Full text of Inslaw's Rebuttal to the Bua Report

1993 – William Hamilton, Elliot Richardson, a.o.

TABLE OF CONTENTS

 1. Ronald LeGrand

 2. Garnett Taylor and the Alleged Destruction of Classified Intelligence/National Security Documents Relating to INSLAW

 D. Bua's Investigation of Leads about Earl W. Brian, the Principal Alleged Private Sector Co-Conspirator of DOJ and U.S. Intelligence Agencies in the Theft and Distribution of PROMIS

 1. Bua's Investigation of the Claimed Direct Evidence of a Conspiracy

 (a) Michael Riconosciuto

 (1) Bua's Claimed Inconsistencies in Riconosciuto's Various Statements about When and from Whom He Claims to Have Obtained the PROMIS Software

 (2) Bua's Investigation of Riconosciuto's Claim to Have Worked on PROMIS under the Auspices of the Wackenhut/Cabazon Joint Venture

 (3) Bua's Attempt to Discredit Riconosciuto Based on Bua's Own Misinformation about the Wackenhut Corporation, and Bua's Failure to Investigate Riconosciuto's Claim that He and Earl Brian Worked Together in 1980 as Contract Employees of Wackenhut

 (4) Bua's Investigation of Riconosciuto's Claimed Involvement with Earl Brian and Peter Videnieks

 (b) Ari Ben Menashe

 (c) Charles Hayes

 (d) Richard Babayan

 2. Bua's Investigation of the Claimed Circumstantial Evidence of a Conspiracy

 (a) The September 1983 Fund-Raising Trip to New York City by Earl Brian, Dominic Laiti, and Paul Wormeli

 (b) The 53rd Street Ventures Connection

 (1) Patricia Cloherty's Alleged Claims about Earl Brian

 (2) Daniel Tessler's Non-Sworn Denial of Hamilton's Sworn Statement about Tessler Demanding Voting Rights to the Hamiltons' Common Stock on the Eve of INSLAW's Chapter 11 Bankruptcy Filing

 (3) Bua's Investigation of Hamilton's Claims about Jonathan Ben Cnaan of 53rd Street Ventures

 (c) The Systems and Computer Technology, Inc. (SCT) Connection

 E. Bua's Investigation of the Death of Investigative Journalist, Danny Casolaro

 1. Evidence that Casolaro Broke the INSLAW Case the Week He Died

 2. The Question of the FBI's Role in the Investigation of Casolaro's Death

 F. Bua's Comments about the Alleged Sham Contract Disputes

 1. DOJ's Refusal, Apparently at the Behest of Presidential Appointee D. Lowell Jensen, to Resolve on the Merits the Main Contract Dispute with INSLAW, a Dispute That is Self-Evidently Contrived

 2. Presidential Appointee D. Lowell Jensen Leads DOJ Effort to Withhold Payment of INSLAW's Profit by Blaming INSLAW for DOJ's Own Delays in the Word Processing Part of the INSLAW Contract

 G. Bua's Investigation into Possible DOJ Complicity in the Failure of Judge Bason to Obtain Reappointment to the U.S. Bankruptcy Court

 1. The Merit Selection Panel Determined that It Would Be Inappropriate to Permit Judge Bason's Inslaw Ruling to Influence Its Evaluation of Bason

 2. DOJ Civil Division Attorney Stuart Schiffer, Currently the Acting Assistant Attorney General for the Civil Division, Assumes the Leadership Role to Separate the Inslaw Case from Judge Bason

 3. Schiffer Had a Long-Term Friendship with the Chair of the Merit Selection Panel

 4. After Discussing the Inslaw Case with Schiffer, Another DOJ Attorney Contacts the Chair of the Merit Selection Panel about INSLAW

 5. The Attempt by Judge Bason's Predecessor, Roger Whelan, to Disparage Bason to the Merit Selection Panel for the Administrative Disarray in the Clerk's Office That the Chief Judge of the U.S. District Court Traces to the Tenure of Whelan Himself

 6. At the Time of Whelan's Effort to Discredit Judge Bason to the Merit Selection Panel, Whelan Was Representing One of INSLAW's Creditors, a Creditor That Appeared to Have Been Acting in Concert with DOJ in the INSLAW Affair

 7. At the Time of Roger Whelan's Ex-Parte Denigration of Judge Bason to the Merit Selection Panel, Thomas C. Papson, a Member of the Panel, Was Counsel of Record to AT&T in an Unrelated U.S. Government Contract Appeals Proceeding, and Whelan Was Counsel of Record to AT&T in the INSLAW Bankruptcy

 8. The Mysterious "Read and Destroy" "Confidential Memorandum" to the Chair of the Merit Selection Panel Highly Critical of Judge Bason, a Memorandum That No One Acknowledges Authoring

INTRODUCTION

The attempt by the Department of Justice (DOJ) to deal with the INSLAW case through a Special Counsel, who is required to report to the Attorney General, and a staff of DOJ attorneys raises significant public policy questions. These are apparent on the face of the Bua Report.

For example, should DOJ, as one of the parties to a civil dispute, be able to use the authority of a federal grand jury and the secrecy requirements of its proceedings to improve its own civil litigation posture? Should DOJ be using its own lawyers and investigators and a federal grand jury to investigate colleagues, superiors, and subordinates? How should the tension between the obligation to enforce the criminal laws of the United States and the legitimate need to safeguard intelligence and national security be reconciled?

The problems with the Bua Report, as set forth in INSLAW's Analysis and Rebuttal, are much more concrete than the aforementioned public policy questions. We do, however, think that the problems identified by these questions should be carefully and thoughtfully addressed as steps are being taken to bring the INSLAW case to a fair, final and publicly acceptable conclusion.

The main body of this memorandum is divided into sections addressing (1) DOJ's wrongful acquisition of an enhanced version of PROMIS to which it was not entitled and which it has continued to use without properly compensating INSLAW, (2) DOJ's attempt, by improper means, to

cause the conversion of the INSLAW bankruptcy from reorganization to liquidation, and (3) the indications of a more widely ramified conspiracy involving Earl Brian and the intelligence and law enforcement agencies of the United States and foreign governments.

Each of these sections examines the basis for the conclusions reached in the Bua Report and points out errors and omissions plainly demonstrable on the basis of evidence cited in the report itself or readily available to the investigators in the records of prior investigations and judicial proceedings. The sections also identify evidentiary points as to which Judge Bua chose to believe the self-serving statements of individuals directly implicated in the theft of INSLAW's software, to disbelieve the testimony on the same points by INSLAW witnesses, and to ignore evidence supporting the findings of the Bankruptcy Court for the District of Columbia, the United States District Court for the District of Columbia, and the House Committee on the Judiciary.

In addition to the deficiencies apparent on its face, the report reveals numerous failures to pursue testimony or documentary evidence that could have contradicted its conclusions and corroborated INSLAW's allegations. The following sections identify these failures in at least 40 situations.

Immediately after his appointment, INSLAW called to Judge Bua's attention the essentiality of assuring senior DOJ officials and other government employees who had given important information to INSLAW that they could disclose this information to him or his staff without fear of reprisal. Any person seriously attempting to uncover the truth would have gone to great lengths to find a way of overcoming these apprehensions. This was not done. Appended to this memorandum is a listing of these informants together with a brief synopsis of information they have furnished to INSLAW. The listing gives enough of an indication of who they are to make clear that they deserve to be taken seriously, but not so much as to make it possible to identify them individually. The synopses make clear at the same time that the information they could furnish strongly corroborates other evidence of the wider conspiracy.

The Bua Report denigrates the findings of the Bankruptcy Court without clearly acknowledging that those findings were affirmed and supplemented by two other entities independent of DOJ, the U.S. District Court and the House Judiciary Committee. Senior U.S. District Judge William B. Bryant, Jr., issued a 44-page opinion, in which he states in part:

It is sufficient to state that after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices, and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court.

. . . the court has examined the bankruptcy judge's findings of fact in the light of the entire record, and finds his account of the evidence is eminently plausible; and this court is not left with any notion that a "mistake has been committed," Id. at 574. This conclusion is reached without regard to the deference to be accorded to the judge's opportunity to assess credibility. The cold record adequately supports his findings under any standard of review.

The section on the wrongful acquisition of PROMIS amply supports its thesis that the Bua Report focuses only on those facts that its authors deemed relevant to the conclusions they intended to reach. It calls attention to the fact that the report based some of its most important conclusions on interviews with unnamed individuals and on undisclosed documentary evidence. This section also points out the report's remarkable credulity toward professions of innocence by the very individuals heretofore identified as the principal culprits in the theft of the software. As the section observes, "To accept the self-serving, long after-the-fact and post hoc rationalizations of these individuals over

their testimony at trial, which testimony clearly evidenced their propensity for lying and covering up the truth, as found by two federal courts, is ludicrous."

The section on the conversion of the INSLAW bankruptcy exposes the same pattern of justifying the DOJ version of the facts and downplaying, misinterpreting, or ignoring evidence to the contrary. This is particularly striking in the case of the report's attempt to minimize the testimony of Anthony Pasciuto, Deputy Director of the Executive Office for U.S. Trustees. In reaching for an explanation of Pasciuto's conduct, his testimony, and his subsequent recantation, the report avoids the one most logical explanation: the fear that he would not get the promotion he had long sought and the fear that he would be fired for telling the truth, as he eventually was.

Pages 28-35 of the section on the more widely ramified conspiracy pull together the numerous indications that INSLAW's PROMIS software is widely used throughout the United States Government. A thorough investigation would, at a minimum, have conducted the relatively simple and inexpensive computer-based code comparisons between PROMIS and its suspected clones in U.S. intelligence and law enforcement agencies, that might have shown whether or not these claims are true. The Bua investigation made no attempt to arrange such comparisons.

Relevant both to DOJ's bad faith in its dealings with INSLAW and to its involvement in a broader conspiracy is the issue of the DOJ's complicity in the denial of reappointment to George F. Bason, Jr., who presided over the Bankruptcy Court trial. The report reveals that the criticisms of Judge Bason by his predecessor, Roger Whelan, were influential in the Merit Selection Panel's deliberations about Judge Bason's suitability for reappointment. Whelan told the Panel that Judge Bason was a poor administrator. Chief Judge Aubrey Robinson of the U.S. District Court, however, told the Judiciary Committee that Judge Bason's only administrative problems were inherited from Judge Whelan and that these were soon brought under control by Judge Bason. In the Chapter 11 proceeding, Roger Whelan represented the INSLAW creditor which pressed hardest for INSLAW's liquidation and which, in so doing, appears to have acted in collusion with DOJ. The report also discloses direct communications on the INSLAW case between a DOJ attorney and the Chair of the Merit Selection Panel, communications whose existence was not revealed in the course of two Congressional investigations on the subject.

It is noteworthy in the circumstances that Judge Bua made an eleventh-hour approach to INSLAW's lawyers in an effort to broker a $25 million settlement between INSLAW and DOJ. The inference that Judge Bua was aware of the weaknesses in his own report is difficult to avoid.

I. DOJ WRONGFULLY OBTAINED AN ENHANCED VERSION OF PROMIS TO WHICH IT WAS NOT ENTITLED AND THEREAFTER HAS USED THAT VERSION WITHOUT PROPERLY COMPENSATING INSLAW

In assessing the validity of the so-called "tentative" factual conclusions reached in the Bua Report, one need be mindful of the following telling admission of the authors:

Our discussion here of the factual background of the 1982 contract does not purport to be exhaustive. Instead, we have attempted to focus on those facts that are relevant to the conclusions we have reached. Where it is necessary to explain specific findings or conclusions, we have undertaken a more detailed examination of certain events in subsequent sections of this report. (Page 15)

In effect, the authors of the Bua Report determined, apparently in advance, the conclusions that they intended to reach and, thereafter, set about to "focus" on only those facts that they deemed relevant to support those conclusions, to the exclusion of the massive factual record that otherwise would,

and did, lead to the very opposite conclusions found not only by two federal courts, but, in part, by the Committee on the Judiciary of the U.S. House of Representatives and the Permanent Subcommittee on Investigations of the Committee on Government Affairs of the U.S. Senate.

It is remarkable that the authors of the Bua Report either ignored or rejected every conclusion reached by the federal courts and the two legislative committees that was contrary to the conclusions reached by the Bua Report, while at the same time accepting those conclusions that were supportive of the conclusions reached in the Bua Report. It is even more remarkable that the Bua Report could find, on the one hand, that DOJ neither obtained the enhanced version of PROMIS through fraud nor wrongfully distributed PROMIS while, on the other hand, Judge Bua repeatedly informed journalists covering the INSLAW case and once conveyed directly to INSLAW's attorneys that he had reached the opposite conclusion and had recommended that DOJ settle its dispute with INSLAW by the payment of $25 million to INSLAW.

The following is an attempt merely to highlight some of the most glaring errors in the factual conclusions reached in the Bua Report.

A. Negotiation of the 1982 Implementation Contract

The Bua Report found that DOJ had issued a Request for Proposals (RFP) in late 1981 that solicited proposals on a contract to: (1) implement computer-based PROMIS software in 20 "larger" United States Attorneys' Offices and (2) create and install word processing based case management software in the remaining 74 offices. There is no dispute that, at the time that the RFP was issued and the contract was awarded to INSLAW, both DOJ and INSLAW understood that DOJ intended to utilize the computer-based PROMIS only in the 20 larger offices; it clearly was understood that the remaining 74 offices would not receive this software.

The Bua Report acknowledged that INSLAW, in responding to the RFP, specifically stated that:

During the life of this project-but not as part of this project-Inslaw plans new enhancements and modifications to the basic PROMIS software and to the original version of PROMIS for U.S. Attorneys.

. . . .[I]mprovements funded by other [i.e. non-governmental] sources and developed and accepted for inclusion in the software supported by Inslaw, will be made available to the U.S. Attorneys' offices. (Page 19)

However, the Bua Report concluded, without any factual support, that INSLAW did not clarify what it meant by "accepted for inclusion" or "will be made available." This is wrong.

First, the Bua Report ignores the fact that the quoted statement was made specifically in response to the Statement of Work, which in part required that:

All systems enhancements, modifications, and development performed pursuant to this contract shall be incorporated within the systems which have already been installed in the U.S. Attorneys' Offices… (§ 3.2.4.2)

INSLAW was responding to this portion of the Statement of Work by advising DOJ that while INSLAW planned new enhancements, they would not be as a part of, or pursuant to, this contract. Thus, DOJ clearly was put on notice that these new enhancements would not be made available for free.

Second, there is ample testimony that both before and after the PROMIS contract was signed, INSLAW specifically advised the Executive Office for U.S. Attorneys ("EOUSA") in writing that it had available for sale, at an additional cost, certain proprietary enhancements to PROMIS. INSLAW

provided this information to DOJ because, by the time that DOJ issued the RFP, INSLAW had made substantial enhancements to Old PROMIS. (Hamilton, T. 105; Merrill, T. 763) These enhancements, which eventually included major new functional subsystems and substantial changes to the existing code, at a cost which INSLAW estimated to be $8.3 million, rendered Enhanced PROMIS far superior to Old PROMIS in terms of speed, flexibility, ease of use, breadth of function, and ability to be modified for particular needs. (Hamilton, T. 400; Merrill, T. 760-762; Holton, T. 1216-1219)

In its Technical Proposal responding to DOJ's PROMIS Project RFP, INSLAW informed DOJ that it had made enhancements to Old PROMIS which were proprietary, and as to which it had made a significant developmental and commercial commitment. (Answer 13; PX 12; Hamilton, T. 124-125; Gizzarelli, T. 482-483) In this regard, INSLAW specifically made a claim of proprietary rights in such enhancements. (Hamilton, T. 124)

The Bua Report suggests that DOJ did not understand that INSLAW had made this claim of proprietary rights, and that INSLAW had failed to explain in sufficient detail the basis or impact of that claim. That is not correct. In fact, in response to INSLAW's proposal, DOJ specifically requested a clarification of INSLAW's claim of proprietary rights. (PX 13; Hamilton, T. 126; Merrill, T. 766-767) In an amendment to its Technical Proposal dated January 13, 1982, INSLAW responded to DOJ's inquiry and specifically informed DOJ that ". . . all of INSLAW's software is proprietary to it thus far." (PX 14; Hamilton, T. 127) DOJ did not respond further to INSLAW's amendment of its Technical Proposal. (Gizzarelli, T. 490; Merrill, T. 767-769) INSLAW also indicated that such programs were copyrighted and that since May 1981 it had been developing privately financed enhancements to PROMIS which were the exclusive property of INSLAW, and that DOJ had no license to use these privately financed enhancements. (PX 14)

To illustrate this point, INSLAW, in its Technical Proposal, singled out the two-program version of the database adjustment subsystem as an enhancement which had been developed by INSLAW using private funds. (Hamilton, T. 125; PX 14) The database adjustment subsystem was not required to be delivered under the contract nor had it been required to be delivered under any prior DOJ contracts (Hamilton, T. 125, 2575-2578; Merrill, T. 768) By this January 13 amendment, INSLAW illustrated the concept that INSLAW had all the proprietary rights in Enhanced PROMIS. (Gizzarelli, T. 493)

Subsequent to receipt of INSLAW's response to DOJ, and prior to the execution of the contract, no one from DOJ made any further inquiry of INSLAW, or raised any questions, concerning INSLAW's right to assert its proprietary rights in Enhanced PROMIS. (Hamilton, T. 128; Merrill, T. 767-769; Gizzarelli, T. 490)

From the foregoing exchange of communications, it should be clear that any rational person acting on behalf of DOJ would understand that INSLAW was advising DOJ that the proprietary enhancements developed by INSLAW would be made available to the Department for a fee, should the Department desire to have those enhancements included within the software delivered under the contract. If there was any confusion on the part of DOJ, that confusion was not the fault of INSLAW; had DOJ any further questions concerning what was meant by the language in issue after having received the January 13 clarification, it was up to DOJ to seek answers to those questions.

