

H-P Scandal Puts Chairman, Lawyer In Awkward Light

Investigators Suspect Crimes May Have Been Committed In Probe of Boardroom Leaks

A widening scandal over Hewlett-Packard Co.'s investigation into leaks from its board of directors is casting an awkward light on the actions of its outside counsel, prominent Silicon Valley lawyer Larry Sonsini, and H-P's non-ex-

By Steve Stecklow and Charles Forelle in Boston, John R. Wilke in Washington and Rebecca Buckman in San Francisco

ecutive chairman, Patricia Dunn.

In an unusual email exchange this summer between Mr. Sonsini and Tom Perkins, an H-P director who angrily resigned in May over a search of directors' phone records, Mr. Sonsini assured Mr. Perkins that the probe—including its use of a practice called pretexting to obtain the phone records—was “well done and within legal limits.”

Late yesterday, a spokesman for California Attorney General Bill Lockyer said that state investigators now believe there was criminal activity involved in the methods used to search those records. Besides H-P directors, the company disclosed that nine reporters, including Pui-Wing Tam of The Wall Street Journal, had their phone records accessed by investigators working for H-P.

The company, which said it was unaware that pretexting was being used, said it was “dismayed” that the informa-

On the Line

■ **Reporters' phone records were obtained in inquiryA13**

■ **Pretexting is a rising consumer woe now drawing legal attentionB1**

■ **Employers may escape liability for actions of private investigatorsB1**

tion was accessed without reporters' knowledge.

It isn't clear to what extent the investigation might threaten the future of Ms. Dunn, who authorized the probe of leaks surrounding the ouster of H-P's former chairman and chief executive, Carly Fiorina, in 2005.

Mr. Sonsini wrote in an email to Mr. Perkins that the investigation was run by the H-P legal department, which is headed by general counsel Ann Baskins. H-P used an unidentified private investigator, who in turn hired a contractor who used pretexting to obtain directors' and reporters' phone records.

Pretexting is the practice of posing as someone else in order to obtain that person's phone records or other private information. H-P has acknowledged pretexting was used in the probe but said it was done without the company's knowledge.

Some Silicon Valley veterans suggested that the flap could cost Ms. Dunn her job, and some called on her to resign—or for H-P to dismiss her.

Ms. Dunn referred questions about the scandal to H-P. A spokesman for the company declined to comment.

According to one person who spoke to
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her recently, Ms. Dunn doesn't intend to resign because she was unaware that investigators used any improper tactics to search for phone records.

In his email exchange with Mr. Perkins, which was reviewed by The Wall Street Journal, Mr. Sonsini indicated that he believed the tactics employed had been proper. Mr. Perkins first wrote to Mr. Sonsini on June 19 after attending a London board meeting of News Corp., another company for which he is a director. Mr. Perkins said he had privately discussed the H-P probe with another News Corp. director, Viet Dinh, a former U.S. assistant attorney general, and that Mr. Dinh had called the monitoring of phone connections or email addresses "unconscionable." It isn't clear from the exchange whether Mr. Dinh was informed that phone records were obtained by pretexting.

Mr. Perkins asked Mr. Sonsini if he had "cleared" the monitoring beforehand. Mr. Sonsini replied that he hadn't—that the probe was overseen by H-P's legal department with outside experts—and that he was confident H-P's general counsel, Ms. Baskins, "had looked into the legality of every step of the inquiry and was satisfied that it was conducted properly." An H-P spokesman said Ms. Baskins was unavailable for comment.

Mr. Sonsini reminded Mr. Perkins in the email that he remained under obligation to keep H-P board matters confidential, even though he had resigned.

Apparently not satisfied, Mr. Perkins asked Mr. Sonsini or his firm to look into the legality of the probe, noting "Viet's unqualified opinion that it was illegal."

"If it was illegal, it occurred under my purview, and on my watch, and I would like to know whether or not I share some responsibility," Mr. Perkins wrote on June 20. Mr. Perkins couldn't be reached for comment. Mr. Dinh declined to comment.

Mr. Sonsini agreed to look into the matter and responded on June 28, confirming that H-P had received information about phone calls made or received from directors' cellular or home phones. "This was done through a third party that made pretext calls to phone service providers," Mr. Sonsini wrote. "Apparently a common investigatory method which was confirmed with experts."

Noting that there was no "secret spying" with listening or recording devices, Mr. Sonsini wrote, "It appears, therefore, that the process was well done and within legal limits."

