Hewlett Packard Scandal
What is the Problem?
Facts, Issues, & Actions Taken

Dr. Thomas A. Johnson
California Sciences Institute
and the
Forensic Data Center
January 23rd, 2006 CNET publishes article attributing insider info from the recent HP board meeting to a “source with the company”

HP conducts private investigation into source of the leak

Question as to whether investigative tactics were legal
Illegal investigation tactics may have been used by HP and/or the security firm they hired.

Who is responsible for the investigation?
Facts: Pre-hearing

- Keyworth named as source of leak, asked to resign in May, declines
- Perkins leaves HP, disagrees with investigative tactics
- Dunn resigns per HP’s request
- Pretexting used by consulting firm hired by HP to investigate leak
Facts: Pre-hearing

- HP investigated board members and their family as well as nine journalists.
- Email with attached tracer sent to board members.
- Investigation into HP leaks may have begun as early as 2005.
- Consulting firm told HP its tactics would be legal.
Issues: Pre-hearing

- Was pre-texting a legal tactic?
- Who authorized the investigation and hired the consulting firm?
- Did parties involved believe tactics were legal?
- Ethics of investigation
- Is HP or the consulting firm responsible?
- How liable were reporters for releasing possible intellectual property?
Actions Taken: Pre-hearing

- Dunn asked to resign/fired
- Hurd appointed HP chairman
- Perkins quit
- HP developing plans for investigating future leaks
- HP hires Bart Schwarts, former U.S. Prosecutor, to conduct review of leak investigation
**Actions Taken: Pre-hearing**

- SEC conducting interviews and investigations
- California Attorney General and several federal agencies investigating whether HP and its executives broke any laws
- FCC has asked AT&T how private investigators were able to obtain private records
- Gentilucci and Hunsaker fired 9/23/06
According to Morgan Lewis’ Mike Holston, a lawyer hired by HP to investigate the probe, Dunn contracted Security Outsourcing Solutions in early 2005. For 1st month of the investigation, Dunn worked directly with Ron DeLia from SOS and didn’t bring HP’s Global Security team in until 2 months later.
Facts - Hearing

- Telephone, fax, and cell phone accounts of more than 24 people were accessed. HP investigators reviewed 33 months of records and about 1,750 calls from 590 telephone numbers.
- Complaint states that Dunn knew since at least June 2005 that methods used to obtain records were deceptive.
Fred Adler, HP investigator, warned higher-ups including their chief ethics officer that methods were possibly illegal ... they were also warned by...

Wilson Sonsini (outside law firm) that the use of Social Security Numbers may have been illegal, but he was not mentioned in the September 6 SEC filing.
Dunn says decision to initiate corporate spying probe was made with others and she never doubted its legality.

She also testified that she discussed the investigation with CEO Mark Hurd and board members and the board seemed satisfied with it.
Dunn didn’t understand that pretexting meant fraudulent misrepresentation and accepts personal responsibility for what occurred.

Dunn says she thought the phone records were publicly available and thought it was a common investigative technique to call up and obtain these records.
Hurd testified that Dunn told him about the investigation, but he wasn’t involved.

Hurd commented that Dunn had to go not because of the leak investigation, but because she’d become a distraction. Blames Dunn for starting investigation.
Hurd further stated in his testimony that “those whose privacy was violated will be provided with the details regarding the information obtained about them, the means by which it was obtained and when it was obtained”
He admits that he should have played a more active role in preventing the scandal. He apologizes for HP’s role and promises to do better.

Lawmakers on the committee expressed outrage at HP’s actions.

They said the situation was reminiscent of the Enron court debacle which was very disappointing considering the 67-yr old computer and printer maker has a reputation of integrity.
Actions Taken - Hearing

- 10 people subpoenaed to testify assert the 5\textsuperscript{th} Amendment
  - Ann Baskins (General Counsel)
  - Ronald DeLia
  - Kevin Hunsaker
  - Anthony Gentilucci
  - 5 Private Investigators
5 people charged with fraud and conspiracy

- Kevin Hunsacker
- Patricia Dunn
- Ronald DeLia
- Bryan Wagner
- Matthew Depante
Each of the 4 felonies under the CA statute, carries a max. prison sentence of 3 years and a $25,000 fine.