Not surprisingly, after thoroughly reviewing the record, Judge Bryant reached the same conclusion:

The parties negotiated for over two months, and finally entered into a contract on March 16, 1982. Prior to the execution of the contract, and for a time thereafter, there were extensive discussions about what INSLAW claimed were privately funded enhancements which were featured in PROMIS. In other words, INSLAW claimed that at the time of entering into the contract their version of PROMIS

was considerably more advanced than it was at the time of the pilot project, and that it claimed proprietary rights to those features which were developed with other than government funding. (D. Ct. Mem. Op., p. 4)

B. INSLAW's Continuing Assertion of Proprietary Rights and DOJ's Improper Response

To the extent that there was any lingering confusion on DOJ's part regarding INSLAW's assertion of proprietary rights in the enhanced version of PROMIS, that confusion should have been removed by INSLAW's continuing assertion of those rights. Indeed, in April 1982, INSLAW formally notified DOJ of its intent to market Enhanced PROMIS as a fee-generating product to public and private sector customers. (Hamilton, T. 134-136; Merrill, T. 775) In this connection, Roderick M. Hills, an attorney for INSLAW, wrote to Associate Deputy Attorney General Stanley E. Morris, enclosing a memorandum written by Hamilton (with his counsel's assistance) describing the origin and financing of Old PROMIS, INSLAW's efforts to substantially improve the program utilizing private funds, and the need to market such privately financed enhancements. (PX 21)

Hill's letter solicited any questions or objections that DOJ had to INSLAW's plans. (PX 21) In essence, this inquiry was intended to provide advance notice to DOJ as to INSLAW's plans and to obtain a "sign-off" letter from DOJ to respond to concerns raised by IBM which at that time was considering a joint marketing agreement with INSLAW. (Rogers, T. 422-424; Hamilton, T. 277) The purpose of the "sign-off" letter, from INSLAW's perspective, was to give INSLAW assurance that DOJ understood what INSLAW was proposing to do, that it agreed with INSLAW's legal position, and that it would take no affirmative action to disrupt or impede INSLAW's marketing efforts. (Rogers, T. 444-445) Any questions that DOJ continued to have should have been answered by this memorandum.

The Bua Report acknowledges the above facts but fails to take into consideration that this additional effort by INSLAW clearly should have put DOJ on notice that there were additional enhancements included within the PROMIS software that were not part of the software to be delivered under the contract, absent a separate agreement regarding that software.

There is no dispute that this plan obviously infuriated C. Madison Brewer, DOJ's PROMIS Project Manager. The Bua Report accepts the fact that Brewer vehemently took issue with the representations and conclusions set forth in the Hamilton memorandum, which Brewer referred to as "scurrilous," and further acknowledges that Brewer's opposition to the plan was presented in an improper manner. However, in a woefully inadequate effort to downplay Brewer's conduct, the Bua Report proceeds to seek to justify his opposition, while at the same time totally ignoring all of the undisputed facts that evidence his outrageous conduct directed at injuring INSLAW.

First, the Bua Report's conclusion that at least some of the positions taken by Brewer appear to have been well-founded is not only wrong, but also is a facially obvious effort to obfuscate the fact that virtually all of the substantive positions and actions taken by DOJ, at the direction of Brewer, were not well-founded. In this regard, the Bua Report credits Brewer for a grand total of two correct positions, to the exclusion of all of the incorrect positions. More particularly, the Bua Report states that Brewer was correct to object to the extent that the Hamilton memorandum claimed that all software developed after May 1981 was proprietary, since the five BJS enhancements that were under development would have been in the public domain. INSLAW did not then, nor has it ever, disputed this fact, and the memorandum did not take a contrary position. Additionally, the Bua Report credits Brewer for correctly arguing that INSLAW had received some federal funding after May 1981. Once again, while this funding may have taken place, INSLAW was not asserting any proprietary rights for software developed from government funding under contracts containing

federal data rights clauses. Moreover, the specific contracts referenced in the Bua Report did not encompass any software development work; therefore, none of the proprietary enhancements was developed using government money. Thus, the only two points on which the Bua Report agrees with Brewer are non-issues, and serve only to cloud the otherwise obvious wrongful conduct undertaken by Brewer.

The Bua Report ignores the fact that at an April 14, 1982 meeting, Brewer actively considered terminating for the government's convenience the month-old PROMIS Contract in retaliation for INSLAW's letter to Morris. (Brewer, T. 1673; PX 23) In his testimony at trial, Brewer's deputy, Jack Rugh, acknowledged that such a termination at that time would have been "ludicrous." (Rugh, T. 1471; Brewer, T. 1673; PX 23) In addition, Brewer discussed reprisals against INSLAW on its several other contracts with DOJ, one of which was the BJS Contract for specific PROMIS enhancement development work which was not part of the PROMIS enhancements claimed as proprietary by INSLAW. (Hamilton, T. 114; PX 24)

Another contract discussed at the April 14, 1982 meeting was awarded to INSLAW in 1981 by DOJ to perform a needs analysis and system design for PROMIS in the U.S. Attorney's Office for the District of Columbia. (PX 324 [Brewer] at p. 122; Brewer, T. 1634, 1673; Hamilton, T. 141; PX 232) The authorized second phase of this contract would have been a PROMIS implementation effort by INSLAW at an estimated contract price of $600,000. (PX 324 [Brewer] at pp. 123-124; Hamilton, T. 141-142) It was noted during the April 14th meeting that DOJ was undecided about whether to proceed with the contract's second phase and that Brewer and Rugh would meet with the District of Columbia's U.S. Attorney's Office staff to decide what would be done on the contract. (PX 23) It was further noted that cancellation of the authorized second phase would adversely affect INSLAW's ability to keep its overhead rate in line with EOUSA expectations. (PX 23)

Stating that he wanted to discuss the BJS Contract with INSLAW, Brewer demanded a meeting with INSLAW for April 19, 1982. (PX 24; Brewer, T. 1638)

At the outset of the meeting on April 19, 1982, Brewer informed James Kelley, INSLAW's General Counsel, and Joyce Deroy of INSLAW that his concern on the BJS Contract arose from the "scurrilous" memorandum written by Hamilton which was attached to INSLAW's April 2, 1982 notice to Morris of its plans to market Enhanced PROMIS. (PX 25; PX 26; PX 324 [Brewer] at p. 137; Brewer, T. 1671)

As of this meeting, Brewer understood from Hamilton's memorandum that INSLAW was asserting its ownership rights in Enhanced PROMIS, as well as its right to market Enhanced PROMIS. (PX 25; PX 324 [Brewer] at p. 141)

During the April 19, 1982 meeting, Brewer again referred to the Hamilton memo and launched into a very emotional, even belligerent, tirade. (PX 26; Brewer, T. 1639; Kelley, T. 1397) During this part of the discussion of the Hamilton memo, Brewer made a number of specific statements regarding the memo. (PX 324 [Brewer] at p. 143) He stated that the Hamilton memo was unnecessary because in Brewer's view DOJ had already acknowledged INSLAW's right to sell Enhanced PROMIS. (PX 324 [Brewer] at pp. 144-145) Nevertheless, and despite the obvious inconsistency, it was Brewer's further understanding, he said, that while INSLAW had the right to sell Enhanced PROMIS, DOJ had unlimited rights to such software, including the right "to give it away" to those very public and private sector entities to which INSLAW would be attempting to market PROMIS. (PX 324 [Brewer] at pp. 146-147; Brewer, T. 1683-1684) DOJ has the audacity to contend that "[it] is in no way inconsistent" for INSLAW to have "the right to sell . . . PROMIS" at the same time that DOJ has "unlimited rights" to give PROMIS away to INSLAW's intended customers. (DRPPFF 167)

Brewer also questioned INSLAW's ability to perform the PROMIS Contract and indicated that a number of people at DOJ were upset with INSLAW and that the Hamilton memo had caused all kinds of problems. (PX 26; PX 324 [Brewer] at pp. 172, 174-175) Brewer further questioned the quality and timeliness of INSLAW's work, citing the Illinois Criminal Justice Coordinating Council, the Michigan Prosecuting Attorneys' Association and others as sources of this information. (PX 26; PX 324 [Brewer] at pp. 175-176)

Finally, Brewer strongly challenged INSLAW's right to claim ownership of, and complete domain over, Enhanced PROMIS. (PX 26; PX 324 [Brewer] at p. 177)

Another matter of discussion by Brewer at the April 19, 1982 meeting was a supplemental request for payment from INSLAW in the amount of $125,000 in regard to the BJS Contract. (PX 324 [Brewer] at pp. 141-142; Brewer, T. 1638, 1679; Hamilton, T. 144, 200) Brewer contacted the superior of the contracting officer on the BJS Contract and asked that a "preliminary notice" of default be issued on the contract as well as a reprimand to INSLAW for failing to comply with the "Limitation of Cost Clause." (PX 27) Subsequent to the meeting and at Brewer's insistence, INSLAW agreed to absorb this $125,000 expense into the PROMIS Contract without increasing the total cost of the PROMIS Contract and without any additional payment under the BJS Contract. (PX 324 [Brewer] at pp. 276-278; Brewer, T. 1640; Hamilton, T. 145)

Subsequent to the April 19, 1982 meeting, Brewer met with officials of the District of Columbia U.S. Attorney's Office to recommend that they not go forward with Phase II of the contract. (PX 232; PX 237; PX 324 [Brewer] at p. 123; Brewer, T. 1674) INSLAW was not formally notified of this decision until August 25, 1982, although it had successfully completed Phase I of the D.C. U.S. Attorney's Contract on May 31, 1982. (Hamilton, T. 142; PX 37; PX 38; PX 48) This formal notice was given just 13 days after INSLAW received a letter from Deputy Attorney General Stanley Morris dated August 11, 1982, which noted that INSLAW could assert proprietary rights to any privately financed PROMIS enhancements. (Hamilton, T. 138-140, 277; Merrill, T. 775-776; PX 36)

Brewer played a very important role in the decision not to go forward with Phase II of the D.C. U.S. Attorney's Office contract. (PX 232; PX 237; PX 324 [Brewer] at p. 124) Brewer identified the purported basis for this decision, in part, as his understanding that INSLAW was not able to perform because of the demands being made upon INSLAW under the new three-year, PROMIS Contract (PX 324 [Brewer] at pp. 124-125; Brewer, T. 1635), notwithstanding that the latter contract had only been in effect a few months.

Based on prior discussions with DOJ officials, INSLAW had been led to believe that it would be awarded Phase II of the D.C. U.S. Attorney's Office contract and had planned upon $600,000 of revenue from Phase II for estimating its overhead rate for all of its DOJ contracts and grants. (Hamilton, T. 143-144; Merrill, T. 774) After the decision not to go forward with Phase II had been made, Brewer was informed by INSLAW's comptroller, Murray Hannon, that denial of the $600,000 Phase II contract resulted in a precipitous increase in INSLAW's overhead within a few months of the decision, as Brewer had been forewarned would happen. (PX 324 [Brewer] at p. 125)

Finally, while the Bua Report went out of its way in an attempt to exonerate Brewer, it is noteworthy that the Bua Report did not even address the unrefutable fact that DOJ failed totally to act upon, let alone consider, INSLAW's repeated assertions of bias on the part of Brewer. As Judge Bryant found:

INSLAW attributed its troubles to an acute bias on the part of Brewer, who according to it was intent on running the company out of business. INSLAW lodged many complaints of bias and made several requests of DOJ to investigate these complaints and give some relief from what it perceived to be

grossly unfair treatment. DOJ made no meaningful response to these complaints, and INSLAW's fortunes did not change (D. Ct. Mem. Op., p. 6)

C. DOJ Obtained Enhanced PROMIS Through Fraud and Deceit

The Bua Report concluded that "[t]he evidence we have compiled to date does not support a finding that DOJ employees intentionally deceived or defrauded INSLAW, or that there was a scheme to trick INSLAW into turning over its proprietary software." (Page 125) This conclusion purportedly is supported on the basis of a review of the deposition and trial testimony, documents and interviews of "many of the individuals involved," and the review of additional unspecified documentary evidence. Not surprisingly, the Bua Report does not disclose the identity of every one of the individuals interviewed or the "additional documentary evidence" reviewed. In fact, however, virtually none of the witnesses offered by INSLAW during the trial was interviewed by the authors of the Bua Report, and those who were interviewed commented at the time on the perfunctory character of the inquiry. Indeed, it is astonishing that the authors of the Bua Report could conclude, on the basis of interviews with DOJ personnel conducted over 10 years after the events in question and following an extensive trial and extraordinary post-trial publicity, that those individuals acted only in the "best legitimate interests of the government." (Page 125) To accept the self-serving, long after-the-fact and post hoc rationalizations of these individuals over their testimony at trial, which testimony clearly evidenced their propensity for lying and covering up the truth, as found by two federal courts, is ludicrous.

1. The Advance Payment Dispute

Under the PROMIS Contract, INSLAW was entitled to receive payments in advance of the waiting period usually necessary to process an invoice. In order to qualify for the advance payment clause, INSLAW had to represent that it was not then capable of obtaining financing from banks or other traditional commercial sources. The contract also contained a provision that prohibited INSLAW from pledging its rights under the contract.

In November 1982, INSLAW informed DOJ that it had violated inadvertently a technical covenant in the contract by assigning its government invoices as collateral for a bank line of credit that it had obtained in April 1982. DOJ responded to this by threatening to terminate the advance payment clause and by demanding that INSLAW turn over a copy of its software to DOJ. The bankruptcy court found that the advance payment dispute was manufactured, without justification, as a mechanism to injure INSLAW and to require INSLAW to provide DOJ with a copy of the software that would, in turn, enable DOJ to implement the software in-house.

The Bua Report rejected the conclusion reached by the bankruptcy court. In doing so, the authors of the Bua Report seek to justify the conduct of DOJ on the basis that DOJ's action was predicated upon its belief that INSLAW had "lied" to it. They conclude that it was the misrepresentations by INSLAW concerning its ability to obtain outside financing that was the primary reason for DOJ giving notice of termination of advance payments. The authors of the Bua Report assert that, after viewing the "demeanor" of the contracting officer, they concluded that his version was believable on this point. This conclusion, however, ignores virtually all of the evidence in the record relating to this subject.

First, the record is undeniably clear that, on February 19, 1982, prior to the issuance of the contract, when INSLAW sought the so-called advance payment provision, commercial bank financing was not available. Thus, INSLAW's representation to DOJ at that time was correct and most certainly was not a lie. In April 1982, largely on the strength of the $10 million contract award, INSLAW was able to secure an additional line of credit from the Bank of Bethesda. This credit was obtained, in part, based

upon the pledge of the receivables to the Bank. Thus, contrary to the assertion in the Bua Report, INSLAW was not in the process of obtaining commercial financing at the time that it represented in its formal request that it was unable to do so, and there is no conflict in the representation made in February, prior to the contract, and the subsequent effort to obtain financing in April, after the contract. The effort to obtain financing took place later, and was predicated on the award of the contract. Thus, INSLAW neither lied nor misrepresented anything to DOJ.

Notwithstanding, there is no dispute that the pledging of the receivables resulted in a technical violation of the contract. In November 1982, this technical violation was discovered by DOJ's auditor Robert Whitely and discussed by him with INSLAW. At that time, Whitely told INSLAW that he was fully satisfied with the foregoing explanation and that, since DOJ was in no way negatively impacted by the line of credit or the pledge, he would not raise any question in the current audit about this matter. Whitely fully acknowledged these facts, and particularly the fact that the government was not placed in any financial risk as a result of the technical violation. (PX 345 [Whitely] at pp. 36-38, 40-44; Whitely, T. 1673-1764; Hamilton, T. 166-167) However, when Whitely met with Videnieks and Brewer and indicated his discovery of the technical violation, they seized on the issue and maneuvered it into a controversy when none really existed. Whitely later testified at trial that he had been concerned about INSLAW's near insolvency, but could not produce any contemporaneous documentation to verify the truthfulness of such claims.

