

Unauthorized Disclosure: Hewlett-Packard's Secret Surveillance of Directors and Journalists



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On September 28, 2006, members of Congress, their staffs, reporters, prospective witnesses, and the curious public packed the wood-paneled hearing room of the U.S. House Committee on Energy and Commerce. The subject of the day's hearing, called by the Subcommittee on Oversight and Investigations, was "Hewlett-Packard's Pretexting Scandal."¹ At issue were methods the technology firm had used to investigate the unauthorized disclosure of nonpublic information to the press by members of its board of directors. Hewlett-Packard (HP) apparently had hired investigators who had used a technique known as pretexting—calling the phone company and posing as someone else in order to obtain that person's records. *Newsweek* had summed up the situation in a cover story published ten days earlier: "Lying, spying, name-calling, finger-pointing—all of it is a tragicomic that Shakespeare might've penned if he had gotten an MBA."²

Hewlett-Packard and its board chairman, Patricia Dunn, had initially defended the company's investigation of directors and journalists, saying aggressive efforts to ferret out the source of leaks were fully justified. But in the past few weeks, the situation had begun to spin out of control as the Securities and Exchange Commission and the California Attorney General had opened probes into the company's actions.³ Now, nearly two dozen of HP's top executives, directors, lawyers, and investigators—including the company's CEO Mark Hurd—had been called before Congress to account for their firm's alleged out-of-bounds behavior and to explain what they intended to do about it. Shortly before the September hearing, Dunn had agreed to resign from the board, and HP's general counsel, Ann Baskins—who had supervised the investigation—had left the firm. Now, Dunn faced the daunting challenge of defending her actions, and Hurd, as CEO and newly appointed board chairman, had to chart a way forward for the company.

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CORPORATE GOVERNANCE AT HEWLETT-PACKARD

Hewlett-Packard described itself as a "technology solutions provider to consumers, businesses and institutions globally."⁴ Founded in 1939 in a garage near the Stanford University campus by David Packard and Bill Hewlett to make test and measurement instruments, the company had grown to become a leader in the information technology industry. HP had four main business units, focusing on information technology infrastructure, imaging and printing, business services, and personal computers and devices. Headquartered in Palo Alto, California, the company in 2005 earned \$3.5 billion on revenues of \$86.7 billion.⁵ It employed around 150,000 people and had a presence in more than 170 countries. (The company's credo, known as the "HP Way," is shown in Exhibit A.)

In 2006, an eleven-person board of directors had overall responsibility for HP's strategy and policies. Patricia Dunn, who had joined the board in 1998, served as chairman from February 2005 until her resignation in September 2006. Dunn, who held a degree in journalism, had begun her career as a secretarial assistant. She had risen rapidly to become, at age forty-two, CEO of Barclays Global Investors, a firm that managed more than \$1 trillion in assets, primarily for institutions. At Barclays, Dunn was known for her customer focus and adherence to strict ethical standards in the stewardship of others' money. In 2002, Dunn stepped down as Barclays' CEO after being diagnosed with both breast cancer and melanoma; in 2004, she was diagnosed with stage IV ovarian cancer. Another prominent member of HP's board was Thomas Perkins, a partner in the powerful Silicon Valley venture capital firm Kleiner Perkins Caufield & Byers. Perkins had a long association with HP, having headed the company's research labs and later its computer division. George (Jay) Keyworth II, the board's longest-serving member, was a nuclear physicist and chair of the Progress & Freedom Foundation. (Exhibit B presents members of the board from 1999 to 2006 and indicates which board members were insiders.)

HP's board had four standing committees: the audit committee, which oversaw financial reporting to shareholders; the finance and investment committee, which oversaw HP's own investments; the HR and compensation committee, which oversaw its compensation structure; and the nominating and governance committee, which recommended candidates for directorships and oversaw the board's own processes. The board met several times throughout the year, culminating in a multi-day, off-site retreat generally held in January, where the board reviewed plans for the coming year.

HP's board had had a recent history of turmoil and turnover. In 2002, Carly Fiorina, CEO since 1999, had initiated a merger with computer-maker Compaq. Although most of the board supported the move, Walter Hewlett—a son of company founder Bill Hewlett and a long-time director—opposed it, saying the merger would destroy the egalitarian culture that was a core element of his father's legacy. Hewlett and his allies led a bruising proxy fight in which they worked to mobilize institutional investors to vote against the acquisition. Despite opposition from both the Hewlett and Packard families, stockholders ultimately approved the merger in a close vote, and Hewlett subsequently left the board.⁶

