Florida Secretary of State's office indicates that

Gonzalez handed over the reins to another Hypercom employee in the Miami office, Mauricio Fernandez. The 1998 report shows Fernandez, in turn, handing off to someone else.

Desert's president now is Liliana Narvaez. A woman at the Miami office said Narvaez was in Colombia, doesn't speak English and would answer questions only in writing. A few days after FORBES faxed a list of questions, the phone line was disconnected. Hypercom's spokesman says Desert Enterprises handled only \$73,000 in Hypercom shipments last year and that no Hypercom employee has an interest in that firm.

**AS GONZALEZ** racked up big sales numbers, Wallner rewarded his top performer. By the time Hypercom was set to go public in late 1997, Gonzalez was president of the international division and had joined the board. Gonzalez was making \$228,000 a year, plus bonuses. In the stock offering set for November 1997, Gonzalez was in for a big payday: He was to receive options to buy more than 1 million shares of Hypercom stock at \$6.40 a share, a discount to the \$16 offering price.

Then trouble struck. At a lunch as the public offering neared, a manager, Ruth Rodriguez, asked a simple question: What about Jairo? She wanted to know whether Gonzalez would change his attitude after Hypercom went public. Reached

by FORBES, Rodriguez declined to discuss the exchange. But it was enough to launch a company investigation.

Wallner and his personnel chief, John Murphy, ended up unearthing complaints about Gonzalez from a total of four women who worked near him at Hypercom. Ruth Rodriguez herself said he had been verbally abusive. She later was fired. A former marketing manager, Mary Ann Lawson, said she had repeatedly complained about him to the personnel department because he used profanity, called her a "stupid gringo" (and other abusive terms) and hit on her.

"He came on to me and other women at the company," says Lawson, who quit in 1997 because of "his erratic behavior, his sexual harassment of me." She adds: "He needs help. He attacks women. He's got a bad temper. Do you want him running your company? Do you want your daughter working for him?"

Though she denies it, Wallner says Lawson had claimed Gonzalez attacked her—which he didn't believe. "She claimed that, yes, but I can't see that happening. She's not a good-looking woman," he says. Hypercom didn't pay her any settlement.

Colleen Ryan Smith came forward only after Wallner and his personnel chief approached her. In a lawsuit she later filed against Hypercom, she claims that in September 1996 Gonzalez sent her on an errand to a Phoenix home that Hypercom rented



**“He was bringing in \$70 million a year. Do you fire your number one rock star because he’s difficult?”**

**—George Wallner,  
chairman of Hypercom**

of Hypercom’s Phoenix base and put him in Europe. He says he demoted Gonzalez, although Hypercom Chief Executive Christopher Alexander says the job in Europe wasn’t a demotion.

To dispose of Smith’s complaint, Hypercom struck a deal with her, agreeing to pay off her \$89,000 mortgage and \$7,000 in legal bills and give her a bonus of \$2,500. The firm also agreed to put her sons through college if she kept her claims secret, according to court documents and Wallner. In November 1997 the stock issue went off without a hitch. George and Paul Wallner each sold 1.2 million shares at \$16, pocketing \$19.2 million apiece. (They now hold a combined 44.6% of the company.)

**SOON AFTER** Smith accepted the offer, she began receiving notes, flowers and gifts

for executives. When she arrived, Gonzalez was waiting for her, “drunk and hostile.” He dragged her into a bedroom and raped and sodomized her, Smith alleges. She says she went to an emergency room afterward but did not go to the police.

Smith, 41, says she was too intimidated to complain to the cops or the company. (She testified she had seen guns at Gonzalez’s home.) Instead, Smith got a transfer—to a job in the Phoenix warehouse, working for Gonzalez’s father. She alleges that in the summer of 1997 Gonzalez Sr. sent her on an errand to another house Hypercom rented, Jairo was there and assaulted her again, and that a third attack happened soon after. When she gave her account in October 1997, Wallner says, he offered to take Smith to the police but she declined.

**BUT WALLNER** didn’t believe Smith, either. He thought Gonzalez and Smith had been dating and had broken up and that Smith was now seeking revenge. “It’s hard to believe when people are dating that it would be a rape,” Wallner says. Smith responds that she never dated Gonzalez. “I never had lunch with him, never had drinks with him. Nothing.”

When the allegations surfaced, some executives wanted Gonzalez fired, but Wallner refused. “This was tearing us apart,” he says. “We understood there was serious exposure, but we also understood his value.” As penance Wallner moved Gonzalez out

from another executive—John Murphy, the personnel chief, who later left. “Some of this is so amazingly dumb it’s frightening,” Wallner says. “It was very poor judgment.” Murphy, who didn’t return calls seeking comment, later married a temp in his area and then hired her. “It wasn’t really the best setup,” Wallner admits.

Then trouble struck—again. In 1998 a fourth woman at Hypercom, Ali Valdez, complained that Gonzalez was abusive. She quit and in September 1998 got a \$100,000 settlement, Wallner says. “We already had [the Colleen Ryan Smith case], we didn’t want another one,” he says. Valdez declines to comment.

Wallner says he didn’t pay Gonzalez a bonus for two years and made him pay back the \$100,000 Hypercom had paid Valdez. In 1999 Gonzalez gave up his board seat, though Wallner says this wasn’t related to the complaints. But the Valdez settlement angered Smith, who says she felt Hypercom had enabled Gonzalez to strike again. In late 1998 she sued the company in Arizona Superior Court, claiming management had violated her agreement by leaking word to other employees. It was a backdoor attempt by her lawyer, Larry J. Debus, to revive a case against the company. He says that Hypercom coerced her into accepting a bad settlement and urged her to not go to the police, conspiring to cover up a crime.