Second, despite considerable written discussions within DOJ concerning this matter, there is no record whatsoever of any DOJ employees stating their belief that INSLAW had lied to them. In fact, while Brewer and the contracting officer purportedly were concerned about a substantial deterioration in the financial condition of INSLAW, as well as other concerns that they enumerated in writing, at no time did they state their belief that INSLAW had engaged in any misrepresentations. Nor did they seek to justify their conduct on that basis during their depositions or at trial. In short, while they may have asserted this so-called "lie" argument to the authors of the Bua Report, over 10 years after the fact, they most certainly did not raise this argument at any earlier time.

Third, the entire premise on which DOJ threatened to terminate the advance payment provision (i.e., the deteriorating financial condition of INSLAW) was found by the bankruptcy court to be a complete fabrication and a pretext for demanding access to the computer software. Not surprisingly, this wealth of evidence was totally ignored in the Bua Report.

For example, despite the expressed concerns about the financial condition of INSLAW, neither Brewer nor Videnieks could identify any evidence which led them to believe that INSLAW's financial condition had substantially deteriorated since the award of the PROMIS contract in March 1982, nor any evidence of any fraud. (PX 324 [Brewer] at pp. 232-233; 241-245; Brewer, T. 1630; Videnieks, 207-208) In fact, Brewer and Videnieks were mistaken in their assumption that INSLAW's financial condition had deteriorated during the latter half of 1982; INSLAW was much stronger in December 1982 than at the time the PROMIS contract began. (Hamilton, T. 162) In fact, during 1982, INSLAW was able to increase a previously existing line of credit of $700,000 with First American Bank to a $1.2 million line of credit from the Bank of Bethesda. (Hamilton, T. 159; Merrill, T. 799) In addition, between August and December 1982, INSLAW entered into the co-marketing agreement with IBM. (Hamilton, T. 160; Merrill, T. 799) Perhaps most important is the fact that INSLAW had obtained the PROMIS contract, and prospects were strong for successful completion of the contract. (Hamilton, T. 160-161; Sherzer, T. 958-959)

Notwithstanding the evidence to the contrary, Brewer informed Tyson, Director of EOUSA, about these same unsupported concerns. (PX 49; Hamilton, T. 156-157) In a December 9, 1982 memo to Tyson, Brewer raised the following issues:

 a. The prospect of INSLAW's bankruptcy;

 The possible need for in-house EOUSA personnel to take over the PROMIS Project;

 c. Substantial questions of fraud being raised by INSLAW's accounting practices;

 d. The need for close auditing review of INSLAW's costs, particularly overhead and computer center costs; and

 e. The prospect of terminating the PROMIS Contract. (PX 49; Hamilton, T. 156-156)

The December 9 memo also expressly detailed EOUSA's commencement of planning for carrying-on the PROMIS Contract Project in-house, using EOUSA employees ". . . in the event of trouble" and stated that DOJ had "demanded, as is our right, from INSLAW copies of all software documentation . . . ." (PX 49) (Emphasis added.) This planning was not disclosed at any time by DOJ to INSLAW. (Hamilton, T. 165) Had this planning been disclosed to INSLAW, INSLAW would not have turned its software over to DOJ pursuant to Modification 12. (Hamilton, T. 165-166)

The December 9, 1982 Brewer memo was based on several fundamental misconceptions. First, INSLAW had not incurred $975,000 of additional bank debt, but $275,000, and the additional borrowing was necessary to defray partially $344,000 that DOJ then owed INSLAW for its time-sharing services. (Hamilton, T. 157-158) Second, Brewer misconstrued the Advance Payments provision of the contract as a mechanism for "payment-in-advance" when it was merely a contractual procedure for DOJ's timely payment of INSLAW's vouchers for work already completed. (Hamilton, T. 158) Third, Brewer erroneously concluded that INSLAW had "reprogrammed" $100,000 in contributions to the INSLAW employee profit-sharing plan because INSLAW had not yet deposited the annual contribution, when, in fact, the deposit was not yet due and owing. (Hamilton, T. 158-159) Fourth, Brewer incorrectly concluded that the nature of INSLAW's indebtedness had become "desperate" by December 1982, when, in fact, INSLAW believed it had just obtained DOJ's "sign-off" to its rights to license its privately financed enhancements, had established its first sales and marketing unit, and had consummated a national co-marketing arrangement with IBM for the public sector. (Hamilton, T. 159-161) Fifth, Brewer confused a version of PROMIS developed under the Pilot contract using a COBOL compiler that the hardware manufacturer (PRIME) had subsequently discontinued, with a version developed by INSLAW's European subsidiary based on current compiler technology; as a consequence of his lack of understanding, Brewer had suggested possible fraudulent accounting practices at INSLAW. (Hamilton, T. 162-165) INSLAW's independent public accountants had, in fact, reviewed and approved the accounting transactions. (Hamilton, T. 165)

The Bua Report concludes that DOJ's actions concerning the advance payments were fully justified by the memoranda they wrote concerning the matter. According to the Bua Report, "[t]o believe that DOJ's concerns about INSLAW's financial health were actually a pretext, would require a finding that certain DOJ employees were so prescient that they created numerous internal documents, and indeed even misled their superiors, just so that they could defend themselves against a claim of theft years later." No such finding would be required. In fact, the only finding that is necessary is that Brewer, for all of the reasons found by the bankruptcy court, set about to manufacture a reason to justify obtaining the software. There is nothing unusual in employees attempting to paper the record in an effort to justify their actions and that is exactly what happened here. The evidence amply

supports the bankruptcy court's findings that DOJ's justification for seeking the software and cancelling the advance payments provisions was unsupportable.

In an effort to justify the conduct of DOJ, the authors of the Bua Report go to great lengths to rebut the conclusion of the bankruptcy court that Brewer and Videnieks had no basis to believe that INSLAW was near insolvency and that Whitely's testimony in support of this argument was manufactured solely for use at trial. According to the report, "Judge Bason stated this conclusion after finding that Whitely never prepared any report, that Whitely never referred to INSLAW's potential insolvency in his deposition, and that Videnieks did not mention Whitely in his deposition." The report concluded that "all of these factual assertions appear to be just plain wrong." (Page 131-132) In fact, Judge Bason was absolutely correct and it is the authors of the Bua Report that are "just plain wrong."

Judge Bason first found that neither Brewer nor Videnieks at their depositions could identify any evidence to demonstrate a substantial deterioration in INSLAW's financial condition, notwithstanding repeated opportunities during their depositions to provide such evidence. While Videnieks did suggest that he had been informed by the audit staff of the possibility of INSLAW's financial failure, this was not evidence of any deterioration in the financial condition of INSLAW. Judge Bason next found that while Whitely asserted at trial his conclusion regarding potential insolvency, Whitely did not prepare a written report or any other document which "detailed" his alleged conclusions. Judge Bason concluded, quite reasonably, that if Whitely had reached such an obviously important, if not critical, conclusion regarding the financial condition of INSLAW, it would have been documented in his work papers, which it was not. In fact, on rebuttal, INSLAW adduced the testimony of Whitely's successor, Ms. Schacht, who testified that there was no reference to such purported insolvency in the DOJ audit file nor any discussions on this subject within DOJ's auditing group. (Schacht, T. 2452) Not surprisingly, DOJ was unable to produce any such written records that supported Whitely's trial testimony, since none existed. While Whitely may have said he prepared "work papers," the facts prove otherwise. Finally, Judge Bason found that Whitely's other conclusions concerning the Irish subsidiary receivable and the capitalization of software development costs were directly contrary to the considered opinion of Arthur Young & Co., a recognized independent international auditing firm, which had given INSLAW, a "clean," unqualified audit opinion as to its financial condition, and itself was the source of INSLAW's accounting treatment of its capitalization. (Whitely, T. 1777-1779)

Obviously, Judge Bason was fully justified, based on the record before him, in concluding that the basis for the advance payment dispute was totally unjustified and manufactured. The Bua Report does nothing to refute the conclusions reached by Judge Bason, and its efforts to attack Judge Bason in this regard are pathetic.

2. DOJ's Demand for the Software

The bankruptcy court concluded that DOJ knowingly set out to obtain the version of PROMIS to which it was not entitled under the contract and which DOJ understood contained proprietary enhancements belonging to INSLAW. The district court concurred with this conclusion:

Thus, the court is drawn to the same conclusion reached by the bankruptcy court; the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract. (D. Ct. Opinion, p. 34)

The Bua Report stated that this conclusion required proof that DOJ set out to obtain something to which it was not entitled. Because DOJ purported initially only to seek the public domain version of the software, the Bua Report concludes that proof of DOJ's fraudulent intent is missing. The Bua

Report concludes that INSLAW had failed to maintain a contract version of PROMIS and that, had they done so, there would have been no proprietary rights dispute, since INSLAW's production of such a version would have satisfied any obligation it had under the contract. This entire argument displays a fundamental misunderstanding of the contract.

First, the contract contemplated that DOJ promptly would select the computer it wished to have installed at the 20 largest U.S. Attorneys' Offices and that INSLAW would then implement the public domain software on that hardware. This software then consisted of two separate parts: the Pilot Project version and the 5 BJS enhancements. Until DOJ selected its computer hardware, there was no reason for INSLAW to maintain a separate public domain version consisting of these then two separate and non-integrated parts. The integration of the five BJS enhancements with the Pilot Project version had to be done after DOJ selected the specific computer hardware. The Pilot Project used PRIME computers, and DOJ had not determined what brand and model of computers it would buy for the 20 largest U.S. Attorneys' Offices. For example, DOJ would not have reimbursed INSLAW to create a separate Pilot Project plus five BJS enhancement version for operation on a particular brand and model computer such as the VAX mid-range computer from Digital Equipment Corporation unless and until DOJ selected VAX for the 20 U.S. Attorneys' Offices. Instead, DOJ selected PRIME.

Second, contrary to the assertion in the Bua Report, INSLAW did have a version of public domain PROMIS that was frozen and bug free. The U.S. Attorneys' Offices in San Diego and Newark were each operating the Pilot Project version of PROMIS, and INSLAW was supporting that version and keeping it "bug free." The five BJS enhancements had not been created at the time of the original Pilot Project implementation. Whatever hardware DOJ selected would also be used to replace the hardware in the San Diego and Newark Pilot Project offices. Consequently, while INSLAW ultimately would have to implement the Pilot Project version, as supplemented by the BJS enhancements in each of the two Pilot Project offices as well as in the other 20 largest U.S. Attorneys' Offices, INSLAW could not reasonably have begun to add the five BJS enhancements to the bug-free Pilot Project version until DOJ made its computer hardware selection. DOJ had not made its selection of the hardware by the time DOJ demanded the time- sharing version of PROMIS.

Third, the conclusion of the Bua Report that DOJ was unaware of the fact that the version it sought contained the proprietary enhancements is wrong. It is undisputed that during the period of time before DOJ selected its hardware, it was understood that INSLAW would accommodate DOJ by allowing the larger offices access to INSLAW's computer in Maryland (not Virginia) on a time-sharing basis. It was expected that DOJ would order the hardware promptly, so that this accommodation would be short term. Since it was not possible to implement the contracted-for version until the hardware was selected, there was no reason to maintain a separate copy of that version, and DOJ certainly knew this fact.

For this temporary time-sharing accommodation to DOJ, INSLAW used its proprietary VAX version of PROMIS in which other proprietary enhancements also had been included ("the time-sharing version"). There was no contractual requirement that INSLAW provide DOJ with this time-sharing software, and therefore INSLAW had, quite properly, not anticipated that DOJ would demand the underlying software which contained these proprietary enhancements. Indeed, no one connected to the contract ever contemplated the delivery to DOJ of the time-sharing version, since this version was being used merely as a short-term accommodation. As DOJ was not expected ever to take delivery of the time-sharing version, INSLAW could reasonably have planned to use its proprietary version in the time-sharing service, because this improved version would enable INSLAW to provide more responsive time-sharing services to each of the largest U.S. Attorneys' Offices.

When DOJ demanded that INSLAW turn over its PROMIS software, DOJ still had not selected either the minicomputer or the word processing hardware that would ultimately be used to run minicomputer PROMIS at the 20 larger offices and the word processor-based case tracking software at the 74 smaller offices. Thus, DOJ was not at that time prepared to implement the version of PROMIS called for under the terms of the contract and, indeed, INSLAW could not prepare the contracted-for version of PROMIS for DOJ until DOJ had decided which minicomputer hardware to procure. Therefore, when DOJ used the pretense of threatened termination of advance payments as leverage to obtain the software, it had to know that it was seeking the enhanced time-sharing version of PROMIS to which it was not entitled under the contract, and which DOJ understood contained proprietary enhancements belonging to INSLAW.

Finally, contrary to the assertion in the Bua Report, whether DOJ had knowledge that it was seeking the time-sharing version at the time it sent its initial request letter is not a critical issue, because DOJ clearly understood that it was seeking the proprietary version at the time it negotiated Modification 12. By that time, there is no dispute that DOJ was aware that the software it was demanding was the version containing the proprietary enhancements. Even the Bua Report concedes that by the time the parties were negotiating Modification 12, INSLAW had informed DOJ that the VAX version of PROMIS being provided under the time-sharing arrangements contained enhancements that INSLAW considered proprietary. (Page 136)

In fact, beginning at least as early as February 4, 1983, when DOJ and INSLAW met to discuss DOJ's threatened discontinuation of the advance payment provision, DOJ specifically was put on notice that its simultaneous demand for the underlying software would require INSLAW to turn over the proprietary version of that software. Immediately upon learning of this fact, there is no dispute that DOJ refused to resolve the advance payment issue independently of the software issue, notwithstanding that the two issues were unrelated. Indeed, as even the Bua Report acknowledged, "from at least this point on, DOJ collapsed the negotiations of the advance payment dispute into the negotiations of the software request and the proprietary rights issue." (Page 28) Thus, when DOJ used the pretense of threatened termination of advance payments as leverage to obtain the enhanced time-sharing software, it knowingly set out to obtain a version of PROMIS to which it was not entitled under the contract, and which DOJ understood contained proprietary enhancements belonging to INSLAW.

Even if DOJ started out to obtain nothing more than the contracted-for version (albeit for improper purposes), DOJ clearly was seeking the proprietary version at the time it put into effect its plan to "get the goods" via Modification 12. As such, the absence of evidence that DOJ knew, when it initially requested a copy of the PROMIS codes, that it would obtain something other than the contract version is irrelevant; the evidence is undisputed that it knew that it was going to receive the proprietary version when it set about to obtain that version without any intention to negotiate in good faith over its use. Thus, there is no "great weakness" in Judge Bason's conversion theory.

3. The Negotiation of Modification 12

The parties thereafter entered into negotiations to resolve both the proprietary rights and advance payment issues, ultimately resulting in the execution of Modification 12 to the contract. The Bua Report acknowledges that, without regard to whatever rights DOJ had to the software prior to Modification 12, DOJ clearly was "bargaining away" some of its rights when it agreed to enter into Modification 12, and moreover, was obligating itself to "live up" to the terms of that Modification. (Page 136-137)

Under this Modification, INSLAW agreed to turn over its proprietary software on the basis of certain explicit commitments by DOJ. First, DOJ was to bargain in good faith to identify the proprietary enhancements contained within enhanced PROMIS. Second, DOJ was to decide within a reasonable time which enhancements it wanted to use, and to the extent that it did not want to use certain of these enhancements, to direct INSLAW to remove the enhancements it did not want. Third, DOJ was to bargain in good faith with INSLAW as to the price to be paid for those enhancements it did want.

The bankruptcy court found that DOJ never intended to meet its commitments under Modification 12 and that once DOJ had received Enhanced PROMIS pursuant to Modification 12, DOJ thereafter refused to bargain in good faith with INSLAW. DOJ instead "engaged in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing." While conceding that DOJ's conduct following execution of Modification 12 was subject to criticism and demonstrated "poor judgment," the Bua Report rejected the bankruptcy court's finding of DOJ fraud under Modification 12, based largely upon its post hoc meetings with Rugh and Videnieks:

Bankruptcy Judge Bason found that DOJ "never intended to meet its commitment" under Modification 12. We do not believe the evidence supports this finding. The weight of the evidence demonstrates that the DOJ employees involved reviewed INSLAW's submissions in good faith, and responded in ways that they subjectively believed were within the government's legitimate rights under the contract. We find no evidence of bad faith or intentional wrongdoing.