Shortly after the merger, Perkins rejoined the HP board (on which he had earlier served briefly), moving over from Compaq's board. One of Perkins' first actions as a director was to help organize a new technology committee "to make recommendations to the board as to scope, direction, quality, investment levels and execution of HP's

technology strategies.”⁷ Initial members of the committee included Keyworth; Lawrence Babbio, the president of Verizon; and Richard Hackborn, HP’s former executive vice president of computer products. According to James B. Stewart, writing in the *New Yorker*, the technology committee soon came to function as a virtual “board-within-the-board,” taking up key strategic issues, including market entry and exit, mergers and acquisitions, and competitor and partner relationships.⁸

In their focus on strategy, members of the technology committee may have differed from other directors who were more concerned with governance processes. In an editorial that appeared on the day of the Congressional hearing, the *Wall Street Journal* offered the following observation about conflict on HP’s board:

The board’s internal disagreements seem to have been about the role of directors. Mr. Keyworth, who was Ronald Reagan’s science adviser and whose twenty-one years on the board go back to the era of founder David Packard, was part of a faction who believe directors need to be conversant enough with technology to appreciate the company’s main business risks . . . Ms. Dunn, by contrast, is a former financier with little knowledge of the computer industry. She believed HP’s board should focus more on supervisory process—for example, fulfilling its obligations under Sarbanes-Oxley.”

A LEAK OF CONFIDENTIAL BOARD DELIBERATIONS

The original unauthorized disclosure—leak of confidential board deliberations—that initiated the chain of events leading to the September 28 hearings had occurred twenty months earlier, before Dunn had become chairman. On January 21, 2005, Fiorina received an urgent e-mail from HP’s press office, saying that the *Wall Street Journal* was planning to run a story about an off-site strategic planning meeting of the board that had taken place several days earlier. The reporter had apparently talked with several directors about the board’s discussions. Did Fiorina wish to comment?

[FIORINA:] It is hard to convey how violated I felt. Until a Board makes a decision, its deliberations are confidential . . . Trust is a business imperative. No Board or management team can operate effectively without it . . . I sent an e-mail message to the Board. I informed them of the leak. I said this was completely unacceptable behavior by a Board member. I convened a conference call for Saturday morning. I was as cold as ice during the call. I said the Board could not operate in this way and I would not . . . Jay [Keyworth], Dick [Hackborn] and Tom [Perkins] all acknowledged that the reporter had contacted them. They all denied they had spoken with her.¹⁰

On Monday morning, the *Wall Street Journal* ran an article on page A1.

Directors of Hewlett-Packard Co., unhappy with the uneven performance of the giant printer and computer maker, are considering a reorganization that would distribute some key day-to-day responsibilities of Chairman and Chief Executive Carly Fiorina among other executives, said people familiar with the situation. At its annual planning meeting between Jan. 12 and Jan. 15, HP’s Board discussed giving three senior executives more authority and autonomy over key operating units, according to people familiar with the matter . . . The Board’s concerns, according to these people, include the mediocre performance of the PC business, which ekes out thin profits, and the perception that HP holds weak market positions against IBM and Dell . . . (Pui-Wing Tam, “Hewlett-Packard Considers a Reorganization; Management Move Stems from Performance Concerns; Helping Fiorina ‘Succeed,’” *Wall Street Journal*, January 24, 2005.)

The board agreed to ask the company's outside counsel to conduct an investigation of possible leaks. Over the next several days, the attorney interviewed all members of the board. He reported his results to the board in a conference call on January 27.

[FIORINA:] [The attorney] informed us that two, possibly three, Board members had leaked confidential Board conversations. His report named only one member, because only Tom Perkins was honest enough to admit that he'd spoken to the press, although he was adamant that he had been a "second source." Although I appreciated Tom's candor, I was deeply disturbed when no one else spoke up. As the call progressed, all but one Board member [Keyworth] asked questions or made comments . . .¹¹

[FIORINA:] Everyone on that call knew that both Tom and Jay were the sources. They were allies. They were the ones pushing for the reorganization described in the article. I was clear and unequivocal that this was unacceptable behavior. They didn't like that.¹²

The next meeting of the board was held on February 7 at the Chicago Airport, an off-site location chosen to avoid further press speculation. After some brief preliminaries, Dunn asked Fiorina if she had anything to say. Fiorina spoke to the group about her views on strategy and other matters. Dunn then asked her to leave the room. When Fiorina was called back three hours later, Dunn and Robert Knowling informed her she had been fired. Explaining the decision to the press afterwards, Dunn praised Fiorina for doing an "outstanding" job, but stated that "a new set of capabilities is called for."¹³ (Fiorina herself wrote in her memoir that the board "did not explain their decision or their reasoning.")¹⁴ At their meeting, the board had also decided to name Dunn non-executive chairman and Robert Wayman, HP's chief financial officer, as interim chief executive while they conducted a search for a new CEO.

