

HP's General Counsel Quits, Declines to Testify at Congressional Hearing

Baskins Believed Boardroom Leak Investigation Technique was Legal

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Hewlett-Packard General Counsel Ann O. Baskins resigned today and told a Congressional subcommittee investigating HP's boardroom leak scandal that she would invoke her Fifth Amendment privilege and decline to testify at today's hearing.

Baskins said in a letter hand delivered to the House Energy and Commerce Committee that she believed that the company's use of deception to obtain private phone records during its investigation was legal. The deception -- called "pretexting" -- had investigators impersonating HP board members, employees, reporters and others to obtain their private phone records without their knowledge.

She also submitted several documents, including a memo of an interview conducted by Wilson Sonsini of former HP lawyer Kevin Hunsaker. In that memo, the lawyers reported that Hunsaker told them HP had used pretexting in other, unrelated investigations, including one involving a subject who was going through a "messy" divorce.

The subcommittee hearing today revealed at least one HP investigator tried to sound an alarm

about the company's use of pretexting to obtain phone records, but apparently got nowhere.

A document released by the subcommittee showed that a member of the investigative team, Vince Nye, sounded a warning in a Feb. 7, 2006 e-mail to HP security manager Anthony Gentilucci.

"I have serious reservations about what we are doing," Nye wrote in an e-mail to Gentilucci. "As I understand Ron's methodology in obtaining this 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.

The e-mail continued, "I am requesting that we cease this phone-number gathering method immediately and discount any of its information. I think we need to refocus our strategy and proceed on the high-ground course."

The "Ron" referred to in Nye's e-mail was Ronald DeLia, head of a Boston-area private investigation firm who worked for HP's investigation and declined to testify today. Gentilucci resigned earlier this week as head of HP's global security unit in Boston, and he also declined to testify.

As the hearing opened, committee members expressed their disbelief that nobody at HP stepped forward to say the practice, legal or not, was unethical and should be stopped. Rep. John Dingell, D-Mich, called the HP actions "a plumbers' operation that would make Richard Nixon blush, were he still alive," referring to the 1970s Watergate break-in scandal that brought down the Nixon presidency.

"The cure, in this case, appears to have been far worse than the disease, and now poses a far greater threat to Hewlett-Packard," Dingell said.

Since HP disclosed earlier this month it had hired outside investigators that used pretexting to trace boardroom leaks to reporters, the company has faced a public furor resulting in the resignation of its board chairman on Friday. The disclosure has triggered two criminal

investigations and the congressional hearing today.

Several committee members used the opportunity to make another pitch for anti-pretexting legislation it sent to Congress in May, but which, as committee member Diana Degette, D-Colo., said seemed to have "fallen down a black hole." Jan Schakowsky, D-Ill, said HP was invited to testify in July on how to raise the bar on protecting privacy. "Little did we know that Hewlett-Packard had been engaging in the worst practices out there," she said.

Although Baskins did not testify, she gave the committee several documents backing up her claim to have repeatedly confirmed, through an HP lawyer, the legality of the methods used by HP investigators to obtain phone records of board members, HP employees and reporters.

In one document, former senior HP lawyer Hunsaker explained the process used by an outside private investigator, Ronald DeLia, of Boston-based Security Outsourcing Solutions.

"We provide DeLia the names and telephone numbers we are interested in, he passes the information to the third-party company, and they then make the pretext calls to the phone service providers," Hunsaker wrote to Baskins on May 1.

Hunsaker added, "It should be noted that this is a common investigative tool that has been used by professional investigators and law firms for more than 20 years -- this fact was confirmed by discussing the issue with a number of experts in the field."

Hunsaker, referring to himself in the third person in the memo, said he had taken a number of steps to confirm the legality of the practice of pretexting, which involves an investigator posing as the target of an investigation to obtain access to the target's private phone records.

He said he was "confident" that all phone records information obtained by HP's investigators were obtained "in a lawful manner."

Memos describing interviews with Hunsaker by Wilson Sonsini lawyers revealed the law firm's own investigation of the HP leak probe in August. It said that Hunsaker told them he had done "hundreds of investigations" but that this was the first one to involve the use of pretexting. He said he first learned about pretexting one or two years ago in connection with another HP investigation.

Hunsaker told Wilson Sonsini attorneys in an interview in August that he first learned HP had used pretexting to obtain phone records in July 2005 in connection with an unrelated HP investigation. A subject of that investigation "was going through a messy divorce, and his attorney contacted HP and claimed that HP had changed his client's pin number in order to access his voice mail. Hunsaker's team told them they had not altered the subject's pin or voice mail, but had used pretexting to obtain phone information about the subject."

The memo also described how Hunsaker obtained reporters' phone numbers from HP's media relations department and gave them to DeLia.

Asked about his research into the legality of pretexting, Hunsaker said "that he did about an hour's worth of online research."

The same document describes how Hunsaker had the hard drives of every member of HP's executive council "imaged" as part of the investigation.

A month into the investigation, Dunn and Baskins asked Hunsaker to reconfirm the legality of the phone pretexting. The answer appears to have always been the same: it was legal.

California Attorney General Bill Lockyer has launched a criminal investigation of HP's investigative pretexting, saying several California laws make the practice illegal.

The Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce has been investigating the broader use of pretexting in hearings this year. Because the practice of pretexting is a focus of the hearings, several HP executives and private eyes involved in its leak investigation were invited to testify today.

Several wireless industry executives and government regulators have been invited to speak before the committee about pretexting Friday.