This conclusion is belied by any reasonable and objective review of the facts relating to this matter. It is also belied by the very reasoning adopted by the authors of the Bua Report. The authors conclude that DOJ had an affirmative obligation to "live up" to the procedures contained in Modification 12 and in a March 18, 1983 letter written by Videnieks which provides the foundation for Modification 12. Together, these documents clearly obligated DOJ to negotiate in good faith with INSLAW to determine which of the enhancements were proprietary and, thereafter, which of those enhancements DOJ wanted to be included in the software delivered under the contract. The Bua Report found that DOJ failed to negotiate with INSLAW regarding an acceptable methodology for determining which enhancements were proprietary. Indeed, the Bua Report concluded that DOJ refused to accept the methodology proposed by INSLAW, refused to explain the basis of that rejection, and refused to provide INSLAW with the methodology that would be acceptable to DOJ. In fact, the Bua Report concluded that "[i]t is difficult for us to see a good reason not to tell INSLAW what criticism DOJ had of INSLAW's methodology . . . it was in neither party's interest to have INSLAW guessing about what was the problem with the methodology." (Page 139) Yet, notwithstanding having concluded that DOJ was obligated to negotiate in good faith to live up to its commitments under the Modification, and having concluded that DOJ failed to do so for no "good reason," the Bua Report concludes that these two failures were not done in bad faith. By definition alone, they most certainly were. Moreover, when put in context, DOJ's actions clearly were a continuation of the ongoing bad faith conduct directed at INSLAW during the entirety of the contract.

By way of background, when DOJ persisted in its attempts to tie resolution of the advance payment issue to the proprietary rights issue, INSLAW initially proposed that the parties enter into an escrow agreement pursuant to which DOJ would receive the software if, and only if, INSLAW went into bankruptcy. (PX 68; Hamilton, T. 167-168; Brewer, T. 1693-1694; Merrill, T. 791)

Although certain DOJ personnel recommended INSLAW's third-party escrow proposal, it was rejected by Brewer and Videnieks, because they could not thereby immediately obtain the software. (PX 73) Videnieks and Brewer discussed this issue on or about March 28, 1983 and decided to propose a

letter response to INSLAW's government contracts counsel, Harvey Sherzer, indicating DOJ's intent "to back off [advance payments] discontinuation and promising non-dissemination [of PROMIS software] in return for delivery of information demanded on 12/6" (PX 73) Videnieks prepared a draft of this letter which Brewer then rewrote (PX 73). This letter was submitted to William Snider, Administrative Counsel for Procurement, who previously had indicated his preference for a bilateral agreement between the parties embodied in a contract modification. (PX 73)

A March 28 memo further recounts that Videnieks was in full agreement with Brewer about the letter, indicating quite significantly ". . . why do you need signature if you got the goods?" (PX 73; Videnieks, T. 1837-1838)

Snider quickly responded to the Brewer/Videnieks proposal on March 29, "sharply disagreeing on this approach." (Videnieks, T. 1838) At this point, Brewer "forbade" Videnieks from entering into a "Mod" of the contract. (PX 73) Brewer did not want a bilateral agreement if he could "get the goods" without it. (Brewer, T. 1704-1705)

On April 5, 1983 Videnieks and Brewer had a telephone conversation in which Brewer told Videnieks that he would "protect" him from "backing down" to Sherzer and Hamilton. (PX 73) After this conversation, Videnieks checked with Snider and "MH" [INSLAW's comptroller, Murray Hannon], who confirmed that a contract modification protecting INSLAW's proprietary enhancements was a precondition to INSLAW's delivery of the software. (PX 73; Brewer, T. 1208) Brewer understood that INSLAW wanted such protection and that INSLAW would remove any enhancements that DOJ did not want. (Brewer, T. 1708-1709)

DOJ's March 18, 1983 response to INSLAW's March 11 escrow agreement proposal dismissed the proposal but did offer, in consideration of "getting the goods," to agree not to disseminate or disclose the PROMIS software beyond EOUSA and the U.S. Attorney's Offices enumerated in the PROMIS contract pending resolution and negotiation of the proprietary enhancements issue "until the data rights of the parties to the contract are resolved." (PX 70; PX 71; Merrill, T. 792; Brewer, T. 1689-1690; Hamilton, T. 168) This proposal by Videnieks was basically the methodology proposed and discussed at the February 4, 1983 meeting. (Merrill, T. 792)

The March 18 letter also stated that once the "data rights" issue was resolved, DOJ would review INSLAW's proprietary enhancements to decide which (if any) enhancements DOJ desired to include in the PROMIS Contract software. (PX 70; PX 71)

Videnieks specifically stated in his March 18 letter that after the proprietary enhancements issue was resolved, DOJ:

. . . will review the effect of any enhancements which are determined to be proprietary, and then either direct INSLAW to delete those enhancements from the versions of PROMIS to be delivered under the contract or negotiate with INSLAW regarding the inclusion of those enhancements in that software. The Government would then either destroy or return the "enhanced" versions of PROMIS in exchange for the Government PROMIS software including only those enhancements that should be included in the software. If this course of action is acceptable to INSLAW there would be no need for an escrow agreement. (PX 70; PX 71; Videnieks, T. 1813-1815)

The enhancements which DOJ did not want would be removed from the software delivered to DOJ. (PX 70; PX 71; Brewer, T. 1690-1691, 1709; Hamilton, T. 330-331)

INSLAW understood from Videnieks' letter that it was necessary to resolve the issue of "proprietary enhancements" as soon as possible because INSLAW was scheduled to deliver software to the 20

largest U.S. Attorney's offices beginning in the Summer of 1983. (PX 73; Hamilton, T. 169) INSLAW also understood from Videnieks' letter that it was to identify the enhancements that had been privately financed, with evidence of the source of private funding, and an indication as to why the enhancements were not required to be furnished under the terms of the contract. (Hamilton, T. 170; PX 70; PX 71)

Most importantly, INSLAW understood from Videnieks' letter that DOJ would negotiate with INSLAW to purchase any privately financed enhancements that it desired to keep in the software deliverable under the contract. (Hamilton, T. 171; Merrill, T. 792-793; Gizzarelli, T. 534; Sherzer, T. 977-979; PX 341 [Tyson] at pp. 205-207, 212-214; PX 336 [Snider] at pp. 91-96; PX 70; PX 71)

As of the time of Videnieks' letter, INSLAW was fully prepared to delete any or all enhancements that DOJ indicated it did not desire pursuant to the process laid out in Videnieks' letter. (Hamilton, T. 172-173; Merrill, T. 793)

William Snider, Administrative Counsel for the Justice Management Division ("JMD") and a prime negotiator of Modification 12, understood that Modification 12 was intended to implement Videnieks' letter of March 18 and the intent to negotiate on proprietary enhancements stated in that letter. (PX 336 [Snider] at pp. 7, 90-96) In that regard, Snider further understood that if DOJ wanted INSLAW's proprietary enhancements, then it would pay INSLAW for such enhancements. (PX 336 [Snider] at pp. 91-96) Indeed, Snider had informed INSLAW representatives at a meeting prior to the execution of Modification 12 that DOJ would negotiate compensation to INSLAW for all such enhancements that DOJ wished to use. (Hamilton, T. 177; Sherzer, T. 977; Merrill, T. 790-791)

In fact, however, notwithstanding the obligation of DOJ to negotiate in good faith, Brewer had no intention to negotiate. Indeed, Videnieks, Rugh and Brewer all testified that notwithstanding Modification 12, they had no understanding of any obligation on DOJ's part to negotiate with INSLAW concerning the time-sharing or any other PROMIS software. (PX 324 [Brewer] at p. 163; Brewer, T. 1691-1693) Brewer had discussed his understanding of Modification 12 with a number of people at DOJ and his views in that regard were shared by Brewer's staff and by Videnieks. (PX 324 [Brewer] at pp. 163-164) This glaring admission was ignored totally in the Bua Report, since this admission made at the time of the trial totally contradicts the purported statements made by these individuals to the authors of the Bua Report in their post hoc interviews. Given the fact of these admissions and the fact that DOJ's actions subsequent to Modification 12 were consistent with the admissions, it is impossible to conclude that DOJ's conduct was not taken in bad faith. Moreover, this conduct at a minimum was a violation of the contractual obligations of DOJ under Modification 12 to negotiate in good faith.

In reviewing the entire factual record, Judge Bryant concluded:

Once the software was in the possession of DOJ, there is no evidence that the government ever negotiated in good faith over the existence of the proprietary enhancements claimed by INSLAW. The DOJ put the entire onus of proof on INSLAW, yet never indicated what methodology or proof would be acceptable. The contract entered into by the parties entitled the government to the version of PROMIS then in the public domain. The expert witnesses demonstrate that INSLAW did enhance the software with private funds. By failing to acknowledge or accept INSLAW's claims, the government continued its fraudulent behavior toward INSLAW. This behavior persisted long after INSLAW filed for reorganization. (D. Ct. Mem. Op., p. 40)

In the face of the factual record before the two federal courts, it is impossible to conclude that DOJ acted other than in bad faith. Most of the conduct of its key employees is indefensible. Its failure to

investigate the assertion of bias also is indefensible. Its repeated false representations to INSLAW's attorneys, as described in detail by the two lower courts, is inexcusable. As Judge Bryant found:

The government accuses the bankruptcy court of looking beyond the bankruptcy proceeding to find culpability by the government. What is strikingly apparent from the testimony and deposition of key witnesses and many documents is that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work. (D. Ct. Mem. Op., p. 36)

Even the most cursory examination of the record leads to the inescapable conclusion of bad faith on the part of DOJ. The Bua Report's contrary conclusion, based upon its long-after-the-fact "demeanor" interviews of the DOJ employees responsible for the bad faith, is simply ridiculous.

4. The Implementation and Use of the PROMIS Software Beyond the 20 Offices

Under Modification 12, DOJ agreed that it would not distribute the software received under the Modification beyond the offices enumerated under the contract. Subsequent thereto, DOJ began to install this software beyond the 20 offices for which the software was designated. The Bua Report concluded that it was neither improper nor unreasonable for DOJ to "self" install PROMIS beyond the 20 larger offices designated to receive this version of PROMIS under the contract. Once again, this conclusion is belied by any responsible understanding of the contract and the circumstances under which Modification 12 was negotiated.

The contract between INSLAW and DOJ involved two separate, severable, and clearly distinguishable tasks:

 1. To create, generate and implement software to be used on computers ("the computer-based software") at 20 designated larger U.S. Attorney's Offices (with an option, admittedly never exercised, to expand this use, to up to thirty offices)

 2. To create, generate and implement a different kind of software to be used on specified word processing equipment ("the word processing based software") at some 74 smaller U.S. Attorneys' Offices. (PX 17)

Thus, Paragraph 1.2 of the contract provides in part:

1.2 The Contractor shall implement PROMIS software and procedures as modified for the U.S. Attorney's environment on Government furnished mini-computers located in the larger U.S. Attorneys' Offices. Case tracking systems that have been developedto operate on Government furnished word processing equipment shall be installed in the smaller U.S. Attorneys' Offices…

The parties clearly understood that these were separate tasks, and required the development and creation by INSLAW of two different and distinguishable kinds of software, each to be implemented only within the designated types of offices specified in the contract for that particular kind of software. (PX 324 [Brewer] at pp. 215-217; Snider 54-56; Gizzarelli, T. 479, 488, 494-495; PX 341 [Tyson] at p. 41; Hamilton, T. 110-111, 115, 132-134; Merrill, T. 770-771)

The computer-based software generated for the 20 larger computer-site offices, as specified in the contract, was to be used only at those offices, and the word processing based software to be developed and created by INSLAW was to be used only at the 74 smaller offices. (Hamilton, T. 132-134; Merrill, T. 764; Gizzarelli, T. 488, 497-499; PX 324 [Brewer] at pp. 215-216) At no time during any meeting, either before or after the contract was signed, did anyone from DOJ inform INSLAW that DOJ believed that the computer-based software could be used beyond these 20 offices. (Merrill, T.

770; Hamilton, T. 134) The contract did provide, however, that DOJ could extend the implementation of computer-based PROMIS to an additional 10 offices at an added price which the contract specified (and the parties understood) would be negotiated between the parties. (Hamilton, T. 124; PX 17; Merrill, T. 769-770; Gizzarelli, T. 496-499; PX 324 [Brewer] at pp. 215-216)

In effect, it was as if there were two contracts calling for two types of software to be delivered to two types of offices, a fact clearly understood by DOJ. (Hamilton, T. 110-111, 132-134; Merrill, T. 764; Gizzarelli, T. 488, 494, 497-499) At the time that Modification 12 was executed, both aspects of the contract were still operative. Modification 12 required INSLAW to produce all "computer programs" and documentation for the time-sharing version, the computer-based version, and the word processing based version. (Merrill, T. 786; Sherzer, T. 980; Hamilton, T. 152, 2583-2588) DOJ never told INSLAW that it was not required to produce all of this under Modification 12 or that INSLAW was producing too much. (Merrill, T. 787)

Contrary to the mindless conclusion reached by the Bua Report, the provisions of Modification 12 must be read consistently with the existing contract, the terms of which (Modification 12 unequivocally states) were not otherwise changed. (Gizzarelli, T. 535; Sherzer, T. 1030) Thus, DOJ's agreement not to disseminate or use the software beyond the 94 offices has to be read in the context of the two contract tasks that existed at that time. This means that the computer-based software would not be disseminated beyond the 20 designated larger offices for which this software was being created and developed, and the word processing based software would not be disseminated beyond the 74 offices for which that type of software was being created and developed. (Merrill, T. 787-788; Hamilton, T. 177-178; Gizzarelli, T. 535)

Contrary to the baseless assertions in the Bua Report, Modification 12 sought to effect delivery to DOJ of all computer programs developed under the contract, as well as INSLAW's proprietary enhancements then incorporated in the software. The statement of work defines the software for the word processing machines as computer programs (Hamilton, T. 2583), and subparagraphs 3 and 5 of Modification 12 specify the delivery of software for operation on word processing machines (Hamilton, T. 2584-2586). In addition, Modification 12 was directly related to and fully embodies the process and intent of Videnieks' letter of March 18, 1983. (Hamilton, T. 173; Gizzarelli, T. 535-536; Merrill, T. 793-794; PX 336 [Snider] at pp. 7, 90-96)

Subsequently, when DOJ unilaterally terminated the word processing part of the contract for the convenience of the Government following the execution of Modification 12, the 74 word processing offices dropped out, and all that remained were the 20 offices that were to receive the computer-based version of PROMIS (plus the never-exercised option to extend the latter version to ten additional offices at additional cost). At no time had anyone from DOJ informed INSLAW that it was DOJ's intention to implement PROMIS beyond the 20 offices specified in the contract. Thus, only these 20 offices were among those the parties contemplated would receive the computer-based PROMIS, and it was only these offices that could receive the INSLAW software until the data rights issue was resolved. No one ever contemplated that DOJ would have the right to disseminate the computer-based software beyond the 20 offices, and most certainly not while there was still a dispute over the ownership rights in that software.

Finally, whether DOJ had the right to implement the software beyond the 20 offices, while clearly relevant in the context of an automatic stay bankruptcy proceeding, is not relevant to the more important question of whether DOJ had the right to continue to use the proprietary software, without compensation to INSLAW, after the data rights issue was determined in favor of INSLAW. During the course of the bankruptcy proceedings, extensive evidence was introduced that

demonstrated that the software used by DOJ was the proprietary, non-public domain version created by INSLAW using non-government funding, and that this proprietary software was not deliverable under the contract. Thus, even if DOJ had the right to use the software until the data rights issue was resolved, once that issue was resolved by the court in favor of INSLAW, DOJ no longer could continue to use the software without appropriate payment to INSLAW. Even DOJ has conceded that its right to use the software under Modification 12 was limited to the period of time during which the parties were required to negotiate the data rights issue. DOJ understood that it could not continue to keep the software to the extent it contained proprietary enhancements without paying INSLAW for the right to do so. Yet, notwithstanding the extensive findings of the bankruptcy court, as affirmed in total by the federal district court, that the software used by DOJ rightfully belonged to INSLAW and that DOJ was not entitled to use that software, DOJ has continued to use the software without compensating INSLAW.

II. BUA'S INVESTIGATION OF THE EVIDENCE THAT DOJ ATTEMPTED TO CAUSE THE CONVERSION OF THE INSLAW BANKRUPTCY BY IMPROPER MEANS-THE "INDEPENDENT HANDLING" PROCEEDING

The Bua Report devotes 41 pages to an analysis of the factual underpinnings of the bankruptcy court's findings in the "Independent Handling" proceeding.

The Independent Handling proceeding in the Spring of 1987 arose from INSLAW's request to the bankruptcy court to insulate the handling of the INSLAW Chapter 11 reorganization by DOJ's U.S. Trustee's program from improper influence by DOJ's Executive Office for U.S. Attorneys. Such improper influence was reflected in the contemporaneous handwritten notes of DOJ Contracting Officer Peter Videnieks that INSLAW obtained during the first quarter of 1987 in litigation discovery.

A separate adversarial hearing ensued on this subject, and the bankruptcy court found that DOJ officials had, in fact, secretly attempted in 1985 forcibly to convert INSLAW from a Chapter 11 reorganization into a Chapter 7 liquidation in order to prevent INSLAW from seeking redress in the courts for DOJ's theft of the PROMIS software in April 1983.

While noting that the covert DOJ liquidation effort was "not free from doubt," the report concludes that there is "insufficient evidence to support a finding that DOJ planned or attempted to convert the Inslaw bankruptcy case or engaged in any cover-up to conceal the conduct alleged." This portion of the report demonstrates, once again, that the Bua investigation's focus and, indeed, its predisposition, was not to investigate DOJ wrongdoing previously demonstrated to two courts through fully litigated factual findings, but, instead, to justify DOJ's conduct and exonerate the wrongdoers.