"SOMETHING HAD TO BE DONE"

[DUNN:] Not surprisingly, given [the] breakdown of boardroom sanctity and continued disclosures of Board-level information making their way into print over the ensuing week, many directors expressed to me their strong opinion that something had to be done to determine their source and bring them to an end. In fact, the majority of directors told me during my first few weeks as Chairman that, next to leading the board's CEO search, coming to grips with HP's famously leaky Board should be my top priority.¹⁵

Dunn thought that a vigorous leak investigation was imperative.

[DUNN:] The most fundamental duties of a director—the duties of deliberation and candor—rely entirely upon the absolute trust that each director must have in one another's confidentiality. This is true for trivial as well as important matters, because even trivial information that finds its way from the boardroom to the press corrodes trust among directors . . . The most sensitive aspects of a company's business come before its Board: strategy; executive succession; acquisitions; business plans; product development; and key supplier relations. That is exactly the type of information a company's competitors and those who trade in its stock would love to have before that information becomes public. Boards have an unquestionable obligation to take appropriate steps to prevent this happening.¹⁶

Dunn sought the advice of Wayman, who referred her to HP's chief of global security. He, in turn, referred her to Ron DeLia, whose firm, Security Outsourcing Solutions (SOS), based in Massachusetts, had done contract investigative work for HP for several years. Dunn later referred to DeLia's firm as a "captive subsidiary."¹⁷ In April, Dunn and

DeLia exchanged several phone calls and e-mails, putting in motion an investigation to identify the source of the leaks.¹⁸ Dunn proposed to refer to the investigation by the code name Project Kona, after the location of her vacation home in Hawaii. By this time, the focus of the investigation had expanded to include several other journalists who had published articles in *BusinessWeek* and the *New York Times*. These articles had included information that had possibly been leaked following a board meeting in March, at which the board had discussed the selection of Mark Hurd as Fiorina's successor.

DeLia subcontracted part of the investigative work for Project Kona to the Action Research Group (ARG) of Melbourne, Florida. DeLia had known and worked with ARG for more two decades and had often used the firm to obtain phone and fax records for persons of interest. ARG, in turn, sometimes subcontracted work to other individuals. In addition to analyzing phone records, DeLia reviewed articles written by the journalists and researched patterns of "potential affiliation" among the journalists and HP directors. On June 14, Security Outsourcing Solutions delivered its preliminary findings to Dunn. The report described the firm's methods, and indicated it had not found the source of the leaks. Although the investigation had not succeeded, Dunn was hopeful that the investigation itself had had a dampening effect.

[DUNN:] By this time [August, 2005], no significant leaks from the boardroom had occurred for several months, and I hoped that simply the knowledge of an investigation had brought them to a halt.¹⁹

A NEW "MAJOR LEAK"

From January 19 to 21, 2006, the board met again for its annual off-site strategic planning meeting. Soon after, Dunn received an e-mail from the head of HP's public relations department, saying there had been a "major leak." The article in question had appeared on *CNET*, an online technology publication.

Hewlett-Packard executives are mulling plans to improve over the next eighteen months the technology the company uses to manage its direct sales, while it continues with commercial printing efforts and acquisitions of software companies.

... HP CEO Mark Hurd, the company's board of directors and senior executives gathered at the computer giant's annual management retreat to discuss long-term strategies ...

According to the source, HP is considering making more acquisitions in the infrastructure software arena. Those acquisitions would include security software companies, storage software makers and software companies that serve the blade server market ... (Dawn Kawamoto and Tom Krazit, "HP Outlines Long-Term Strategy," *CNET*, January 23, 2006.)

Dunn circulated the *CNET* article to the board. To Perkins, she sent an e-mail:

Tom, this will disturb you as much as it disturbs me. For our discussion. Break out the lie detectors. Regards, Pattie.²⁰

Perkins responded:

This is incredible! I can't believe that this has happened again. But, in reading it, I don't think it damages the company too much—it's just that the news should come from us when we want it to, and not when it is leaked. I doubt if this came from a board member. Frankly, I don't think a board member would have remembered this much detail ... I think Mark [Hurd] must put the fear of God (i.e. Mark Hurd) ... to stop this.²¹

This time, Dunn consulted Ann Baskins, HP's general counsel. Baskins recommended that the investigation be turned over to Kevin Hunsaker, a senior attorney in HP's legal department who had responsibility for overseeing investigations into violations of standards of business conduct, including employee wrongdoing.²²

"ALL INVESTIGATIVE ALTERNATIVES"

On Monday, January 23—the day the article appeared—Hunsaker assembled a team to carry out the second leak investigation, which became known as Kona II. (Exhibit C shows the composition of the investigative team.)

The Kona II team went to work immediately. They assigned undercover operatives to Keyworth (whom they suspected from the beginning), following him to Boulder, Colorado, from January 30 to February 1, where he was giving a lecture at the University of Colorado. Surveillance teams later followed Keyworth's wife and also Dawn Kawamoto, the *CNET* journalist. These activities turned up nothing of relevance—the operatives observed Mrs. Keyworth playing bingo at a local community center and Kawamoto picking up her child after school.

