

Lessons on Communications and the Law from Hewlett Packard

Over the past month, you have certainly heard a lot about the Hewlett-Packard Boardroom scandal. To boil down all that has filled the news, perhaps a quick review is in order: In January of this year, a prominent on-line publication published a story containing anonymous quotes about HP boardroom goings-on. In the months that followed, HP sought to uncover the source of the press leak. They hired an investigation firm that employed, among other strategies, “pretexting” — using faked information to obtain the home phone records of and other information about certain board members. When it became clear that HP Chairwoman Patricia Dunn knew about the pretexting, she resigned her post amidst allegations of criminal conduct and a certain public relations maelstrom.

Sometimes the only silver lining in a corporate fiasco is what it can teach others. Indeed, I’d like to suggest that HP offers five important and, in some cases, subtle principles for organizational leaders. Think you know what they are? Read on

1. *Legal compliance is a floor not a ceiling.*

Too often, organizations understand their compliance obligations as a matter of simply meeting explicit legal requirements: How long do I have to keep OSHA records? Does this count as “material non-public information”? While legal regulators may measure you by such standards, most of your constituencies will expect more. Even HP sees that now. In the first interview following the scandal by President and CEO Mark Hurd, he told *Business Week*: “[What was legal is] not exactly the question here. It’s a question about appropriateness, and we have a different standard. We’re not trying to straddle the legal line at every turn. One of the strongest attributes of our brand is trust, so we have to make sure we’re doing things in a way we can proud [of].”

Being legal is simply not enough; the public demands organizations to be “good.” HP was not being good, but you must be.

2. *Leaders must put ethics and compliance at the top of their “To-Do” list — and then be wise executing it.*

At this particular moment in history, leaders must spend time and money identifying their legal and ethical obligations and then be willing to accept the inevitable hassles and inefficiencies of working according to those guidelines. When *Business Week* asked Hurd how he could have let all of this happen, Hurd said simply that his priorities weren’t in order: “[W]hen you have a place of this scale, you have to pick your spots where you’re going to go dive. Ethics and compliance wasn’t the first process I was going to go look at. I was going to

“Being lawful isn’t enough any more; you also have to be able to explain it. It sounds funny to say, but you can no longer just walk the walk. While walking, you also have to be able to talk the talk.”



PATRICIA DUNN

go look at processes related to the performance of the company.”

On the one hand, perhaps HP wasn’t paying enough attention to ethical conduct; on the other hand, perhaps they were paying attention — but not wisely. Dunn herself seemed quite committed to such things — she had been deeply involved with the one of the most prominent organizations on ethics and compliance, who use her photo and quote on their website. Indeed, at

least one writer has suggested that it was Dunn’s perfectionist attitude towards ethical conduct that got her so worked up about the Board leak in the first place. But, of course, crusading without plain-old discretion got the better of her and the organization. How? That leads us to our third point . . .

3. *Flower’s mother was correct: “Two wrongs do not make a right.”*

For a board member to leak confidential information to the media is, itself, unethical. But that underlying misstep has been all but eclipsed by the company’s mangled attempts to respond. As Hurd himself said: “[B]ad investigations of bad things are not acceptable, either.” This is a lesson learned by any supervisor who has mismanaged discipline of a poor-performing employee — or learned by any little boy grounded for hitting the bully back. Action-response, retribution: these are complicated stories for the public to comprehend and sort through. That is especially true when you don’t have the media on your side, and HP sure didn’t.

4. *The media’s influence is tremendous but generally invisible. Get ready for that.*

It is not surprising that the media galvanized against HP. An individual was made to suffer for talking to the press — what earnest newswoman wouldn’t take up that cause? To be certain, HP’s pretexting is shocking to most people, but it is newsworthy, at least in part, because of the certain sympathies and interests of those deciding what is news.

While dismissing with “that liberal media” is cavalier, it is true that the media as an industry and the newsperson in any particular case always affect what gets covered and how.