The report correctly states that INSLAW's evidence in the proceeding consisted essentially of six parts: (1) statements and testimony by Anthony Pasciuto, then Deputy Director of DOJ's Executive Office for U.S. Trustees; (2) handwritten notes of Peter Videnieks', DOJ's Contracting Officer for the INSLAW contract; (3) testimony and notes of Gregory McKain, a senior INSLAW computer software engineer; (4) evidence that U.S. Trustee William White requested that the bankruptcy court add language barring him from disclosing INSLAW data to anyone at the Executive Office for U.S. Trustees; (5) statements and deposition testimony of U.S. Bankruptcy Judge Cornelius Blackshear; and (6) evidence regarding the planned transfer of Assistant U.S. Trustee Harry Jones from New York to Washington to work on the INSLAW case.

The core of the bankruptcy court's findings rests on the intertwined relationship between the Videnieks notes, Rugh and McKain's testimony, and McKain's notes. Videnieks made

contemporaneous notes of a telephone conversation he had with Brewer's deputy, Jack Rugh, on February 20, 1985 (13 days after INSLAW filed its Chapter 11 petition):

JR called re[garding] "our computer" …Brick [Brewer] talked to Stanton …No way "11" will be "7" …Need home for computer …

Videnieks' notes document a conversation with "JR" [Jack Rugh] and what Rugh, a computer system executive for EOUSA, said "re[garding] our computer." The words following "Brick talked to Stanton. . ." are a quote of what Stanton, the Director of the Executive Office for U.S. Trustees, said. Quotation marks are used to bracket what Stanton said: "no way 11 will be 7 ." It cannot reasonably be inferred, as the Bua investigators infer, that these four prefatory words in a seamless line of thought and preceding an obvious quote of Stanton are somehow disconnected from the quote they precede. As justification for such a conclusion, the report cites "a space in the notes between the words Brick talked to Stanton and the words no way 11 will be 7 ." In fact, there are three dots after the word "Stanton," indicating all the more that the phrases following are quotes and are connected to the rest of the conversation.

Rugh testified that the notes correctly summarized what he had told Videnieks, but that the statement "No way 11 will be 7" represented merely his own personal view that INSLAW would be liquidated and not something Brewer had told him as a result of Brewer's conversation with Stanton. Rugh also testified about subsequently calling INSLAW's McKain and telling him that he did not think INSLAW would survive in bankruptcy, and trying to arrange for the future hiring of McKain by DOJ.

McKain testified, however, that Rugh told him that they had "talked to the trustees" and that the trustees said INSLAW was not going to make it and that INSLAW would be out of business in 30 to 60 days. McKain made contemporaneous notes which were fully consistent with his testimony. Moreover, he acted immediately in a manner consistent only with his version of events: He went to Mr. Hamilton and repeated what Rugh had told him, and asked whether this was true. Incensed, Hamilton, in turn, had counsel contact the local U.S. Trustee, who said that he had not made any such prediction, that it must have come from the Executive Office for U.S. Trustees, i.e., from Stanton's office. Although Rugh acknowledged that he may have mentioned talking to the trustees, he categorically denied telling McKain that the trustees had said INSLAW would likely be liquidated in 30 to 60 days.

The bankruptcy court was thus presented with a classic credibility conflict: Rugh's testimony and McKain's testimony were irreconcilable. The court found that McKain was telling the truth and that Rugh was lying. This conclusion was based not simply upon the court's assessment of the witnesses' relative courtroom demeanor, but also upon the corroboration of McKain's version provided by his consistent contemporaneous notes and his and Hamilton's unmistakably consistent actions: having INSLAW's counsel contact and complain to the U.S. Trustee. If, as Rugh maintained, Rugh had merely said that he thought that the company would be liquidated, INSLAW might have complained to Rugh's superior, Brewer, or to the bankruptcy court, but not to the U.S. Trustee.

The testimony by Rugh that his statements to McKain represented only his "personal view" that INSLAW would not survive-as opposed to what Brewer had told him as a result of his discussion with Stanton-was extremely suspect on its face. Rugh is a non-lawyer who acknowledged that he had known of only one or two prior bankruptcy cases in his life. It is surely unlikely that Rugh would have taken the step of contacting one of INSLAW's chief computer software engineers and offering him a job based only on his own layman's opinion that the company would not survive. In addition, Videnieks' notes contain the statement "need home for computer." This reflects a seeming certainty

that INSLAW would be put out of business imminently-prompting the need for Rugh or someone in EOUSA to take action to arrange a new site for the DOJ computer then being used to operate PROMIS in the U.S. Attorney's Office for the District of Maryland from INSLAW's Maryland computer center.

Finally, it was the threatened immediacy of liquidation forecast by Rugh that provoked such an intense response by McKain and, in turn, by Hamilton. Liquidation in 30 to 60 days was completely inconsistent with the briefing from INSLAW's bankruptcy counsel that McKain and all INSLAW employees had received only days before, to the effect that INSLAW could expect to operate normally during the Chapter 11 Reorganization. Now, according to Rugh, the employees would be out of work in 30 to 60 days. Even if it were plausible that Rugh had merely stated his "personal view" about eventual liquidation, the notion that he also expressed his "personal view" that it would happen in 30 to 60 days is simply inconceivable. Yet, if Rugh had not stated that liquidation would likely occur very soon, McKain would not have reacted as he did.

The bankruptcy court's resolution of the Rugh-McKain credibility dispute is thus solidly grounded on corroborating evidence. It is obvious that both McKain and Rugh gave the testimony at issue under oath and subject to cross-examination in a courtroom before a fact finder. It is hardly appropriate for Special Counsel Bua-on the basis of interviews of some of the witnesses (McKain was not interviewed) five years removed from that courtroom-to opine that had he been there, he would have resolved the dispute differently. That he would undertake to do so, reflects a transparent effort to exonerate DOJ, whatever the evidence. For example, the report argues that "there is no more reason to think that Rugh is lying about this than there is to think that McKain is." It further states, "If Rugh can be said to have lied to help his employer, DOJ, it is equally plausible that McKain lied to help his employer, INSLAW." This statement is preposterous on its face. McKain's actions were taken in 1985, in response to a call from Rugh, documented by contemporaneous notes and corroborated by the undisputed actions of his employer promptly thereafter. All of this occurred long before INSLAW had knowledge of any basis for a lawsuit against DOJ. Accordingly, these statements in the Bua Report are not only unfounded, but they also represent a crude and totally unwarranted smear of McKain.

The bankruptcy court's findings on the Rugh-McKain conflict buttress the court's other findings. The conclusion that Rugh, a subordinate non-lawyer, knowingly gave false testimony about his call to McKain to conceal the truth, supports the conclusion that it is likely that Stanton did make a commitment to Brewer to seek INSLAW's liquidation despite both of their denials. Stanton's actions in trying to bring Assistant U.S. Trustee Harry Jones from New York to work on the case were certainly consistent with such a commitment. The court's conclusion that Judge Blackshear's testimony at his initial deposition, and in his statements in his three prior telephone conversations with INSLAW's attorneys and another judge-that White had told him that Stanton was going to ask him to send Harry Jones to Washington to seek conversion of the INSLAW case-was truthful and that his two subsequent recantations were not truthful, is also supported by the finding that Rugh falsely denied telling McKain that the trustees had said INSLAW would be out of business shortly.

The Bua Report's treatment of the Pasciuto testimony also reflects an apparent preconception. It is perhaps difficult to fully perceive from the cold record Pasciuto's evident anguish and emotional turmoil in the courtroom. He was, at the time of his testimony, Deputy Director of the Executive Office for U.S. Trustees. Out of conscience, he had secretly met with the Hamiltons and told them of the scheme to liquidate INSLAW two years before, expecting that his friends, William White and Judge Blackshear, both then no longer employed by the Trustees' Office, would candidly support his statements. While Blackshear initially did support Pasciuto's testimony, he quickly recanted, and White denied any knowledge of such a scheme. Thus, at the time of his testimony, Pasciuto, who was

still employed at DOJ's Executive Office for U.S. Trustees, had the worst of all possible worlds: being exposed as a "whistle blower" to his boss and being left out on a testimonial limb with no corroborative support.

INSLAW's trial team included former federal prosecutors with well over sixty years of active trial experience. Pasciuto's testimony was some of the most dramatic these lawyers had ever observed in a courtroom. When confronted with the fact of his secret meeting with the Hamiltons, Pasciuto first admitted the meeting and then said he could not recall making the key statements he had made. He wondered aloud whether the Hamiltons had tape recorded the session. The Hamiltons had not. He said he had met with the Hamiltons to hurt Stanton, whom he disliked. Finally, when confronted with the fact that he had made the same statements at a meeting with a judge, the Honorable Lawrence Pierce of the United States Court of Appeals for the Second Circuit, Pasciuto admitted that he had made the statements. Ultimately, the bankruptcy court ruled that Pasciuto's hearsay statements were inadmissible. Yet no one who was in the courtroom when he testified could fail to have concluded that something was terribly wrong at DOJ.

That conclusion was enhanced by DOJ's subsequent treatment of Pasciuto. An investigation by DOJ's Office of Professional Responsibility ("OPR"), incredibly, found that but for Pasciuto's conduct, "the department would be in a much better litigation posture," and concluded that he should be fired. Eventually, he was allowed to resign. Before the Congressional committees, Pasciuto maintained that he had told the Hamiltons the truth in the first place, and had backed away from it because of pressure from DOJ and fear of losing his job. The House Judiciary Committee's Investigative Report had criticized OPR's treatment of the Pasciuto case. The Bua Report rejects this criticism of OPR, opining that Pasciuto only professed to have told the Hamiltons the truth when he was confronted by OPR's recommendation that he be fired for having set out to hurt his superior, Stanton, by making false statements to the Hamiltons.

Pasciuto's conduct, his testimony, and his subsequent recantation are most logically explained by fear: fear that he would not get the promotion he had long sought and fear that he would be fired for telling the truth, as he eventually was. The claim that he made it all up to hurt Stanton is, in light of the corroborating evidence which exists, obviously false, as Pasciuto now acknowledges. For OPR to accept this claim and proceed to recommend the disciplinary action of termination based on it, was a charade-designed to avoid the politically unpleasant task of investigating the more serious wrongdoing that the underlying situation reflected.

In 1987, the year the bankruptcy court released its oral opinion adverse to DOJ, three Presidential $20,000 awards were made to Senior Executive Service employees at DOJ. One award went to Stuart Schiffer, at the time a Deputy Assistant Attorney General in the Civil Division who had been criticized by the bankruptcy court in the INSLAW litigation against DOJ. A second award went to Michael Shaheen, head of OPR and the author of the December 23, 1987 report recommending the termination of Pasciuto. A separate $10,000 award, also one of three in DOJ for the year 1987, was given to Lawrence McWhorter, an EOUSA official who hired Brewer and whose testimony the bankruptcy court found "totally unbelievable." McWhorter was also promoted that year to Director of EOUSA. Thus, more than half -- $50,000 out of a total of $90,000 -- available for distribution to senior executives within DOJ for the year-was distributed to key officials involved in maintaining DOJ's claim of a lack of wrongdoing. This startling fact is not mentioned in the Bua Report.

III. BUA'S INVESTIGATION OF POST-TRIAL LEADS ABOUT A MORE WIDELY- RAMIFIED CONSPIRACY INVOLVING EARL BRIAN AND THE INTELLIGENCE AND LAW ENFORCEMENT AGENCIES OF THE UNITED STATES AND FOREIGN GOVERNMENTS

A. Bua's Investigation of the Alleged Justice Department Distribution of INSLAW's PROMIS Software to U.S. Government Law Enforcement and Intelligence Agencies, Other than the U.S. Attorneys' Offices

A significant number of individuals, some employed by the Department of Justice (DOJ), and others with claimed associations with United States and/or Israeli intelligence, have told INSLAW that its PROMIS software has been implemented throughout the United States Government as the de facto standard database management software system for the U.S. intelligence community.

Among the agencies allegedly using PROMIS as their principal case tracking and workflow management software system are the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), and the U.S. Marshal's Service, all within DOJ itself; and the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the White House National Security Council (NSC).

In January 1992, INSLAW summarized these claims in a written submission to Bua in which INSLAW identified many of the sources of the allegations and also described other informants who were unwilling to be identified unless assured of protection against reprisals.

Since January 1992, INSLAW has been told by still more witnesses, including additional current or former DOJ employees, that these basic facts not only are true, but also are widely known to be true among the Senior Executive Service (SES) career officials in DOJ and the FBI.

Several sources have even claimed that the U.S. intelligence and law enforcement agencies regularly exchange data from their respective PROMIS-based systems via remote access through computer terminals equipped with both traditional communications modems and classified encoding equipment.

At least two journalists, Richard Fricker and George Williamson, have told INSLAW that current or former senior-level CIA officials have confirmed to them that the CIA is using INSLAW's PROMIS software and that the CIA obtained PROMIS from DOJ. In the January 1993 issue of the national computer industry magazine, Wired, Richard Fricker quotes from his interview with an unnamed former senior CIA administrator who claimed to have first-hand knowledge of these facts:

"On Nov. 20, 1990, the Judiciary Committee wrote a letter asking CIA director William Webster to help the committee by determining whether the CIA has the PROMIS software.

The official reply on December 11th: "We have checked with Agency components that track data processing procurement or that would be likely users of PROMIS, and we have been unable to find any indication that the Agency ever obtained PROMIS software."

But a retired CIA official whose job it was to investigate the Inslaw allegations internally told Wired that the DOJ gave PROMIS to the CIA. "Well," the retired official told Wired, "the congressional committees were after us to look into allegations that somehow the agency had been culpable of what would have been, in essence, taking advantage of, like stealing, the technology [PROMIS]. We looked into it and there was enough to it, the agency had been involved."

How was the CIA involved? According to the same source, who requested anonymity, the agency accepted stolen goods, not aware that a major scandal was brewing. In other words, the DOJ robbed the bank, and the CIA took a share of the plunder.

In its September 1992 Investigative Report, The INSLAW Affair, the House Judiciary Committee reported that the CIA finally admitted having a software product called PROMIS but claimed that the

CIA's PROMIS was purchased from a small Cambridge, Massachusetts, software company called Strategic Software Planning Corporation. That company acknowledges marketing and supporting a software product called PROMIS for project management in the construction industry. The CIA also disclosed that the PROMIS software it claims to have acquired from the Cambridge, Massachusetts, company included an "Intelligence Report System," a curious capability for construction industry project management software. This latter CIA disclosure was contained in a letter to Mr. Terry D. Miller, the President of Government Sales Consultants, Inc., on April 5, 1993.

Bua apparently made no effort to test the CIA's denial that its PROMIS software product is based on INSLAW's PROMIS. Neither apparently did he examine the claims that copies of PROMIS have been implemented in the DIA and the National Security Council of the White House.

Bua did make very limited inquiries about the alleged use of INSLAW's PROMIS by the DEA and the FBI within DOJ, and by the NSA. However, Bua does not appear to have brought any of the U.S. Government officials he contacted on this matter before the grand jury or even to have placed them under oath. Neither did Bua have anyone attempt to verify the denials of these officials by comparing the source code in INSLAW's PROMIS with the source code of the suspected cloned software systems.

1. The Implausibility that the Two Principal DOJ Investigative Agencies, the DEA and the FBI, Would Each Have Developed a Complex On-Line Case Tracking and Workflow Management System In-House at Approximately the Same Time

Before discussing Bua's very limited investigation of the DEA, the FBI, and the NSA, it is important to understand that the odds against a federal agency developing internally, without contractor assistance, a complex, on-line software system, such as a case tracking and workflow management system, are very high. The odds against two separate agencies of the same department, such as the FBI and the DEA within DOJ, each developing a complex, on-line case tracking system are even higher. Finally, the odds against two such agencies developing the same kind of on-line case tracking system in-house at virtually the same time, i.e., during 1988 and 1989, are higher still.

Before considering claims from former and current senior DOJ officials that both the DEA and the FBI have been operating INSLAW's PROMIS software since the late 1980's, and before examining apparent inconsistencies, contradictions and possible dissembling in the statements made by DEA and FBI officials on this subject, one should keep in mind that the backdrop for their statements is the highly implausible scenario just described.

2. Indications of Possible Dissembling to Bua by a Key DEA Official

Bua apparently never questioned Carl Jackson, a recently retired DEA deputy assistant administrator, about DEA's alleged use of PROMIS, even though the September 1992 Investigative Report by the House Judiciary Committee identified Jackson as the source of allegations that the DEA had implemented PROMIS.

Bua did, however, ask DEA Deputy Assistant Administrator for Information Systems Phillip Cammera, whether the DEA had implemented a PROMIS-derivative case tracking system. Cammera assured Bua that the DEA had developed in-house its new case-tracking system called Case Status System (CAST). The House Judiciary Committee reported that CAST was developed in the 1988-1989 time-frame.

