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## H.P. Could Be a Finger-Pointing Case

By [MATT RICHTEL](#)

SAN FRANCISCO, Oct. 10 — The five defendants in the [Hewlett-Packard](#) spying case must overcome a paper trail of evidence against them. But they could wind up with as much to fear from one another.

At least one lawyer involved in the case and several outside legal experts said the five defendants might wind up turning on one another as part of a way to shift blame away from themselves.

“It’s every man for himself,” said Stephen Naratil, the lawyer for Bryan Wagner, who is charged with having misrepresented himself to phone companies to obtain calling records of Hewlett-Packard directors. “Everyone is going to pass the buck down, and that’s where my guy is sitting.”

Mr. Naratil said he would not be surprised ultimately to see conflict between the lawyers for the company’s former chairwoman, [Patricia C. Dunn](#), and its former head of ethics, [Kevin T. Hunsaker](#). “They’re going to point fingers at each other and other executives.”

His comments, and interviews with lawyers for the other defendants, have begun to bring preliminary shape to a defense strategy in a case that is moving from the political and media stage to the courtroom.

At a joint arraignment hearing on Tuesday in San Jose, Calif., Mr. Wagner and two private investigators — Ronald R. DeLia and Matthew DePante — pleaded not guilty and agreed to return to court on Nov. 17 for a preliminary hearing along with Ms. Dunn and Ms. Hunsaker.

It is not yet clear whether the defendants will be tried together or separately. It is possible that one or more defendants could choose to cooperate with the prosecution and testify against others.

But lawyers for any of the defendants could also try to shade the evidence in a way that is more favorable to their client and less so to another defendant. If the cases are severed, evidence

presented in one trial could be subpoenaed in another trial.

Prosecutors want to try all the defendants at once. “We will resist any attempt to sever the prosecution of the case,” said Tom Dresslar, a spokesman for Attorney General [Bill Lockyer](#), citing the interest of “judicial economy.”

Legal experts and lawyers in the case said that for all five defendants, the case was likely to be fought not just on the facts but also on the law. If there is one theme that will unify the defendants, legal experts said, it is that they will seek to challenge whether California law is even applicable to “pretexting” — a technique involving misrepresentation to get personal and calling records.

The defendants are said to have engaged in a conspiracy to obtain such records to determine the identity of a director who Ms. Dunn and others thought was giving confidential information to the news media.

“The thing we’re most interested in is whether the statutes selected for charging do not address the alleged conduct,” said Richard J. Pereira, co-counsel for Mr. DePante. Mr. Pereira said the defense lawyers “have a common interest in educating the court as to the inapplicability of the statutes.”

The defendants are each charged with four felony counts. Among the charges, the state accuses them of violating laws against knowingly gaining unauthorized access to computer data to devise or execute a scheme, or using the data to defraud or deceive, or for unlawful purposes.

Legal experts said there would certainly be a vigorous pretrial debate about whether the laws fitted the charges. The legal experts themselves are sorely divided on the question.

“The statutes would have to be expansively interpreted in order to reach pretexting,” said Joseph A. Grundfest, professor of law and business at [Stanford University](#). “But courts have interpreted statutes expansively before.”

In a recent interview, Mr. Lockyer, the attorney general, said, “I think our laws are sufficient to cover the behavior.”

Ms. Dunn’s lawyer, Jim Brosnahan, declined to discuss many aspects of his strategy. But he said he might argue that his client had not ordered anyone to commit an illegal act and had not known one was being committed.

“If the attorney general has progressed against Pattie Dunn on the theory she didn’t have to

know she was doing anything wrong or didn't have to order that something be done wrong, the weakness of that case will be subject to some very interesting motions," Mr. Brosnahan said.

Ms. Dunn also hinted at her own strategy in an interview broadcast Sunday on "60 Minutes." She said she did not recall — as prosecutors assert — that she had given home phone numbers of Hewlett-Packard board members to Mr. DeLia, the investigator.

She also rejected contentions, indicated in interview notes from Hewlett-Packard's outside lawyer, that she had been told that investigators might have to use false pretenses to obtain calling records.

But legal experts said Ms. Dunn might not have done her defense team any favors by appearing on "60 Minutes."

"It was an act of total lunacy," said Jonathan Turley, professor of law at [George Washington University](#). Because everything in the interview can be used as evidence, it could close the door on some lines of defense, he said.

Mr. Turley said Ms. Dunn's best defense is "rather obvious."

"She's got to claim that she did not micromanage the investigation," he said. "Her best defense must not be ignorance of the law, but ignorance of the act."

But he and other legal experts said Ms. Dunn and Mr. Hunsaker might have trouble making the case.

Joel Reidenberg, professor of law and director of the center on law and information policy at [Fordham University](#), said: "Their best argument is to say, 'We didn't know what Wagner was doing'? Is it a credible argument? I don't think so. They got reports of detailed phone records."

Mr. Turley said he expected the challenges to be severe for Mr. Wagner as well, because the other defendants would seek to isolate him as the bad actor.

"He is someone we call the 'designated defendant,'" Mr. Turley said. "He'll be portrayed as the rogue employee or rogue contractor."

But that could work against the other defendants, too, he said. "If prosecutors really want to nail the top executives, they could cut a deal with him."

Mr. Wagner's lawyer, Mr. Naratil, said he was still studying the statutes in the case but said one

central question was whether the state of California has jurisdiction over his client, who lives in Littleton, Colo.

Mr. Wagner is said to have been hired to gather phone records in the Hewlett-Packard investigation for Mr. DePante's firm, Action Research Group, based in Florida, which was hired in turn by Mr. DeLia, an investigative consultant in the Boston area.

Outside the courtroom on Tuesday, Mr. Naratil said Mr. Wagner "didn't know anyone at H.P. and he didn't know he was working for H.P."

The lawyer representing Mr. DeLia in court on Tuesday, John Williams, declined to comment after the hearing.

Michael Pancer, the lawyer for Mr. Hunsaker, said he expected to be able to elaborate on his strategy after he got further into the pretrial procedures. For now, he said, his client's defense is based on a good-faith belief that the investigators' conduct was legal.

But Mr. Turley said Mr. Hunsaker could have a tough road, too, partly because of an e-mail message that the defendant is said to have written. In that message — in response to a note from investigators saying that a ruse had been used to obtain phone records — Mr. Hunsaker wrote back that he "shouldn't have asked."

Mr. Turley said that, whatever the defense strategy, that message could become a cornerstone of the prosecutor's case. "The quote supplies a ready-made narrative," Mr. Turley said. "It sums up the case in a single sentence."

He said prosecutors would characterize a corporate culture in which top executives did not confront the hard questions, telling the jurors: "Isn't that what Dunn is all about? She knew not to ask."

*Laurie J. Flynn contributed reporting from San Jose, Calif.*