Fred Adler, a member of HP's IT security team, examined the company's internal telephone and Internet records for evidence of contact with Kawamoto and her associates at *CNET*. This effort turned up nothing other than some routine contacts between *CNET* and HP's public relations department.

The Kona II team also came up with a plan to open a dialogue with Kawamoto, impersonating a fictional executive, "Jacob," with some purported inside information. On Wednesday, February 1, the team sent Kawamoto a message from a hotmail account that could not be traced to HP, offering "some information that I would be interested in passing along." Kawamoto responded, suggesting that Jacob call her at her office.

The following day, Thursday, February 2, the team provided an initial briefing to Dunn in HP's Palo Alto offices. The presentation slides reported that the team was considering "all investigative alternatives." It also noted, "While time is of the essence, the investigation must be comprehensive, accurate, and in compliance with all laws and accepted investigative principles."²³

[DUNN to HUNSAKER, February 3, 2006:] Kevin, I came away with a good sense of what you and the team are doing, and encouraged that this effort is on the right track. As discussed, this is an unusually sensitive matter and we need to tap into the necessary expertise wherever it resides. I will count on you and the team to continue to do so.

"SUBJECT: PHONE RECORDS"

As the team in California proceeded with their work, DeLia—working from Massachusetts—once again mobilized the Action Research Group. He instructed the Florida investigators to obtain the home phone, office phone, cell phone, and fax records of Kawamoto, as well as those of seven current and former board members (including Keyworth and Perkins), two HP employees, eight other journalists, and in some cases, those of their family members. ARG quickly began producing results, sending DeLia detailed logs of phone records, showing numbers called and the time and duration of the calls.

[HUNSAKER to GENTILUCCI, January 30, 2006. Subject: Phone Records:] Hi Tony, How does Ron [DeLia] get cell and home phone records? Is it all above board?

[GENTILUCCI:] The methodology used is social engineering. He has investigators call operators under some ruse, to obtain the cell phone records over the phone. It's verbally communicated to the investigator, who has to write it down. In essence the Operator shouldn't give it out, and that person is liable in some sense. Ron can describe the operation obviously better, as well as the fact that this technique since he, and others, have been using it, has not been challenged. I think it's on the edge, but above board. We use pretext interviews on a number of investigations to extract information and/or make covert purchases of stolen property, in a sense, all undercover operations.

[HUNSAKER:] I shouldn't have asked. . . . [ellipses in original]

DeLia later told attorneys hired by HP to investigate the Kona II activities that he subscribed to proprietary databases, available only to licensed investigators and law enforcement officials, which provided Social Security numbers along with other information about individuals. The interview summary stated:

DeLia supplied ARG with Social Security Numbers for all subjects of pretexting. DeLia thought that ARG used the last four digits of the numbers as required.

Perkins later asked AT&T, his phone service provider, whether or not his phone records had been pretexted during this period. AT&T responded:

[T]he third-party pretexter who got details about Perkins's local home-telephone usage was able to provide the last four digits of Perkins's Social Security number and that was sufficient identification for AT&T. The impersonator convinced an AT&T customer-service representative to send the details electronically to an e-mail account at yahoo.com that on its face had nothing to do with Perkins.²⁴

By February 10, DeLia's operatives had obtained information for more than 240 telephone, cell phone, and fax numbers.

"A KEY PIECE OF THE PUZZLE"

On Monday evening, February 6, DeLia provided the team with an apparently critical piece of evidence: telephone logs supplied by his investigator that showed several calls from Kawamoto to Keyworth's home shortly before her article came out. Even though it was after hours, some members of the team were apparently checking their e-mails and seemed immediately to recognize the information's importance.

[GENTILUCCI to HUNSAKER, DeLIA, NYE, and ADLER, 9:33 P.M.:] . . . appears to be a "key" piece of the puzzle, "worth" a lot of weight in this case. Sorry, I couldn't help myself. Lets keep on moving forward with the plan. Good work team.

[HUNSAKER to DeLIA, GENTILUCCI, NYE, and ADLER, 9:36 P.M.:] Do we have the outbound calls from Keyworth's home from that date, so we can confirm that he and/or his wife . . . were at home? . . . Do you know what time of day the call went from Kawamoto to the Keyworth residence? . . . I'm starting to get excited . . .

The next morning, a junior member of the investigation team, Vince Nye, contacted two of his superiors.

[NYE to GENTILUCCI, cc to HUNSAKER, February 7, 2006, 9:32 A.M.:] Tony: I have serious reservations about what we are doing. As I understand Ron's methodology in obtaining the phone record information it leaves me with the opinion that it is very unethical at the least and probably illegal. If it is not totally illegal, then it is leaving HP in a position that could damage our reputation or worse. I am requesting that we cease

this phone number gathering method immediately and discount any of its information. I think we need to re-focus our strategy and proceed on the high ground course.