The disclosures come at a time when the 65-year-old Mr. Sonsini and the 600-lawyer firm that he chairs, Wilson Sonsini Goodrich & Rosati of Palo Alto, Calif., is drawing attention in another scandal. The firm represents a number of high-tech companies now under federal investigation for allegedly backdating or otherwise manipulating dates of stock-options grants to executives or directors to make them more lucrative.

In an interview yesterday, Mr. Sonsini said that at the time he responded to Mr. Perkins's query he and his firm hadn't yet been asked by H-P to do a thorough investigation of the probe, and that he was only relaying the view of an H-P lawyer that the methods used were legal. "That was the conclusion that they gave me, and I reported that," he said.

Mr. Sonsini says H-P's board subsequently asked his firm to review the legality of the leak probe. His firm concluded in a report that it couldn't confirm that the methods were legal, he says. He and two other Wilson Sonsini lawyers said that H-P accurately reflected their findings this week in a filing with the Securities and Exchange Commission.

In that filing, H-P said a board committee investigating the matter was "advised by the committee's outside counsel that the use of pretexting at the time of the investigation was not generally unlawful (except with respect to financial institutions), but such counsel could not confirm that the techniques" of outside investigators "complied in all respects with applicable law." Mr. Sonsini declined to elaborate. He also said he wasn't authorized to disclose the outside companies H-P used in its probe.

A low-key lawyer, Mr. Sonsini has the ear of some of Silicon Valley's most powerful personalities. He is friends with Apple Computer Inc.'s Steve Jobs, and also close to Oracle Corp.'s Larry Ellison. Countless companies, from giants like Google Inc. to smaller-time start-ups, seek his legal counsel, his business advice and his guiding hand. The attention has made Mr. Sonsini wealthy—and a hot commodity as a corporate board member.

Mr. Sonsini first joined Wilson Sonsini, then known as McCloskey, Wilson and Mosher, in 1966 and served as chairman and CEO for more than 20 years. In that time, he helped to define Wilson Sonsini as the premier firm for several generations of aspiring Silicon Valley start-ups. Mr. Sonsini has served over the years as a director of at least 11 public companies, including LSI Logic Corp. and Silicon Valley Bancshares, according to securities filings, and is a trusted adviser for many valley CEOs. His law firm has eight offices nationwide and plans soon to expand to China.

Wilson Sonsini has also invested in technology firms. Google's securities filings show that Wilson Sonsini-related individuals and partnerships held a stake

in the search company prior to its initial public offering. The stake was described as less than 0.1% of Google's Class B shares, which have 10 times the voting power of regular Class A shares. Securities filings show that a collection of investment partnerships affiliated with Wilson Sonsini have held stakes in several companies, sometimes including those of which Mr. Sonsini was a director or for which his firm did legal work or both.

Mr. Sonsini has close ties to Google; he was a director of Novell Inc. while Google CEO Eric Schmidt was chief of that company. Last year, he stepped down as CEO of Wilson Sonsini but remains chairman. Mr. Sonsini, who was a director of the New York Stock Exchange from 2001 to 2003, is currently chairman of NYSE Group Inc.'s legal advisory committee.

Mr. Sonsini is closely connected to several companies that have been caught up in the stock options backdating scandal. He hasn't been accused of any wrongdoing, and there is no evidence that he was involved in the practice. Mr. Sonsini previously served on the board of Brocade Communications Systems Inc., whose former chief executive and former human resources director have been indicted on criminal fraud charges. The two former executives deny the charges.

The attorney also is a longtime adviser and lawyer to Apple, among the highest-profile companies disclosing options problems. Apple has said its probe

has discovered "irregularities" in its option grants, including one to Apple's Mr. Jobs. At Pixar Inc., another company of which Mr. Jobs was chief executive, several executives received grants dated at times when the share price was unusually low. Mr. Sonsini was a board member of Pixar, which was purchased this year by Walt Disney Co.

Novell, where Mr. Sonsini was a director from 1988 through 2002, said last month that it had begun a "self-initiated, voluntary" review of its past options practices and had hired an outside law firm to look into the matter.

In addition, Mr. Sonsini has been corporate secretary to KLA-Tencor Corp., which has disclosed that its past recorded grant dates "likely differ" from when they should have been recorded. The company has received a subpoena from federal prosecutors and is being investigated by the SEC. He said yesterday his position at KLA-Tencor "was merely clerical."