Yet the media’s practical role in any story is surprisingly hard for viewers to discern. Most people, instead, attribute the media-driven aspects of the story to the substantive players involved. We decide the spokesperson isn’t well informed rather than focusing on the fact that the reporter was asking silly, off-point questions. We decide that the speaker isn’t compassionate rather than considering what statements might have ended up on the cutting room floor. Of course this cuts both ways: Good lighting and artistic camera work gets attributed to an attractive spokesperson. In some ways, this is the mass communications version of the *fundamental attribution error*, but, alas, that is a topic for another essay, another time . . .

Whatever you call this effect, smart companies will prepare for it better than did HP. Among other things, smart companies will develop better and more clear external communication policies — perhaps they could have prevented the underlying leak in the first place. They will also train very carefully their external spokespeople when such an event breaks. Media and crisis training pays in spades; we just completed a comprehensive study of training effectiveness that brings this home in dramatic and detailed fashion (more information on the study is available under “current newsletters” at www.WordOfLaw.com)

5. We are living in an Era of Corporate Legal Transparency, which makes us forget that individuals still get to remain opaque.

At this particular moment in history, corporate communications and the law have come together as we have never seen them converge before. A slew of recent laws mandate when and what public companies must say to the government and investors: Reg FD, Sarbanes-Oxley and the new SEC executive compensation rules, for example. The FERC Standards of Conduct tell energy companies how and when they must talk to colleagues and business partners. Both the DOJ’s charge guidelines and the Federal Sentencing Guidelines give you credit for “cooperation” if you are willing to be open with investigators and if you communicate with employees about the law, too. It remains to be seen if the recent revisions to the FSG standards fro cooperation really change anything.

All these laws reflect a pretty specific conviction that big companies have to talk clearly and openly with the public about legal issues. Layer on top of these laws how federal judges have responded to defendants who don’t seem to be following these rules, or to defendants who can’t communicate clearly: Martha Stewart goes to prison not for insider trading but for obstruction of justice; a federal judge orders Morgan Stanley to pay \$1.6 because they just can’t find all the email messages they were supposed to.

Moreover, we are fascinated when communications about legal issues are sloppy: when, in the midst of Katrina, FEMA Director Mike Brown sends an email with the punch-line “Can I quit now? Can I come home?” Or facing a grand jury investigation, Barry Bonds says, “I don’t have to use steroids. I mean, I’m a good enough ballplayer as it is. . . .” Or who can forget, perjury claims against President Bill Clinton in 1998: “. . . I did not have sexual relations with THAT lady, Miss Lewinsky . . .” In each of these cases — and these are just a few examples — much of the legal wrangling focuses on whether the truth was told rather than an assessment of the underlying activity. We can’t get enough of that stuff – and that is not good for the organizations these communicators represent.

We have clearly entered an era of *corporate legal transparency*, in which regulators, shareholders, judges, and the media demand that you be honest, open and accurate about how you are being lawful. Your words count — in some cases just as much as your actions. Being lawful isn’t enough any more; you also have to be able to explain it. It sounds funny to say, but you can no longer just walk the walk. While walking, you also have to be able to talk the talk.

Against this backdrop of mandated transparency, coming to terms with individual privacy is a knotty issue. If corporations have to disclose every step they take, why not then their board members, as well? Moreover, in light of the new world of digitized data, those steps can be traced easily. It is easy to forget that the public views individual privacy, at least that of non-famous people, quite differently from that of big organizations and public figures. At bottom, in a nation that has always wrestled with the divide between public and private, the era of corporate legal transparency makes it easier to forget that there is a line — somewhere. HP forgot all about that line, but you must not.

Taken together, the Gospel from the shake-up at HP becomes something like this: Be not just lawful in your undertakings, but be good, too. And be wise, while you’re at it, about how you put your newfound legal and moral standards into place. In many cases, we will measure your organization by not just what happened yesterday but how you handle it today. The media may or may not be on your side, but most of your audiences won’t care or notice anyway. And in the current cultural context, you’ll have to be extra-extra careful not to entirely overlook individual privacy. If you find yourself thinking a bit more deeply about these points, then HP has offered a small, but useful, silver lining.

Erika Tyner Allen, J.D., Ph.D.