Cammera told a different story in late 1990, however, when he was contacted by a former colleague, retired DEA Deputy Assistant Administrator Carl Jackson. According to Jackson's contemporaneous account to Mr. and Mrs. Hamilton of INSLAW, Cammera confirmed Jackson's own recollection on the

matter. Jackson's recollection is that the Attorney General of the United States issued "non-negotiable" orders to both the DEA and the FBI in the summer of 1988 to "chuck" their existing case tracking systems and replace them with PROMIS, and that the DEA at least carried out the orders in the 1988-1989 time frame.

Jackson told the Hamiltons in 1990 that he had no way of verifying whether the FBI had implemented PROMIS as the DEA had done, but that he would have been surprised if the FBI had not implemented PROMIS because the Attorney General had made it explicitly clear that the orders were "non-negotiable."

3. Indications of Possible Dissembling to Bua by the FBI

In January 1992, INSLAW informed Bua in writing that it had a source, described as a current senior DOJ career official, who claims to have been told that the FBI did, in fact, at some point in the late 1980s implement PROMIS as its investigative case management system. The FBI calls its system FOIMS (Field Office Information Management System). INSLAW's source, who is not willing to be identified unless there is a guarantee of no reprisal, claimed to have been told directly by John Otto, then one of the top FBI officials, that the current version of FOIMS is based on PROMIS. Otto served as Acting Director of the FBI between the departure of William Webster and the arrival of William Sessions.

Bua interviewed Otto, who had since retired from the FBI, but apparently did not place Otto under oath or bring him before the grand jury. According to Bua, Otto flatly denied the account given to INSLAW by the current senior DOJ career official. Bua simply accepted Otto's non-sworn denial as well as Otto's claim that he is virtually "computer illiterate" and therefore could not have been engaged in the kind of conversation claimed by INSLAW's confidential DOJ source. Had Bua attempted to verify Otto's claim of computer illiteracy, however, he would have learned that it is a highly implausible claim. For example, Otto had direct management responsibility within the FBI for both FOIMS and the nationwide UCR (Uniform Crime Report) system, including the computer software that is at the heart of these systems. Moreover, until the radical FOIMS software transplant of June 1988, the FBI's investigative case management system reportedly suffered from a very poor reputation among FBI agents; Otto would have had management responsibility for correcting a software system problem that may have been hampering the performance of the FBI mission.

In its September 1992 Investigative Report, The INSLAW Affair, the House Judiciary Committee noted its inability to finance the kind of independent analysis required to test the claims that the FBI's FOIMS system is based on PROMIS. The Committee noted, however, that the question "could be resolved quickly if an independent agency or expert was commissioned to conduct a code comparison of the PROMIS and FOIMS systems."

FBI Director Sessions wrote to Bua on June 23, 1992, agreeing to permit such an examination of the FOIMS code, provided that the independent expert was acceptable to the FBI.

Bua chose Professor Dorothy Denning, the Chair of the Computer Science Department of Georgetown University. Bua notes in his report that "the FBI voiced no objection to our choice and processed her security clearance."

In his report, Bua states that he provided to Denning "a copy of INSLAW's FOIMS analysis plan" that detailed how the developers of PROMIS would approach the question of whether the FBI's FOIMS system was, in fact, based on INSLAW's PROMIS.

One of the steps suggested by INSLAW was the use of a software routine in the IBM operating system called SUPERC which is able to do a code comparison at no cost to the Justice Department, and the comparison can be accomplished in approximately four (4) hours. The ease and short time within which a code comparison could have been accomplished makes the failure to conduct such a comparison utterly indefensible.

According to Bua, Denning, however, decided that the source code comparison, recommended by both the House Judiciary Committee and INSLAW, "would be a waste of her time and the government's money."

INSLAW read the report Denning submitted to Bua, which INSLAW obtained from FBI Director Sessions, to try to understand the basis for this very surprising conclusion of Professor Denning.

To begin with, Denning uncritically accepted representations by the FBI about the history and technical characteristics of FOIMS that are contradicted by other FBI disclosures about FOIMS.

For example, Denning accepted as fact that the original 1978 COBOL-language version of FOIMS was replaced by the claimed current NATURAL-language version of FOIMS in 1983. Published data about FOIMS from the national market research firm, INPUT, however, traces the current version of FOIMS to June 1988, rather than to 1983. This timing is consistent with the statements attributed to John Otto by INSLAW's confidential senior DOJ source, and also consistent with Carl Jackson's recollection that the FBI had been ordered in the summer of 1988 to implement PROMIS in place of the then current version of FOIMS.

Denning then uncritically accepted FBI representations that the current version of FOIMS is written in the NATURAL programming language, rather than in COBOL, the programming language used in INSLAW's PROMIS. As is evidenced in the following paragraph and its footnote, this representation also appears to be contradicted by other published data on FOIMS.

"FOIMS now contains over 570,000 lines of code," according to a June 7, 1991 letter from FBI Assistant Director Delbert C. Toohey to Mr. Terry D. Miller, President of Government Sales Consultants, Inc. The claim that an application with 570,000 lines of code is written in the NATURAL programming language is "wrong by an order of magnitude," according to Mr. John A. Maguire, the founder and, until recently, the Chief Executive Officer of Software A.G. of North America, the U.S. company that markets the NATURAL programming language.

It is hard to escape the conclusion that the FBI dissembled to Denning about the year of origin of the current version of FOIMS and about the apparent use of the COBOL programming language in the current version of PROMIS in an attempt to diminish the credibility of the aforementioned claims that the FBI "chucked" its earlier 1983 version of FOIMS, on orders from the Attorney General in the summer of 1988, and replaced it with INSLAW's PROMIS software.

There would be ample reason for both the FBI and the DEA to try to conceal their implementations of PROMIS in 1988 and 1989. In January 1988, the U.S. Bankruptcy Court had issued a permanent injunction against any further unlicensed proliferation of PROMIS by the U.S. Government. If Attorney General Meese issued the claimed orders to the FBI and the DEA in the summer of 1988, it would have been a willful, secret violation of a federal court order by the chief law enforcement officer of the United States.

Denning justified her decision not to do a code comparison between FOIMS and PROMIS primarily on her professed belief that FOIMS and PROMIS each support "entirely different" "application domains," with FOIMS tracking investigations and PROMIS tracking judicial proceedings; and that it is extremely

difficult to convert software that runs one application into software that runs an entirely different application:

Because it is extremely difficult to convert software that runs one application into software that runs an entirely different application, the differences in just the FOIMS and PROMIS application domains show almost conclusively that FOIMS was not derived from PROMIS. ("Analysis of FOIMS and PROMIS," by Dorothy E. Denning, January 10, 1993, Page 1)

The aforementioned conclusions by Denning demonstrate that she is misinformed about the case management application domain in general and about INSLAW's PROMIS case management software in particular. For example, INSLAW's PROMIS software is currently being used for investigative case management by both state and local governments and by nationwide property and casualty insurance companies. Moreover, as INSLAW pointed out to Bua in its written submission of January 1992, the PROMIS software has been successfully applied to case management "application domains" much more removed from PROMIS's criminal prosecution "application domain" than FOIMS's criminal investigation "application domain." INSLAW provided to Bua the examples of the use of PROMIS in a nationwide credit bureau and in land conveyance record keeping in the Republic of Ireland.

Denning's analysis makes no sense whatsoever and is totally inappropriate given the circumstantial evidence. The methodology appears to be designed to rationalize and support a conclusion of non-infringement rather than the conduct of an independent objective analysis of the software programs in question to ascertain the truth.

Bua also addressed the question of the alleged use of PROMIS by the National Security Agency (NSA). Bua did confirm that the NSA has a software product called PROMIS but, once again, simply accepted the apparently unsworn statement of a U.S. Government official that the PROMIS software in question is not a derivative of INSLAW's PROMIS. NSA evidently claims to use a commercial database management system (DBMS) called M204, from Computer Corporation of America, as the "engine" for its PROMIS system, and to have written the application code, i.e., "the car" by analogy, in an unspecified programming language. As with many of the other suspected PROMIS-clone software systems, NSA claims to have developed its PROMIS application code in house. NSA also claims, according to Bua, that its PROMIS tracks information related to its published intelligence reports, called "products" by the NSA. Without explaining the basis for his statement, Bua asserts that such an application is different from the application domain of PROMIS: "NSA's PROMIS serves different purposes . . . ." INSLAW's PROMIS would, in fact, be easily adaptable to tracking either the workflow that produces NSA's intelligence output or the names, places, dates and events in the intelligence reports or both.

Bua also dismisses the possibility that NSA's PROMIS could be based on INSLAW's PROMIS because INSLAW's PROMIS is "used with a different database." Bua is apparently referring to the NSA claim that it uses the commercial M204 DBMS as the engine for its PROMIS application system. The choice of commercial DBMS "engine" for PROMIS, however, has very little relevance to the question of whether the application code is a clone of INSLAW's PROMIS. INSLAW itself has incorporated a variety of different commercial DBMS engines into its PROMIS software. There is no difficulty in believing that NSA might have incorporated the M204 DBMS into its copy of INSLAW's PROMIS or that the FBI may have incorporated the ADABAS DBMS into its copy of INSLAW's PROMIS.

In actuality, NSA's admission that it too uses a software product called PROMIS and that the application domain of NSA's PROMIS has something to do with the tracking of its published

intelligence information lends further plausibility to the claims that virtually every major U.S. intelligence agency is using INSLAW's PROMIS software. Bua, of course, could have easily resolved the question by arranging for a code comparison, but apparently chose not to do so.

Bua's failure to arrange for the code comparisons between INSLAW's PROMIS and its suspected clones in U.S. intelligence and law enforcement agencies, where his federal grand jury's legal authority to conduct such investigations was obvious, is all the more mystifying in light of Bua's published statement that he considered trying to do just such code comparisons with foreign governments. Although a federal grand jury has no authority over foreign governments, Bua made the following statement about what he claimed he considered doing to check out the claimed international distribution of INSLAW's PROMIS:

Theoretically, we could continue our investigation of this subject by contacting various foreign governments, asking them to provide us with the source code to their law enforcement software, and then hiring an expert to compare that software to PROMIS.

B. Bua's Investigation of the Alleged International Distribution of INSLAW's PROMIS

There are a number of individuals, with claimed ties to U.S. and/or foreign intelligence agencies, who have told INSLAW a remarkably consistent story about the alleged international distribution of INSLAW's PROMIS software.

Most of the accounts place Earl W. Brian at the center of the worldwide sales and distribution. Virtually all of the sources claim that U.S. intelligence, law enforcement and national security agencies, including the Central Intelligence Agency, the National Security Agency, the Drug Enforcement Administration, and the White House National Security Council, have supported Brian's worldwide sales and distribution of PROMIS. The accounts are generally consistent about the motivations for the sales: (1) the personal financial gain of Earl Brian and colleagues; (2) the generation of extra funds for financing U.S. covert intelligence operations that the U.S. Congress has declined to finance, such as the mid-1980's covert assistance to the Contras in Nicaragua; and (3) an initiative to penetrate the secret files of foreign intelligence and law enforcement agencies by inducing them to acquire and implement the PROMIS database management software and the necessary computer hardware, after the software and hardware have been secretly modified to permit electronic eavesdropping by the U.S. National Security Agency.

One account even identifies the name of the individual, Lindsey, who was allegedly appointed by the U.S. Government to package INSLAW's PROMIS software for Brian's alleged sales to such foreign intelligence agencies as Egypt's military intelligence agency. Moreover, this source claims that Lindsey was instructed to package the version of INSLAW's PROMIS that the CIA obtained from DOJ and which has been operational within the CIA ever since 1983, tracking U.S. and foreign covert intelligence operations.

Several of the accounts claim an important role for Israeli intelligence in the international distribution of INSLAW's PROMIS, with Israel brokering the sales to countries where it has significant intelligence liaison and influence, such as Singapore, South Africa, Eastern European countries, and Central American countries.

One source claims personally to have participated in at least one meeting in the Justice Command Center at DOJ headquarters between representatives of Israeli military intelligence and representatives of DOJ regarding the use of PROMIS databases in Israel to track terrorists in the Middle East.

An associate of the late journalist Danny Casolaro claims to have seen U.S. Government communications intelligence documents that Casolaro obtained from an employee of the National Security Agency facility in Vint Hills, Virginia, concerning the sales of PROMIS to Israel, Germany, South Africa and other countries, and concerning the flow of the proceeds from some of the sales to bank accounts in the Cayman Islands and in Switzerland. The NSA employee identified by Casolaro's associate was found murdered in his car at National Airport in January 1991.

Many of these sources express fear of reprisal by the United States Government if they were to come forward. The specific types of reprisals, mentioned most often by those who express fear, are loss of security clearances vital to their employment, and criminal prosecution by DOJ under the espionage laws of the United States for disclosing U.S. national secrets.

Bua's consideration of the claims of the sale and distribution of PROMIS to foreign governments was even more superficial than his examination of whether PROMIS is being used by the FBI, the DEA, and the National Security Agency.

The following are examples of the superficiality of the Bua investigation in the area of international distribution: the alleged distribution of PROMIS to Canada and the alleged distribution of PROMIS to Israel, together with the alleged partnership between DOJ and Israeli intelligence in the theft of PROMIS.

1. The Alleged Distribution of PROMIS to Canada

The first information that INSLAW received about the alleged international distribution of INSLAW's PROMIS came from the Government of Canada. In telephone calls and letters in late 1990 and early 1991, the Government of Canada informed INSLAW that it was using its PROMIS software in several departments and agencies and wished to learn whether INSLAW also had available a French-language version of the PROMIS computer software and documentation because there are two official languages in Canada, English and French, and the Canadian Government at that point only had the English version of PROMIS. The Government of Canada eventually disclosed to INSLAW that the Royal Canadian Mounted Police (RCMP) alone was using INSLAW's PROMIS to support 900 separate office locations in Canada.

After the U.S. media began to report on this disclosure by the Government of Canada and on INSLAW's claim that it had neither sold PROMIS to Canada nor authorized others to do so on its behalf, the Government of Canada retracted its earlier oral and written statements to INSLAW. Canada attempted to explain the matter as an unfortunate mistake on the part of the Canadian officials who had originally contacted INSLAW. Ultimately, the Government of Canada settled on the story that the Department of Public Works, not the RCMP, had bought the PROMIS software; that the Department of Public Works had purchased only six copies of PROMIS, instead of 900 copies; and that the Department of Public Works had purchased PROMIS not from INSLAW, but from a small software company in Cambridge, Massachusetts, called Strategic Software Planning Corporation. This Cambridge, Massachusetts, company is the same company that the CIA told the House Judiciary Committee was the source of its PROMIS software. The CIA also subsequently disclosed in an April 5, 1993 letter to Mr. Terry D. Miller, President of Government Sales Consultants, that the PROMIS software it obtained from the Cambridge, Massachusetts, company included an Intelligence Report System, an unlikely subsystem for construction industry project management, whether in Canada or the United States.

The only reference that Bua makes to the Canadian lead is in footnote #90 on page 151 of his report, in which Bua appears to scold the House Judiciary Committee for failing to accept at face value Canada's claims that the original disclosures to INSLAW were simply an unfortunate mistake.

Although INSLAW recognizes that Bua's federal grand jury had no investigative jurisdiction over the Canadian Government, there are other ways for a U.S. investigator to have pursued the Canadian lead. To illustrate this point, we have attached as Exhibit A a memorandum from John Belton, a former stockbroker in Canada who has been attempting to investigate the Canadian PROMIS distribution lead. In his memorandum, Belton first explains the history of his interaction with Earl Brian and Hadron, Inc., and recounts Brian's claims to Belton in early 1981 that Hadron's future revenue stream was to come from Hadron's acquisition of a computer software product for the administration of justice that Brian described as having "great PROMIS(E)." Belton then documents the fact that three reputable Canadian journalists have each confirmed to him, based on their confidential informants among senior current or former RCMP officials, that the RCMP is, in fact, using PROMIS, despite the Government of Canada's public denials. Finally, Belton quotes verbatim from his telephone conversations during the past year with several U.S. businessmen. These conversations document the existence of a business relationship between Earl Brian's Hadron, Inc., and two Canadian computer services companies on a large software sale to the Government of Canada in 1983. Belton's memorandum also summarizes leads that strongly suggest that these business transactions in 1983 involved the Privy Council of Canada and its intelligence and security staff, and the acquisition of PROMIS by the RCMP under the name Police Information Records System (PIRS).

INSLAW told Bua about Belton's research in a written submission to Bua in January 1992, but Bua made no attempt to interview Belton. Instead of attempting to exculpate Earl Brian and Hadron of any complicity in the theft and unauthorized distribution of INSLAW's PROMIS software, Bua could have used the federal grand jury to interrogate the U.S. businessmen whom Belton interviewed, and to compel the production of potentially relevant documents by Hadron, Earl Brian and the U.S. subsidiary of one of the two Canadian companies that were Hadron's partners in the 1983 software sale to Canada.