He also wrote Fred Adler, a fellow investigator.

[NYE to ADLER, February 7, 2006, 1:30 P.M.:] Fred: This information is too detailed to obtain via voice over the phone by a pretense operative . . .

He wrote again a few minutes later.

[NYE to ADLER, February 7, 2006, 1:46 P.M.:] Its clear from the earlier call, that this is "Don't ask Don't tell" with regard to Ron's role . . . Kevin Thinks . . . He doesn't want to go make sure she knows... This is the guy who is suppose to keep us above the board!!!!!!

[ADLER to NYE, February 7, 2006, 2:42 P.M.:] Agreed, I am VERY concerned about the legality of this information.²⁵

"IN COMPLIANCE WITH THE LAW"

Sometime that day the investigation team met to review their progress. Adler later testified before Congress:

[ADLER:] [A]t that meeting . . . both myself and Mr. Nye . . . started questioning Mr. Gentilucci and Mr. DeLia and Mr. Hunsaker about the pretext calling and how the information was being obtained and whether it was in compliance with the law.

Hunsaker apparently followed up on his team members' concerns about the legality of the methods used by DeLia's contractors, because he received the following e-mail from DeLia:

[DeLIA to HUNSAKER, February 7, 2006, 2:12 P.M.:] Kevin: I sent an email to my source in FL and asked them if there were any state laws prohibiting pretexting telephone companies for call records. Following is their response. We are comfortable there are no Federal laws prohibiting the practice. Note: The Federal Trade Commission has jurisdiction. The firm has been in business for over 20 years and is properly licensed in FL and other states. I have been utilizing their services for approximately 8 to 10 years. Ron. "As of right now there are no laws against pretexting. We are on top of everything going on regarding this issue and if any law were to pass we will be the first to let you know." [underlining in original]

An attorney conducting an internal probe for HP later reported on an interview with Hunsaker about his research on the legality of pretexting:

. . . after Nye and Adler expressed concern about the legality of pretexting . . . [Hunsaker] asked DeLia . . . to confirm the method's legality with the Florida investigators . . . Asked about the scope of his [own] research, Hunsaker said he did about an hour's worth of online research on the legality of pretexting . . .

Ann Baskins, HP's general counsel, later recalled that during a meeting with Hunsaker in or around early March she had specifically asked him to consult a legal expert to confirm the legality of pretexting. Hunsaker delegated this task to Gentilucci, who contacted an attorney he knew in Boston. This attorney advised the team that pretexting of financial institutions was prohibited by statute, but that no law specifically banned the pretexting of phone records.

Despite the apparent break in the case, the team moved forward with the "Jacob" operation. On February 9, the group sent another e-mail to Kawamoto with some

genuine inside information, after seeking approval for this disclosure from Mark Hurd. A tracking device was attached to the e-mail in the hope that Kawamoto would forward it to her source for confirmation, thus revealing his or her identity. DeLia made a pretext call to confirm that Kawamoto was in her office, and the group posted a surveillance team to watch her movements. "This is like waiting for the Apollo 13 spacecraft to emerge from the dark side of the moon," Gentilucci e-mailed the team. CNET's firewall may have blocked the message; in any case, Kawamoto never responded or forwarded it.

"THE OVERWHELMING WEIGHT OF EVIDENCE"

On March 10, 2006, Hunsaker issued an eighteen-page draft report of the investigation, addressed to Dunn, Hurd, and Baskins. The executive summary concluded that the investigation had likely found the source of the leaks:

[T]he overwhelming weight of evidence reviewed by the Investigation Team indicates that the source of the leak is HP Board member George Keyworth II. Specifically, the content of each of the articles citing a "source" written by Kawamoto in the past 4 years, the numerous connections made by the Investigation Team tying Keyworth to the leaks, and the telephonic contact between Kawamoto and Keyworth in January and February of 2006, all clearly identify and establish Keyworth as the only feasible source of the leaks.

The report concluded by posing—but not answering—the question "whether Keyworth should be interviewed in conjunction with the investigation" and, if so, by whom and to what purpose.

The following week, HP's directors and many top executives gathered in Los Angeles for the annual shareholders meeting. On the evening of March 18, Hurd, Dunn, and Baskins were in the lounge of the Park Hyatt Hotel when they noticed Keyworth, the board member they suspected, sitting at the bar. Hurd told his companions, "I'll take care of this."²⁶

[DUNN:] Mr. Hurd . . . has related many times to me and to others that he tried in every way he could to get Mr. Keyworth to come forward and admit his culpability. Ms. Baskins and I were sitting near them during this meeting, which occurred over cocktails in the hotel lobby, and I could see that Mr. Hurd was intensely engaged with Mr. Keyworth. Mr. Hurd subsequently described to me . . . that, although he gave Mr. Keyworth several chances to come forward, Mr. Keyworth declined to acknowledge his culpability.²⁷

"BUT ONE BOARD SEAT FROM WHICH TO RESIGN"

On May 18, the board gathered in Palo Alto for its regular meeting. Ten directors were present. Immediately prior to the meeting, Robert Ryan, chairman of the audit committee, met with Keyworth privately to inform him about the findings of the investigation.