As for H-P's Ms. Dunn, some in the high-tech industry were skeptical about her future. Resigning "would be the dignified thing to do," said Dick Kramlich, a veteran venture capitalist at New Enterprise Associates who has sat on numerous corporate boards. The investigation sparked by Ms. Dunn, which amounted to spying on fellow board members, "just destroys her ability to govern," Mr. Kramlich said.

"I think she should be fired," said Rob

Kuhling, a partner with venture-capital firm Onset Ventures, who has served on about a half-dozen public boards and more than 20 private ones. Mr. Kuhling said H-P's tactics were "absolutely unethical and not reflective of the trust you want in the boardroom."

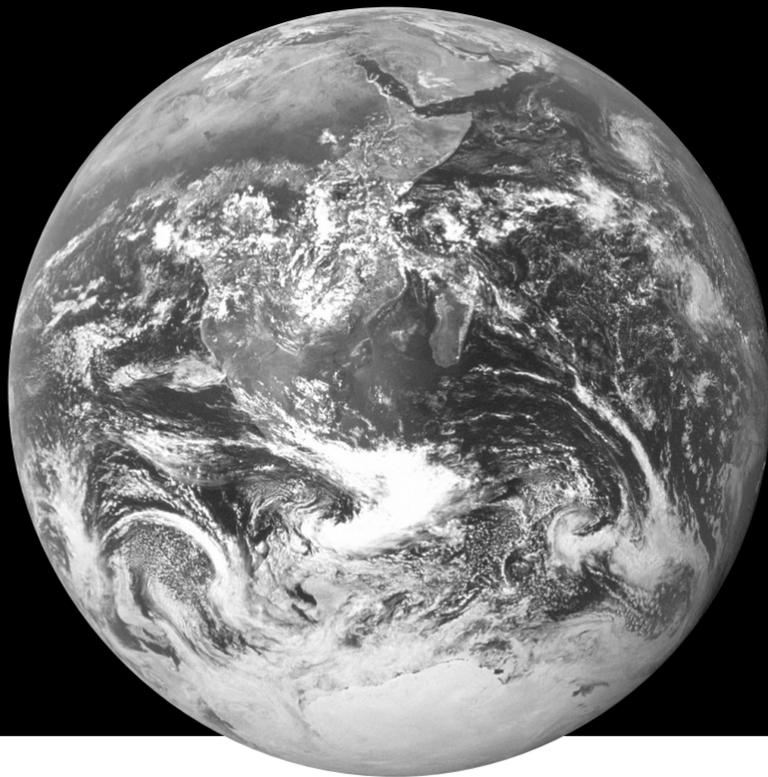
A person close to the 53-year-old Ms. Dunn said she would step down "if she lost the confidence of the board" and other directors asked her to do so.

Experts on corporate governance said Ms. Dunn's fate may depend on whether she knew about the investigation tactics, and how well she kept fellow board members apprised. If Ms. Dunn knew, or should have known, about the questionable tactics, "she has a very short half-life" as H-P chairman, predicted Joseph Grundfest, a professor of law and business at Stanford University and former member of the SEC.

Mr. Grundfest, a Dunn acquaintance, said he "would be shocked" to learn she knew about or even suspected illegal investigatory methods. He believes investigations will show that "other people violated the trust she placed in them."

—Joann S. Lublin and Jamie Heller contributed to this article.

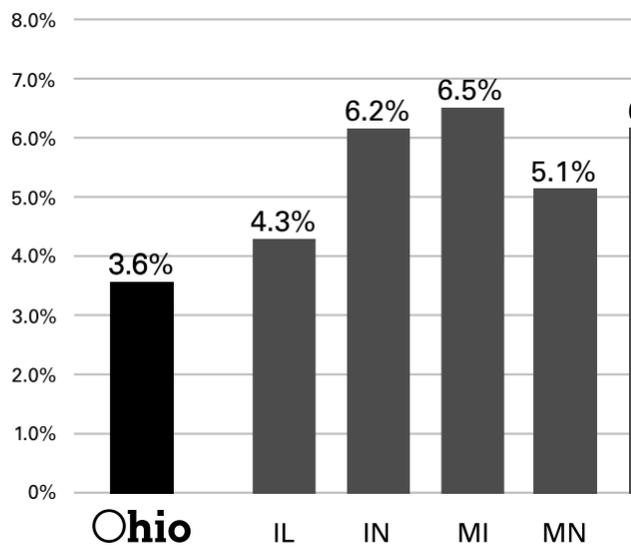
Online Today: WSJ.com subscribers can read key documents in the H-P case, including internal emails, an investigator's search warrant and more, at WSJ.com/OnlineToday.



Why 10

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