

## **Case #8: Ethics Officers Getting Businesses off the Hook?**

In late June of 2007 Kevin Hunsaker, former Ethics Officer of Hewlett-Packard, completed 96 hours of community service as part of a plea bargain entered into earlier in the year to drop charges of misdemeanor fraud brought against him, along with several other defendants, by the Attorney General of California. The charges grew out of disclosures that an investigator, hired by Hewlett Packard to discover the source of leaks to the press about boardroom meetings had posed as another person to obtain phone records of reporters and board members.

In an interview with Bloomberg.com, Professor James Post states, “The failure at HP was a failure of ethical leadership, not headcount.” Post, a professor of management at Boston University, further states, “The fact that they had only six [ethics officials] on staff before the 2006 scandal suggests an overworked staff, but I doubt that a few more people in the ethics department would have deterred the board chair, the head of ethics, and the general counsel from their chosen investigatory path.”

According to Forbes.com, “chief ethics officers and compliance officers have become trendy in recent years, but some experts fear they act mainly as window dressing.” Chief ethics officers began appearing in defense contractor organizational structures in 1986, when a self governing Defense Industry Initiative was created as a recommendation of the Packard Commission championed by President Reagan.

Companies began creating more chief ethics officers in 1991, when the Federal Sentencing Guidelines (FSG) for corporations went into effect. When companies employ “effective” ethics compliance programs, penalties for ethical violations can be reduced to 5% of fines levied. Penalties can be increased up to 400% where evidence demonstrated that an effective program did not exist.

Many believe having a chief ethics officer is a “requirement for good governance.” But according to Efrem Grail, ethics officers are sometimes “just a mask for the company to hide behind.” Grail is an attorney specializing in corporate investigations at Reed Smith. According to Forbes, most corporations hire an attorney to fill the chief ethics officer position – while attorneys generally receive training in professional responsibility, they are not specialists in ethics.

The New York Times reported an email exchange between HP’s officer, Hunsaker, and Anthony R. Gentilucci, the head of HP’s global investigations unit. Hunsaker asked whether the spying tactics used by a subcontractor were “above board,” but later noted, “I shouldn’t have asked.”