[DUNN:] Mr. Ryan reported [to Hurd, Dunn, Baskins, and HP's outside counsel] after his interview with Mr. Keyworth that Mr. Keyworth's immediate response to hearing the investigation's results was to admit he was the leaker, followed by the question, "Why didn't you just ask me?" All of us were flummoxed by this response, as it was clear to all of us that for the prior 15 months Mr. Keyworth could have come forward at any time to acknowledge his culpability.²⁸

According to the minutes of the May 18 meeting, the first item on the agenda was the findings of the leak investigation. Dunn reported that the investigation had been conclusive and then turned to Ryan, who summarized the report for the board and stated that Keyworth had been identified as the leaker and had, that morning, acknowledged being the source for the *CNET* article. After some further discussion, Keyworth addressed the group. The minutes of the meeting summarized his statement:

[Keyworth] described the circumstances under which he became acquainted with Dawn Kawamoto, explaining that he initially established contact with Kawamoto at the request of former CEO Carly Fiorina, who asked Keyworth to speak with certain members of the media in support of the Compaq merger. He added that Kawamoto emerged as an influential reporter who reported favorably on HP. He said that his intent in describing the January Board meeting to Kawamoto was to help the Company and in particular to convey that HP and its CEO were addressing key growth opportunities and other important strategies rather than narrowly focused on cost-cutting efforts. Dr. Keyworth assured the Board that he had not been a source for other stories by different reporters, including articles written by Pui-Wing Tam of the *Wall Street Journal*. He indicated that he would not make unauthorized disclosures to the media in the future.

Keyworth then left the room. After a discussion that lasted about ninety minutes, the board voted by secret ballot, six to three, to ask for Keyworth's resignation. Dunn later recalled this discussion and its aftermath:

[DUNN:] Mr. Perkins became very agitated when it became clear that a majority of the Board did not think Mr. Keyworth had handled his response to the Board appropriately and thus were strongly leaning toward asking for his resignation. A secret ballot, suggested by another director, was taken, in which a strong majority of the Board voted to ask Mr. Keyworth to resign, which later in the meeting he refused to do. At that point Mr. Perkins erupted in great anger. Mr. Perkins' anger was directed entirely at me, and centered on the "betrayal" he alleged at my not having abided by an agreement that he said we had to cover-up the name of the leaker. I had little opportunity to respond to this outburst except to say, "Tom, we had no such agreement." . . . At no point during Mr. Perkins' outburst did he make any statements whatsoever about the leak investigation—including its justification and methods. Mr. Perkins told the Board he resigned and he left the room, at which point a director put a motion on the table to accept his resignation, which was then seconded and carried unanimously.²⁹

Several days later, Perkins wrote a confidential memo to the members of the board of the News Corporation, on which he served, to explain his actions, in which he stated:

I was very angry at the time, but now that over a week has passed, I think that I did the right thing, and to paraphrase the Revolutionary War hero, Nathan Hale ("I regret that I have but one life to give to my country"), I regret that I have but one HP Board seat from which to resign.

On May 22, HP filed a Form 8-K with the SEC reporting Perkins' resignation, as required by law, giving no reason for his action.

"UNTOWARD AND ILLEGAL PRACTICES"

On July 28, Perkins wrote Baskins, with a copy to Hurd and HP's outside counsel, saying he could not accept the minutes of the May 18 board meeting as written. One of his main points was that the minutes did not convey his concerns about the legality of the leak investigation.

An essential point, which I explicitly made, questioned the legality of the surveillance of director's communications by the Chairman's outside experts. I specifically questioned this at the time of the meeting and question it still. As written the minutes state that I concurred in the nature of the investigation—this is not true. I was under the impression that the investigation involved examining calendars, travel schedules and such. I had no idea that personal communications were involved, and had I known that this was the case I would have brought the matter (of the intrusive nature of the investigation) to the board, for full examination, well in advance of the May 18th meeting.

On August 16, after an exchange of correspondence with AT&T, his telephone service provider, Perkins wrote again, this time asking that HP provide a copy of his letter to the SEC.

- I have direct proof of these untoward and illegal practices. My personal phone records were "hacked."