2. The Alleged Distribution of PROMIS to Israel and the Alleged Partnership of DOJ and Israeli Intelligence in the Theft of PROMIS

Bua devotes only a single paragraph to the alleged distribubut of PROMIS to the State of Israel, even though Bua characterizes this distribution as the "one documented international distribution" by DOJ of PROMIS. Predictably, Bua accepts at face value DOJ's contention that the May 1983 internal DOJ memorandum on the distribution of PROMIS to Dr. Ben Orr of Israel was truthful when it memorialized the distribution to Israel of the earlier, and by-then largely obsolete, public domain version of PROMIS.

The first reason to be skeptical about the truthfulness of the claim that it was the older, public domain version that DOJ gave to Israel is that Israel is both a technologically sophisticated country and a strategically important ally of the United States and, therefore, may not have been satisfied with obtaining the public domain version of PROMIS in May 1983, after that version had already become obsolete.

The second reason for skepticism is that it would have been an admission of wrongdoing for DOJ to have memorialized the distribution of the proprietary version of PROMIS to Israel. In April 1983, just one month before the internal DOJ memorandum on the transfer of PROMIS to Israel, DOJ had stolen

the proprietary version of PROMIS from INSLAW "through trickery, fraud and deceit," according to the findings of the U.S. Bankruptcy Court, affirmed by the U.S. District Court, and confirmed and supplemented by the September 1992 Investigative Report by the House Judiciary Committee. In modifying INSLAW's contract on April 11, 1983, DOJ had committed itself contractually not to distribute the proprietary version outside the 22 largest U.S. Attorneys' Offices.

The third reason for skepticism is that DOJ did not produce for the House Judiciary Committee any of the kinds of records that should have accompanied such an international transfer of computer software. Examples would be an export license from the Commerce Department and documents explaining how it came to be that mid-echelon DOJ officials were conveying a computer software product to a foreign government.

The fourth reason for skepticism is that Israeli intelligence appears to have been working hand-in-glove with DOJ officials during the winter and spring of 1983 on the theft of the proprietary version of PROMIS from INSLAW. DOJ, in fact, sent a very high-level Israeli intelligence official over to INSLAW in February 1983 for a demonstration of the very proprietary version of PROMIS that DOJ misappropriated from INSLAW in April 1983.

In his report, Bua asks "why the DOJ would go to all the trouble of documenting the fact that it was giving a copy of PROMIS to Israel if this was some sort of covert operation." The answer to Bua's evidently rhetorical question is that the DOJ actions vis-a-vis INSLAW in the winter and spring of 1983 were, in fact, apparently part of a covert DOJ-Israeli intelligence operation, and the internal DOJ memorandum from May 1983 can be understood as an integral part of the "trickery, fraud and deceit" of the joint DOJ-Israeli intelligence covert operation.

INSLAW discovered the apparent 1983 DOJ-Israeli intelligence initiative on PROMIS by following up on leads in the September 1992 Investigative Report by the House Judiciary Committee. These leads were, of course, available to Bua too.

In February 1983, DOJ's Brewer telephoned INSLAW President William Hamilton to ask if INSLAW would be willing to provide a technical briefing and demonstration of the PROMIS software to a visiting prosecutor from the Israeli Ministry of Justice. Brewer identified this Israeli visitor as Dr. Ben Orr, the same person to whom DOJ claims to have given the obsolete, public domain version of PROMIS in May 1983, according to the contemporaneous DOJ memorandum. Brewer told Hamilton that the visiting Israeli prosecutor was heading a project to computerize the prosecutors' offices in Israel.

Following through on DOJ's request, INSLAW demonstrated the proprietary version of PROMIS to the Israeli visitor in February 1983. This is the same version of PROMIS, i.e., the version for operation on Digital Equipment Corporation VAX computers, that DOJ stole from INSLAW in April 1983. The Israeli visitor displayed enthusiasm for the proprietary VAX version of PROMIS when INSLAW demonstrated it to him.

After the House Judiciary Committee published its report, INSLAW wrote to the Israeli Ministry of Justice seeking confirmation about whether there had actually been a Dr. Ben Orr employed by the Ministry in February 1983 and, if so, where to find him.

The Ministry replied by letter that there indeed had been a Dr. Ben Orr employed by the Israeli Ministry of Justice in 1983, but that Dr. Ben Orr had since retired and is currently practicing law in Jerusalem.

Working with information supplied to INSLAW by the Israeli Ministry of Justice, the foreign editor of a major Israeli daily newspaper tracked down Dr. Ben Orr at his home in Jerusalem. The foreign editor described Dr. Ben Orr as tall by Israeli standards (5'10-1/2"), thin, having a full head of hair and possessing a dignified demeanor. Dr. Ben Orr also disclosed to the foreign editor that he had been stationed at the U.S. Department of Justice in Washington, DC, for one year under an exchange program, returning to Israel in May 1983 from his one-year stint in Washington, DC. Most curiously, while the Israeli journalist was visiting him in his home, Dr. Ben Orr produced what he claimed was the very PROMIS computer tape given to him by DOJ in May 1983. This is the kind of computer software tape that can only be operated on large and very expensive computers, not the kind of computers one would expect to find in a private residence.

Nothing about this Dr. Ben Orr fits the actual Israeli visitor to INSLAW in February 1983. That visitor was very short in height and quite stocky. He had a deeply receding hairline. His demeanor could not easily be described as "dignified." Moreover, unlike the real Dr. Ben Orr who had already been in Washington, DC, for the better part of one year by the time of the February 1983 visit, the Israeli visitor to INSLAW had come directly from Tel Aviv to Washington, DC, after a brief layover in New York City. In fact, the visitor to INSLAW telephoned from New York City to delay the meeting at INSLAW for 24 hours because he claimed that some friends in New York City were giving a party in honor of his arrival in the United States from Israel.

In retrospect, both DOJ and the visitor himself had deceived INSLAW about the visitor's real identity.

At approximately the same time that INSLAW discovered this apparent DOJ-Israeli subterfuge from a decade earlier, INSLAW received a lead that the name, Dr. Ben Orr, had, from time to time, been used as a pseudonym by Rafi Eitan, a legendary Israeli espionage official. Rafi Eitan was, for example, the Israeli spymaster for Jonathan Pollard, a civilian U.S. Navy intelligence analyst convicted in 1986 of spying for the Government of Israel.

After locating a photograph of Rafi Eitan in a book on the Pollard case, William Hamilton recognized Rafi Eitan as the February 1983 Israeli visitor to INSLAW.

Immediately thereafter, INSLAW arranged for a former INSLAW vice president, who had spent several hours briefing the Israeli visitor in February 1983, and who knew nothing about INSLAW's recent investigation of the matter, to attempt to identify the visitor from a photographic line-up of six reasonably similar looking Caucasian males. INSLAW also arranged for the videotaping of the process. The former INSLAW officer, without hesitation, identified photograph #2 as the photograph of the February 1983 visitor. That, of course, was a photograph of Rafi Eitan.

This identification of Rafi Eitan as the February 1983 visitor to INSLAW obviously increases the credibility of the sworn statements in 1991 by Ari Ben Menashe to the effect that Rafi Eitan obtained a copy of the PROMIS software while on a visit to the United States in the early 1980's, and that Rafi Eitan worked with U.S. intelligence and Earl W. Brian on the international distribution of PROMIS.

Bua, however, dismisses Ben Menashe as a credible witness. Bua contends that Ben Menashe abandoned the clear implications of his sworn affidavits to INSLAW and of the chapter on PROMIS in his recently published book, Profits of War, and cynically confessed to Bua that he had no personal knowledge of Earl Brian's sale of INSLAW's PROMIS software. Moreover, according to Bua, Ben Menashe altered his story to say that Earl Brian was selling a different software product called PROMIS that was developed by the National Security Agency, independently of INSLAW's PROMIS.

Ben Menashe has denied to INSLAW that he ever made any such statements to Bua or Bua's staff. INSLAW has no way of knowing for certain what Ben Menashe said or did not say before Bua's federal grand jury, but it seems unlikely that Ben Menashe would have made statements to Bua that are totally inconsistent with his earlier sworn testimony both to INSLAW and to the House Judiciary Committee, and totally inconsistent with the thrust of his recently published book, Profits of War.

For example, in affidavits given to INSLAW in 1991, Ben Menashe claims to have attended a PROMIS computer software sales presentation by Earl Brian in 1987 to Israeli intelligence agencies in Tel Aviv. Ben Menashe further claims in these sworn statements that Earl Brian stated during this sales presentation that the PROMIS software he was marketing to Israel was the same PROMIS software then operating in DOJ, CIA, NSA and DIA. The DOJ version in 1987 could only have been INSLAW's proprietary PROMIS software installed in the 42 largest U.S. Attorneys' Offices.

Ben Menashe's understanding that it was INSLAW's PROMIS software that Earl Brian and Rafi Eitan were marketing internationally is also clearly evidenced in his book, Profits of War. For example, Ben Menashe claims in the book that Rafi Eitan, Earl Brian, and Washington, DC, attorney Leonard Garment conspired in 1986 or 1987 to deprive INSLAW of the ability to seek redress in the courts for DOJ's theft of the PROMIS software. Specifically, Ben Menashe claims in the book that Rafi Eitan authorized the wire transfer of $600,000 from an Israeli intelligence slush fund to Earl Brian's Hadron, Inc., in Fairfax, Virginia, and that Hadron was thereafter to provide this money to Leonard Garment at the law firm of Dickstein, Shapiro and Morin in order to finance that law firm's separation agreement with Leigh Ratiner. At the time of his firing by Dickstein, Shapiro and Morin, where he had been a partner for 10 years, Ratiner was the lead counsel on INSLAW's PROMIS lawsuit against DOJ, which he had filed only four months before.

In his report, Bua refers to Ben Menashe's published claim of a payoff which, if true, would constitute obstruction of justice. Bua explains, however, that he felt no obligation to investigate the claim because he had decided that Ben Menashe had very little credibility, and because he had assessed the claim as implausible.

Even the most cursory investigation would have contradicted Bua's assertion that this claim by Ben Menashe is implausible. Ratiner, for example, told the Hamiltons in October 1986 that his firing was precipitated by his naming of Deputy Attorney General D. Lowell Jensen in the INSLAW complaint against DOJ.

Moreover, on October 6, 1986, the week before the law firm's Senior Policy Committee met and voted to fire Ratiner, Leonard Garment, a member of the Senior Policy Committee, had had a social lunch with Deputy Attorney General Arnold Burns about the INSLAW case. Garment never disclosed the lunch at the time either to his partner, Leigh Ratiner, or to INSLAW, his firm's client. According to the September 1989 Staff Report of the Senate Permanent Investigations Subcommittee, Burns disclosed that he met with Garment on October 6, 1986 to signal his readiness to negotiate a settlement on the INSLAW case, as well as to criticize the litigation strategy that Ratiner was then pursuing in the INSLAW case.

After Ratiner was fired, the law firm sent INSLAW a letter containing an ultimatum that INSLAW authorize the law firm to negotiate a settlement of INSLAW's claims, on terms proposed in the letter, or else find new litigation counsel. The proposed terms of settlement were payment of at least $1,000,000 of the $2,000,000 that DOJ had withheld for INSLAW's implementation services and the acknowledgement that DOJ was not obliged to pay PROMIS license fees to INSLAW. The proposed terms were strikingly close to Deputy Attorney General Burns' terms, as implied by his August 1986

letter to Leigh Ratiner. INSLAW rejected the ultimatum, found new litigation counsel, prosecuted and won the case against DOJ at trial.

Not only did Garment have an undisclosed communication with DOJ on INSLAW at the time of Ratiner's firing, but Garment was also simultaneously representing the State of Israel in the Rafi Eitan-Jonathan Pollard espionage case. Although INSLAW did not then know it, Rafi Eitan had also apparently collaborated with DOJ on the 1983 theft of PROMIS.

The Government of Israel reportedly hired Garment to help prevent the Rafi Eitan - Jonathan Pollard espionage scandal from spreading and leading to the criminal indictment of other co-conspirators, such as Israeli Air Force Colonel Aviem Sella. The Government of Israel and Rafi Eitan would presumably have had a strong incentive to conceal Rafi Eitan's role as a partner of DOJ in the theft of the PROMIS software. DOJ, for example, granted Rafi Eitan immunity from prosecution for his cooperation in the Pollard espionage case. If it had become publicly known that Rafi Eitan and DOJ had, in fact, been partners in the theft of the PROMIS software and in its illegal distribution internationally, DOJ might have been obliged to recuse itself from the prosecution of the Pollard espionage case. At the very least, such DOJ decisions as granting immunity from prosecution to Rafi Eitan would have come under intense public scrutiny.

Bua could presumably have investigated Ben Menashe's claim by having the grand jury subpoena financial and accounting records of Dickstein, Shapiro and Morin and Hadron, Inc., and by interrogating appropriate individuals before the grand jury. It is difficult to imagine a more serious instance of obstruction of justice in the INSLAW case than that represented by Ben Menashe's published claim. INSLAW has intelligence information that Ratiner's settlement agreement with Dickstein, Shapiro and Morin was in the approximate amount of the alleged wire transfer from Israel and that the funds from which the Ratiner severance payments were drawn were provided from outside the law firm.

C. Bua's Investigation of Leads Relating to the Role of DOJ Officials in Either Facilitating or Covering Up the Use of INSLAW's PROMIS in Intelligence/National Security Programs

1. Ronald LeGrand

In his report, Bua quotes extensively from William Hamilton's December 1989 affidavit about what INSLAW had been told in 1988 by Mr. Ronald LeGrand, when LeGrand was Chief Investigator of the Senate Judiciary Committee.

LeGrand attributed his information to a trusted source whom he said he had by then known for 15 years and whom he described as a senior DOJ career official with a title. The gist of the information that LeGrand passed on from his source is that Presidential appointee D. Lowell Jensen, who headed the Criminal Division from early 1981 until approximately mid-1983, engineered INSLAW's contract disputes with DOJ in order "to get INSLAW out of the way" and be able to award the PROMIS-related case management business to "friends." According to LeGrand, his source identified two senior Criminal Division aides to Jensen as among the several individuals through whom Jensen carried out the alleged scheme: James Knapp, whom Jensen had brought with him from California to be his principal political Deputy Assistant Attorney General in the Criminal Division, and Miles Matthews, a Knapp subordinate whom Jensen had elevated to the position of Executive Officer for the Criminal Division.

According to LeGrand, his source also identified three other senior Criminal Division officials whom he described as knowing the whole story of the alleged Jensen-directed scheme: These officials are

John Keeney, the highest ranking career lawyer in the Criminal Division; Mark Richard, the career Deputy Assistant Attorney General responsible in 1983 for intelligence, national security and international terrorism issues within the Criminal Division; and Philip White, who served under Mark Richard as Director of International Affairs, starting in 1983.

Bua quotes Hamilton's December 1989 affidavit as follows:

Although Richard and White were "pretty upset" about it, the source did not believe that either of them would disclose what they know except in response to a subpoena and under oath. The source added that he did not think that either Richard or White would commit perjury.

Although Bua placed LeGrand before the grand jury, he merely "interviewed" Keeney, Richard and White, who each denied knowing anything. Bua apparently ignored the cautionary warning that Bua himself quoted from Hamilton's December 1989 affidavit: "The source did not believe that either of them [Mark Richard or Philip White] would disclose what they know except in response to a subpoena and under oath."

U.S. Government officials who are given access to classified information are bound by security oaths not to disclose such classified information except to individuals who have both the required security clearance and the "need to know." If a highly classified U.S. Government program, considered vital to the U.S. national security, also included U.S. Government activities that were approved at the highest levels of the United States Government but which constituted violations of the federal criminal laws, the security oaths could operate so as to constrain the ability of U.S. Government officials to volunteer information about the criminal activity embedded within the classified U.S. intelligence/national security program.

Mark Richard's and Philip White's official duties in 1983 would have included collaboration with foreign intelligence and law enforcement agencies on the problem of acts of terrorism against U.S. citizens. During the past decade, the Middle East has been the principal center of terrorism against U.S. citizens, and Israel has been one of the most important allies of the United States in the fight against Middle Eastern terrorism.

If DOJ and the Government of Israel decided to collaborate on an initiative against Middle Eastern terrorism, such collaboration might well have included an effort to obtain whatever information on suspected terrorists exists from the law enforcement and intelligence files of other governments, particularly in the Middle East. If other governments could be induced to implement the PROMIS database management software system in their intelligence and law enforcement agencies, and if both the software system and the computer hardware acquired to operate the software had been secretly modified to permit electronic eavesdropping by U.S. and Israeli intelligence, the joint DOJ-Israeli intelligence initiative against terrorism would have been positioned in such a way as to maximize the potential success of the DOJ-Israeli intelligence joint venture. One of INSLAW's sources, Ari Ben Menashe, claims to have attended a meeting in DOJ's Justice Command Center between DOJ officials and Israeli military intelligence officials, where data on terrorists were exchanged between the representatives of the two governments. Ben Menashe claims that both governments were using the PROMIS software to track terrorists.