If convicted of all 4 felonies, sentence will be between 6 and 9 years in jail total, but statutes don’t prohibit probation, often granted in white collar cases where defendants have no prior criminal history.
Specific charges for these 4 felonies include; fraudulent wire communications, wrongful use of computer data, identity theft, and conspiracy to commit those crimes.


CA Attorney General Lockyer has said he has enough evidence to indict HP insiders and contractors.
Bryan Wagner admits he destroyed and disposed of his computer after receiving a tip regarding a criminal probe into his acquiring of phone records for HP, he could be charged with obstruction of evidence.
Cingular and Verizon have filed suit against suspected pretexting firms that have obtained their customer’s records. Suits seek specified damages as well as an injunction prohibiting defendants from contacting the companies for any reason.
Facts – Post Hearing

- Spying scandal has not affected business much.
  - Ravi Sood, co-founder of Voodoo, has sold their operations to HP, citing high regard for Hurd
  - HP shares did fall 4% on October 12th amid newspaper reports that internal emails show Hurd approved some aspects of leak investigation
- Hurd made nearly $1.4 million by cashing out stock options one week before the spy scandal broke
In an interview on 60 Minutes and in a book by Fiorina, Dunn and Fiorina have said Perkins and Keyworth plotted against them and wanted them off the board.

Hurd has avoided prosecution as CA investigators haven’t found enough evidence to link him to the HP investigation, but hasn’t been publicly exonerated.
• Nye, who said he’d worked for 20-plus years in law enforcement before joining HP, in an email to Crawford said “Speaking for myself I won’t use this particular tactic.” (pretexting) He also urged HP to “reconsider” using the method in future cases.
In a February 7th email, Nye warned colleagues heading the leak probe that use of false pretenses to access phone records appeared to him to be “very unethical at the least and probably illegal.”

He continued to say “If it is not illegal, then it is leaving HP in a position that could damage our reputation or worse.”

Nye has also referred to a Sacramento Bee Newspaper article highlighting this issue.

January 1st – Pretexting will become a criminal offense in CA.
Facts – Post Hearing

- Private Investigation: $325,641.65
- Surveillance: $83,600
- Obtaining personal phone records: $51,000
- All Background Checks: $66,688
- Background Checks of HP’s Media Relations Department: $6,435
- Charge to locate, review, and catalog over 10,000 print and internet media articles: $37,535
- To recover Keyworth’s stolen laptop: $9,600

Losing your job and facing a congressional hearing? Priceless
Issues – Post Hearing

- 5 defendants might turn on one another to shift blame from themselves.
  It’s possible one or more may cooperate with the prosecution and testify against others.

- Defense lawyers could spin the evidence in a way more favorable to their client and not the others.
Issues – Post Hearing

- Prosecutors want to try all defendants at once
- Whether CA law is applicable to pretexting and whether the laws fit the charges
Dunn was ordered by the Santa Clara County Superior Court to appear for her arraignment on November 14th, then released.

Dunn pled not guilty at arraignment.

Hunsaker’s arraignment set for December 6th.
DeLia and Wagner agreed to travel to CA to set an arraignment date. They and Depante appeared November 17th. They’ve pled not guilty. Bail for DeLia and Wagner set at $50,000. Bail for Depante set at $100,000.

Attorney Jon Hoak named VP and Chief Ethics and Compliance officer for HP
HP has been informed that the SEC has issued a formal order of investigation.

HP has also received a request from the Federal Communications Commission for records and information relating to the leak investigations.

Sivilla, a state deputy attorney general, has said there is no timetable for when the case might conclude.
Conclusion

- HP, one of Silicon Valley’s most respected companies, has seen its reputation tarnished by the scandal.
- It remains to be seen the effect the scandal will have on the company in the long run.