Baskins wrote back, indicating that the board had decided it would not amend the minutes or the filings with the SEC noting Perkins' resignation, because they were accurate. Perkins' attorney responded, threatening to "take appropriate action."³⁰ Shortly thereafter, the SEC, the FBI, and the California Attorney General began investigations.

In early September, the story broke wide open in the media. On September 18, *Newsweek* ran a cover story, "Intrigue in High Places: To Catch a Leaker, Hewlett-Packard's Chairwoman Spied on the Home-Phone Records of Its Board of Directors." The author, who was writing a book about Perkins' yacht, had interviewed Perkins extensively for the piece. Articles in *BusinessWeek*, the *Wall Street Journal*, and other leading publications also appeared around this time, and congressional staffers contacted the company about a possible House of Representatives inquiry.

"THE FINAL STORY"

When facing members of Congress, the press, and the public, only four of the potential witnesses called to the hearing—Dunn, Adler, Hurd, and HP's outside counsel—agreed to testify. The others—Baskins, Gentilucci, Hunsaker, DeLia, and various investigators from Florida, Colorado, Texas, and Georgia—all pleaded their Fifth Amendment rights against self-incrimination.

Dunn vigorously defended her actions and stated, "I do not take personal responsibility for what happened."

[DUNN:] I am neither a lawyer nor an investigator, and in this matter, I relied on the expertise of people in whom I had full confidence based upon their positions with the company and my years of experience working with them. I deeply regret that so many people, including me, were badly let down by this reliance . . .

In her written testimony, she offered this reflection:

When the final story is written on what happened at HP, I believe that its roots will be understood as emanating from a clash between the old and the new cultures of the Boardroom, driven importantly by Sarbanes-Oxley and related regulatory changes. The clash is perhaps particularly poignant in Silicon Valley, where the culture of innovation, freedom of maneuver and creativity are seen as essential to value creation.³¹

The final witness of the day was Mark Hurd, HP's CEO. He testified:

HP is a company that has consistently earned recognition for our adherence to standards of ethics, privacy and corporate responsibility, and yet these practices that we have taken

such pride in have recently been violated by people inside the company and by people outside the company with whom we contracted. This committee rightfully wonders what happened.

What began as a proper and serious inquiry into leaks to the press of sensitive company information became a rogue investigation that violated our own principles and values. There is no excuse for this aberration. It happened; it will never happen again . . .

The question remains: how did such abuse of privacy occur in a company renowned for its commitment to privacy? It is an age-old story. The ends came to justify the means. The investigation team became so focused on finding the source of the leaks that they lost sight of the values that this company has always represented.

NOTES

1. "Probing the Pretexts: Congress Grills Hewlett-Packard Executives Over 'Sleaze' Investigative Tactics," *Wall Street Journal* (September 29, 2006): B1.
2. David A. Kaplan, "HP Scandal: The Boss Who Spied on Her Board," *Newsweek* (September 18, 2006).
3. "HP Faces Probe over Its Inquiry into Board Leaks," *Wall Street Journal* (September 7, 2006): A1.
4. <http://www.hp.com/hpinfo>.
5. *Hewlett-Packard Form 10-K for the fiscal year ending October 31, 2005*, p. 71.
6. The story of the merger proxy vote is told in Peter Burrows, *Back-Fire: Carly Fiorina's High-Stakes Battle for the Soul of Hewlett-Packard* (Hoboken, NJ: John Wiley & Sons, 2003) and George Anders, *Perfect Enough: Carly Fiorina and the Reinvention of Hewlett-Packard* (New York: Penguin, 2004).
7. "Hewlett-Packard Company Board of Directors Technology Committee Charter," <http://www.hp.com/hpinfo/investor/technology.pdf>.
8. James B. Stewart, "The Kona Files," *The New Yorker* (February 19 and 26, 2007): 155.
9. "Dunn and Dumber" (editorial), *Wall Street Journal* (September 28, 2006): A16. The Sarbanes-Oxley Act, also known as the Public Company Accounting Reform and Investor Protection Act of 2002, set strict new standards for public companies, including rules governing the structure, operation, and performance of their boards.
10. Carly Fiorina, *Tough Choices: A Memoir* (New York: Penguin, 2006), 290-92.
11. *Ibid.*, 293.
12. Quoted in Stewart, *op. Cit.*, 155.
13. "Fallen Star, HP's Board Ousts Fiorina as CEO," *Wall Street Journal* (February 10, 2005): A1.
14. Fiorina, *op. Cit.*, 302.
15. Patricia C. Dunn, "My Role in the Hewlett-Packard Leak Investigation," written testimony provided to the Sub-Committee on Investigations of the House Energy and Commerce Committee, p. 2.
16. *Ibid.*, 3-4.