Hypercom fired Smith in January 1999, alleging she had

**“The behavior is so egregious that the damages could be astronomical. You could see a jury awarding double-digit millions.”** —Larry J. Debus, lawyer for Colleen Ryan Smith

stolen Hypercom gear, a charge her lawyer says was contrived. In September of the same year a judge dismissed Smith's lawsuit, ruling that Hypercom had fulfilled the obligations of the settlement and that Smith had relinquished her right to sue. “As abhorrent as Gonzalez's assaults on Plaintiff and Hypercom's retention [of him] as an officer and director were, they are not the issues the court was called upon to decide,” Superior Court Judge Edward O. Burke wrote. Burke also ordered Smith to pay Hypercom \$40,000 in attorney's fees. Smith appealed to the Arizona Court of Appeals, and late last month the court ruled in her favor. Her attorney now hopes to pursue broader action against Gonzalez, Murphy and Hypercom. “The behavior is so egregious that the damages could be astronomical. You could see a jury awarding double-digit millions,” Debus says.

In November 2000 Gonzalez moved back to Phoenix and was named president of Hypercom's biggest division, Transac-

tion Systems Group. In 2001 Gonzalez was granted 300,000 options at \$3.50 a share. With a 1997 grant of just over 1 million shares, Gonzalez has a 2.4% stake in Hypercom, making him the largest individual shareholder after George and Paul Wallner.

“Jairo redeemed himself. He took management courses, he sought counseling. This guy has really turned himself around,” Wallner says. Gonzalez is the most likely candidate to become the next chief executive of Hypercom, succeeding Alexander, says Peter Quadragno of Quadragno & Associates, who follows the company. Wallner, the chairman, calls this view “pure speculation.”

**GONZALEZ ALIENATED** colleagues by hiring friends and relatives. In 2001 Hypercom hired a Miami company to make videos for its annual conference, then lined up a job at that company for Gonzalez's girlfriend. For this year's conference, Hypercom hired a Phoenix company that had recently hired her. Wallner says simply that both video outfits did terrific work.

Wallner, too, has benefited personally from his ties to Hypercom. In 1994 he borrowed from Hypercom to buy a house, paying back nearly \$3 million, including interest, by 1997. From 1995 to 1997 he operated a side company, Digitech Research, that billed Hypercom \$820,000 and received \$200,000 in interest-free advances from Hypercom. (Wallner dissolved the company in 1998.) In 1997, months before the offering, Wallner and his brother each took \$750,000 in interest-free loans from Hypercom. They don't have to repay until 2004. When the board okayed the loans, it had only one true outsider among its six members; insiders included the two Wallners, Gonzalez, then-chief Irato and Irato's brother-in-law, Peter Hart, who helped run a Hypercom supplier. The freebie loans to the Wallners look particularly galling now: In 2000 and 2001, when Hypercom hit hard times and needed a loan, George Wallner ponied up \$3.1 million—but charged the company 12% interest.

The last two years have been tough for Hypercom. Sales declined 11% to \$291 million last year. The company put \$10 million into a Web venture run by Paul Wallner; it has been sold. As profits turned to losses, Hypercom defaulted on loan covenants and had to borrow from new lenders to pay off the old ones. The stock, at \$15 two years ago, is down to \$7. Wallner, eager to move on, says he is confident Hypercom will prevail in court against Colleen Ryan Smith. “It wasn't really a pleasant episode,” he says. “But I think this happens all the time. Some of these rock stars are also a bit eccentric.” **F**

## Unbecoming Conduct

**A**CCUSATIONS IN HARASSMENT CASES ARE SOMETIMES APPALLING—AND sometimes silly. The charge in one case was that a male firefighter told a colleague she had been denied promotions because she did not perform fellatio well enough. (*Howley v. Town of Stratford*. A trial court ruled she couldn't sue, but an appeals court overturned that order.) In another, the allegation was that firefighters asked a female colleague if she was on birth control so they could “bang” her at the next union party. (*O'Rourke v. City of Providence*.) Elsewhere, a police chief told his female dispatcher he believed she had sex with family members (and possibly animals) and sacrificed animals in Satan's name. (*Venters v. City of Delphi*. An appeals court let her sue for religious discrimination.) One fellow, it was alleged, left a message on a female colleague's home answering machine with heavy breathing, panting and slurping sounds. He called her “Foxy Mama,” stood outside her office staring at her for up to 20 minutes and once asked her for a kiss: “I am serious, I want some tongue.” (*Westvaco Corp. v. United Paperworkers International Union*. He was fired but later got his job back.)

At the other end of the scale: the grocery store worker, a Lutheran, who sued because the manager played “satanic death metal” music over the loudspeakers and in his office. (*Cook v. Cub Foods*; case tossed out.)

When employees are truly out of line, some companies send them to one-on-one counseling with a lawyer who scares the bejesus out of them. “I call it ‘bad boy training,’” says Scott Rechtschaffen of Littler Mendelson, a San Francisco law firm that defends harassment lawsuits and runs these “scared straight” sessions. It beats getting fired. For an employer, though, forgoing a firing could hurt if yet another employee crosses the line. “When it comes out that the same thing has happened previously, that reinforces the possibility in jurors' minds that the company was reckless or grossly negligent, or even intentionally engaged in wrongdoing,” says Peter Schuck, a professor at Yale Law School. —D.L.