17. "Interviews of Ron DeLia—DRAFT," August 21, 2006, by attorneys conducting an investigation of the investigation, Hearing Documents, p. 630; Dunn, "My Role," p. 9. DeLia's background is further described in "HP Investigator Has Contentious Past; Forays Into Other Ventures Have Sparked Disputes Over Business, Finance," *Wall Street Journal* (September 14, 2006): A18.
18. DeLia to Dunn, e-mail, April 19, 2005, Hearing Documents, p. 237.
19. Dunn, "My Role," 15.
20. Stewart, op. Cit., 152.
21. Ibid., 154. Perkins apparently provided these e-mails to Stewart, who does not give their exact dates.
22. Susan Beck, "Where Will the Troubles End for Sonsini and HP?" *Law.com*, December 6, 2006, at <http://www.law.com>.
23. "Project Kona II," presentation slides, Hearings Documents, 315.
24. David A. Kaplan, "Intrigue in High Places," *Newsweek* (September 18, 2006), paraphrasing a letter from AT&T to Perkins and provided by Perkins to the SEC and to *Newsweek*.
25. From the context, the "she" in Nye's e-mail appears to be Ann Baskins.
26. Stewart, op. Cit., 162.
27. Dunn, "My Role," 21.
28. Dunn, "My Role," 23.
29. Dunn, "My Role," 24–25.
30. Stewart, op Cit., 165.
31. Dunn, "My Role," 29.

Exhibit A The HP Way

We have trust and respect for individuals.

We approach each situation with the belief that people want to do a good job and will do so, given the proper tools and support. We attract highly capable, diverse, innovative people and recognize their efforts and contributions to the company. HP people contribute enthusiastically and share in the success that they make possible.

We focus on a high level of achievement and contribution.

Our customers expect HP products and services to be of the highest quality and to provide lasting value. To achieve this, all HP people, especially managers, must be leaders who generate enthusiasm and respond with extra effort to meet customer needs. Techniques and management practices which are effective today may be outdated in the future. For us to remain at the forefront in all our activities, people should always be looking for new and better ways to do their work.

We conduct our business with uncompromising integrity.

We expect HP people to be open and honest in their dealings to earn the trust and loyalty of others. People at every level are expected to adhere to the highest standards of business ethics and must understand that anything less is unacceptable. As a practical matter, ethical conduct cannot be assured by written HP policies and codes; it must be an integral part of the organization, a deeply ingrained tradition that is passed from one generation of employees to another.

We achieve our common objectives through teamwork.

We recognize that it is only through effective cooperation within and among organizations that we can achieve our goals. Our commitment is to work as a worldwide team to fulfill the expectations of our customers, shareholders and others who depend upon us. The benefits and obligations of doing business are shared among all HP people.

We encourage flexibility and innovation.

We create an inclusive work environment which supports the diversity of our people and stimulates innovation. We strive for overall objectives which are clearly stated and agreed upon, and allow people flexibility in working toward goals in ways that they help determine are best for the organization. HP people should personally accept responsibility and be encouraged to upgrade their skills and capabilities through ongoing training and development. This is especially important in a technical business where the rate of progress is rapid and where people are expected to adapt to change.

Exhibit B Hewlett-Packard Board of Directors, 1999-2006

	1999	2000	2001	2002	2003	2004	2005	2006
Richard A. Hackborn	A	A	A	A	A	A	A	A
George A. Keyworth	A	A	A	A	A	A	A	A
Robert P. Wayman *	A	A	A	A			A	A
Sam Ginn	A	A	A	A	A		A	A
Walter B. Hewlett **	A	A	A	A				
Susan Packard Orr **	A	A						
Thomas E. Everett	A							
John B. Fery	A							
Jean-Paul G. Gimon	A							
David M. Lawrence	A							
David W. Packard **	A							
Lewis E. Platt *	A							
Paul F. Miller								
Phillip M. Condit	A	A	A	A	A			
Patricia C. Dunn	A	A	A	A	A	A	A	A
Robert E. Knowling		A	A	A	A	A	A	
Carleton S. Fiorina *		A	A	A	A	A	A	
Lawrence T. Babbio					A	A	A	A
Lucille S. Salhany					A	A	A	A
Sanford M. Litvack					A	A		
Thomas J. Perkins					A		A	A
Robert L. Ryan						A	A	A
Sari M. Baldauf								A
John H. Hammergren								A
Mark V. Hurd *								A
Total Directors	14	10	9	9	11	9	9	11

Source: HP Proxy Statements

Notes:

A = Active board membership at the time of annual meeting. Board membership changed between meetings during this time period.

Lewis E. Platt completed his term as chairman in 1999. Carly Fiorina served as chairman from 1999-2005. Patricia Dunn served as chairman from February 2005 to September 2006. Mark Hurd became chairman in September 2006.

* Inside director (i.e., HP employee at the time of board service). Richard Hackborn and Thomas Perkins were former HP employees at the time of board service.

** Member of one of the founding families (Hewletts and Packards).