As noted in the preceding section, III.B.2., DOJ's PROMIS Project Manager, C. Madison Brewer, sent over to INSLAW in February 1983, under the guise of a visiting Israeli prosecutor, one of the top Israeli espionage officials, Rafi Eitan. Brewer asked that INSLAW provide a technical briefing on and demonstration of PROMIS for this Israeli visitor, which INSLAW did. At the time, Rafi Eitan was Anti-Terrorism Advisor to the Prime Minister of Israel. According to the September 1992 Investigative

Report of the House Judiciary Committee, Brewer testified that Jensen pre-approved virtually every action he took with regard to INSLAW. Although it is unlikely that Brewer, as the computer systems executive for U.S. Attorneys' Offices, would normally have interacted with the top Anti-Terrorism Advisor to the Prime Minister of another country, it is not implausible that Jensen, Mark Richard and Philip White of DOJ's Criminal Division would have had dealings with Rafi Eitan on such subjects as extraditing suspected terrorists from abroad for criminal prosecution in the United States.

An American citizen's oath not to disclose classified information must, under the law, give way to the obligation to testify truthfully when compelled by appropriate legal process to answer questions under oath. Bua's failure either to bring Keeney, Richard and White before his grand jury or to place them under oath, in spite of being warned of the necessity to do so, is difficult to understand. Moreover, it invites concerns about a purposeful effort to avoid placing DOJ witnesses in a position where they would have to choose between perjury and damaging disclosures about the use of a national security initiative to conceal violations of the federal criminal law.

Such concerns are fueled further by Bua's silence in his report about another disturbing development regarding DOJ and LeGrand. In 1991, DOJ sought to block INSLAW's request to the U.S. District Court to re-open discovery. One tactic employed by DOJ was to sponsor a sworn statement by LeGrand purporting to cast doubt on the accuracy of Hamilton's December 1989 affidavit about LeGrand. Unfortunately for LeGrand and DOJ, Senator Sam Nunn had, in the meantime, confirmed the accuracy of Hamilton's statements about LeGrand in a letter to the editor of the New Republic magazine. According to Senator Nunn, LeGrand had repeated the same story that he told the Hamiltons to the staff of the Senate Permanent Investigations Subcommittee chaired by Senator Nunn. Bua's report devoted almost four pages to LeGrand's testimony before the grand jury. All of it has been redacted. From the questions that Bua reports asking DOJ officials, however, it appears that LeGrand's grand jury testimony was consistent with his earlier statements to the Hamiltons. Bua makes no mention of LeGrand's subsequent contradictory statement sponsored by DOJ in 1991 in the U.S. District Court for the District of Columbia.

2. Garnett Taylor and the Alleged DOJ Destruction of Classified Intelligence/National Security Documents Relating to INSLAW

INSLAW urged Bua to subpoena Garnett Taylor, a former DOJ security officer, before Bua's grand jury and to interrogate him about several matters, including the alleged destruction by DOJ officials of classified national security/intelligence documents relating to INSLAW. As with LeGrand, Taylor's testimony before the grand jury has been redacted from Bua's report, but it is possible to draw some inferences about Taylor's grand jury testimony from Bua's narrative about his interview with James Walker, Taylor's former DOJ supervisor.

Bua's narrative about his interview with James Walker implies that Walker's former subordinate, Taylor, testified before the grand jury that Walker had instructed Taylor to retrieve classified intelligence/national security documents relating to the INSLAW case from the files of a Civil Division attorney who had left DOJ, and then to destroy those documents. There is also the further implication in the Bua Report that Taylor also alleged that Walker later cancelled the instructions to Taylor and, thereafter, carried out the retrieval and destruction of the classified INSLAW documents himself.

In its September 1992 Investigative Report, the House Judiciary Committee reported that over 50 sensitive files or documents relating to INSLAW had disappeared from the Civil Division's litigation files while the House Judiciary Committee sought access to the Civil Division's files on INSLAW.

Bua states that the House Judiciary Committee's report contains the suggestion that a missing Civil Division file on INSLAW "may have been destroyed because it contained documents that implicated DOJ officials in a criminal conspiracy relating to INSLAW."

Bua disposes of this suspicion by describing it as unfounded. Bua accomplishes this by accepting at face value the account given by Sandra Spooner, the lead Civil Division litigation counsel on INSLAW. Bua does confirm that one file of privileged documents is missing, but instead of conducting an investigation, Bua snidely insinuates that the House Judiciary Committee's investigators could have stolen it: "Even the Committee investigators had limited access to the storage room and therefore the missing file. By no means do we suggest that one of the investigators stole the file."

According to Bua, James Walker confirmed that Garnett Taylor's official responsibilities, when he worked for Walker, included "responsibility for shredding classified documents once a determination was made that the documents need not be retained." Bua also claimed that "Walker stated that it was conceivable that Taylor had been dispatched to take care of a file cabinet belonging to a DOJ employee who had left."

When it came to Taylor's apparent claim that Walker had "reassigned Taylor to another task and handled the disposition of the documents in the file cabinet himself," Bua accepts at face value Walker's statement that he had "no recollection" of such an incident. If Walker were to recollect such an incident, of course, Walker might well expose himself to criminal prosecution for obstruction of justice. Bua also uncritically accepts Walker's statement that "there were never any INSLAW documents in any of the safes he controlled or any of the safes he knew about."

Walker is DOJ's Special Security Officer with responsibility for administering the facility on the 6th floor of DOJ headquarters that houses Sensitive Compartmented Information.

Walker's apparently unsworn denials of Taylor's sworn statements were good enough for Bua. INSLAW has other U.S. Government witnesses, however, who claim to know about the incident that Walker claims he cannot recollect. One of these witnesses claims to have been an eyewitness to at least part of the incident. These witnesses are unwilling to be identified unless given guarantees that there will be no reprisals.

It is difficult to understand why Bua would not have insisted on inspecting the Sensitive Compartmented Information Facility (SCIF) administered by James Walker to determine whether the SCIF vault houses materials relating to the PROMIS software and/or INSLAW, whether in the form of documents, microfiche or remotely-located computer-based PROMIS data accessible by computer terminals within the confines of the SCIF. It is difficult to justify Bua's failure to attempt to resolve empirically the apparent discrepancy between the grand jury testimony of Taylor and the unsworn "failure to recollect" statements by Walker. Bua presumably could have brought Walker and other DOJ security officers before the federal grand jury, and also subpoenaed DOJ's records on the destruction or relocation of classified intelligence and national security records.

D. Bua's Investigation of Leads about Earl W. Brian, the Principal Alleged Private Sector Co-Conspirator of DOJ and U.S. Intelligence Agencies in the Theft and Distribution of PROMIS

As noted in Section III.B., Bua's Investigation of the Alleged International Distribution of INSLAW's PROMIS, most of the accounts of the foreign sales and distribution of PROMIS place Earl W. Brian at the center of the activity.

Bua subdivides his investigation of this question into two parts: the Claimed Direct Evidence of a Conspiracy and the Claimed Circumstantial Evidence of a Conspiracy.

1. Bua's Investigation of the Claimed Direct Evidence of a Conspiracy

Bua begins this section by claiming to have interviewed individuals whom INSLAW and others have identified as having personal knowledge of the activities of Earl Brian in connection with the distribution of PROMIS software. Bua then addresses in particular Michael Riconosciuto, Ari Ben Menashe, and Charles Hayes.

(a) Michael Riconosciuto

Michael Riconosciuto served as Director of Research during the early 1980's for the Joint Venture between the Wackenhut Corporation of Coral Gables, Florida, and the Cabazon Band of Mission Indians in Indio, California. The Wackenhut Corporation reportedly regularly conducts highly classified contract work for U.S. intelligence and law enforcement agencies. Riconosciuto claims that Earl W. Brian and Peter Videnieks, DOJ's PROMIS Contracting Officer, were frequent visitors to the Joint Venture in Indio, California, because the Joint Venture was modifying the PROMIS software so that Earl Brian could sell it to foreign governments for their intelligence and law enforcement agencies.

(1) Bua's Claimed Inconsistencies in Riconosciuto's Various Statements about When and from Whom He Claims to Have Obtained the PROMIS Software

Bua claims to have found inconsistencies among several sworn statements by Riconosciuto, relating both to the number of copies of the PROMIS software that Riconosciuto claims to have received and to the identification of the party or parties from whom Riconosciuto claims to have received the PROMIS software.

In both his affidavit to INSLAW and his sworn statement to the House Judiciary Committee, Riconosciuto is apparently consistent in claiming to have received a single copy of PROMIS, as well as in claiming to have obtained PROMIS from Earl Brian and Peter Videnieks, the Justice Department's PROMIS Contracting Officer. In testimony at his criminal trial in Takoma, Washington, in January 1992, however, Riconosciuto made references to receiving several copies of PROMIS and to receiving those copies from Dr. John P. Nichols, the Administrator of the Joint Venture.

These accounts may not, in fact, be in conflict. Riconosciuto may have focused his testimony to the House Judiciary Committee and to INSLAW on the one incident that combines the proprietary version of PROMIS and direct evidence of DOJ complicity in its dissemination; i.e., the chain of custody from DOJ Contracting Officer Peter Videnieks to Brian to Riconosciuto. This is the kind of evidence that both INSLAW and the House Judiciary Committee were seeking. Riconosciuto's testimony about receiving the proprietary version of PROMIS from Earl Brian and Peter Videnieks would not necessarily mean that Riconosciuto did not receive other copies of PROMIS from individuals such as John P. Nichols. Moreover, Riconosciuto's testimony to INSLAW and the House Judiciary Committee would not exclude the possibility that Riconosciuto also obtained copies of the earlier public domain version of PROMIS for modification under the auspices of the Joint Venture. This could also account for Riconosciuto's apparent inconsistencies about the years when he claims to have worked on PROMIS, which Bua noted as additional reasons to question Riconosciuto's credibility.

Bua also apparently does not realize that INSLAW had another DOJ customer, in addition to the Executive Office for U.S. Attorneys, to which it delivered the proprietary version of PROMIS: DOJ's Land and Natural Resources Division. That DOJ division has been subscribing to INSLAW's PROMIS software support services since January 1982 and receiving proprietary enhancements to PROMIS

pursuant to the Annual INSLAW Software Support Agreements ever since. These standard INSLAW Software Support Agreements legally bar DOJ from copying or disseminating the proprietary enhancements in the same way as INSLAW's standard PROMIS license agreement does. Bua's failure to understand this point also led to the following statement by Bua that is patently untrue:

It is undisputed that INSLAW did not produce a copy of enhanced PROMIS to DOJ until April 20, 1983.

(2) Bua's Investigation of Riconosciuto's Claim to Have Worked on PROMIS under the Auspices of the Wackenhut/Cabazon Joint Venture

Bua states that his investigators "interviewed a number of people whom Riconosciuto identified as having knowledge of the activities involving PROMIS at the Cabazon Reservation," including Robert Nichols and Peter Zokosky, and that his "interviews" led him to the tentative conclusion "that there were absolutely no activities undertaken by Wackenhut, Riconosciuto, or the Cabazons that had anything to do with PROMIS or any other software."

Robert Nichols and Peter Zokosky have each reportedly had extensive employment in classified U.S. Government intelligence and national security activities. Nichols, in fact, testified under oath at a civil trial in Los Angeles in 1993 about his claimed 18 year association with the CIA. Each presumably took an oath not to disclose voluntarily any classified information that he may have acquired as part of his U.S. Government work, except to individuals who possess both the requisite security clearances and the "need to know." The only way to overcome that sworn obligation to silence is to use compulsory legal process, such as a federal grand jury, to require such an individual to answer highly detailed questions under oath. Bua apparently did not do this.

If Riconosciuto is telling the truth about modifying INSLAW's PROMIS software with a "trap door" for electronic eavesdropping by the U.S. Government, the U.S. intelligence agency whose vital interests would be most clearly implicated in any such project is the National Security Agency (NSA).

That the Joint Venture was carrying out contract R&D for the National Security Agency and that Michael Riconosciuto was personally involved in such work can be inferred from statements and actions of Robert Nichols and Peter Zokosky.

Robert Nichols told Mr. and Ms. Hamilton about an incident in the early 1980's when a colonel from the NSA Headquarters at Fort George G. Meade, Maryland, allegedly flew out to the Cabazon Reservation for the day for the single purpose of assuring that FBI agents, investigating a triple homicide of the Vice Chairman of the Cabazon Tribe and two associates, did not attempt to probe the classified U.S. Government work being performed under the auspices of the Wackenhut-Cabazon Joint Venture.

Robert Nichols also told the Hamiltons about having accompanied Michael Riconosciuto on a visit to a classified NSA contractor facility in the Silicon Valley and to have observed Riconosciuto's apparently unrestricted and unescorted access to both the contractor's employees and to offices within the contractor facility that were prominently marked as off-limits to any unescorted visitors.

Robert Nichols also told the Hamiltons about frequent alleged telephone conversations at the Wackenhut-Cabazon Joint Venture between Michael Riconosciuto and Bobby Inman. Bobby Inman served in the early 1980's consecutively as Director of the National Security Agency and Deputy Director of the Central Intelligence Agency.

For his part, Peter Zokosky sent Mr. and Ms. Hamilton an excerpt from Public Law 86-36 of 1959 on NSA, with the following words highlighted:

Except as provided in subsection (b) of this section, nothing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, or any information with respect to the activities thereof …

(3) Bua's Attempt to Discredit Riconosciuto Based on Bua's Own Misinformation about the Wackenhut Corporation, and Bua's Failure to Investigate Riconosciuto's Claim that He and Earl Brian Worked Together in 1980 as Contract Employees of Wackenhut

Riconosciuto claims that he and Earl Brian made a trip to Iran in 1980 as independent contractors with a subsidiary of the Wackenhut Corporation known as the Wackenhut Research Corporation.

Bua states that the Wackenhut Research Corporation does not exist. While that statement is true for 1993, what is important, is that the Wackenhut Research Corporation did exist in 1980, as a subsidiary of the Wackenhut Corporation, according to the 1980 Annual Report for the parent company. Rather than diminishing Riconosciuto's credibility, the reference to a subsidiary that has not been in existence for a decade but that was in existence when Riconosciuto claims it was, actually enhances Riconosciuto's credibility.

Bua further criticizes Riconosciuto for failing to produce, as he promised Mr. and Ms. Hamilton in a May 1990 telephone conversation memorialized by the Hamiltons, copies of Internal Revenue Service (IRS) 1099 independent contractor forms for his and Earl Brian's claimed contract work for the Wackenhut Research Corporation in 1980. Bua's federal grand jury presumably could have issued a subpoena to the IRS and/or to the Wackenhut Corporation for the records in question and, in so doing, determined whether Earl Brian and Michael Riconosciuto each worked for the same unit of the Wackenhut Corporation at the same time in 1980. Because Earl Brian has repeatedly denied Michael Riconosciuto's claims, Bua could have used this opportunity to determine empirically whether it is Michael Riconosciuto or Earl Brian who is lying.

(4) Bua's Investigation of Riconosciuto's Claimed Involvement with Earl Brian and Peter Videnieks

Bua states that Sam Cross, who was Chief of Police in Indio, California, in the early 1980's, "made a point of staying aware of what was going on at the Cabazon Reservation during that period, and that he never heard any mention of the name Earl Brian." If the NSA could send a colonel 3,000 miles across the United States to make certain that FBI agents investigating a triple homicide near the reservation did not find out anything about the classified projects undertaken by the reservation's Joint Venture, there is no reason to believe that a local police chief would fare any better in gaining access to classified Joint Venture projects. Bua's reliance on Sam Cross' ability to know about such classified activities would, therefore, appear to be misplaced.

Bua quotes John P. Nichols, the Director of the Wackenhut-Cabazon Joint Venture, as being "emphatic that Riconosciuto's allegations concerning PROMIS are fabricated" "and that he had never heard of Earl Brian or any of his companies prior to Riconosciuto's allegations." Although Bua details Riconosciuto's criminal history, he fails to mention that John P. Nichols was incarcerated in the mid-1980's following a conviction for contracting with professional "hit men" for a number of assassinations. The disclosure of such information is relevant for anyone trying to determine how much weight to give to John P. Nichols' statements. Moreover, Bua apparently did not place Nichols before the grand jury or even under oath.

Bua states that Brian's presence at the September 10, 1981 weapons demonstration, as reported in the September 1992 Investigative Report of the House Judiciary Committee, "would be significant"

because Brian "has steadfastly denied having been to the Cabazon reservation, or ever having met Riconosciuto or any one affiliated with the Cabazons."

The Indio Police Department conducted surveillance of the September 10, 1981 weapons demonstration and recorded both Earl Brian and Michael Riconosciuto as attending, with Earl Brian arriving as a passenger in a Rolls Royce automobile driven by Wayne Reeder, whom Bua describes as a real estate developer. Bua reports that Wayne Reeder claims that Earl Brian was not present with him on September 10, 1981. Wayne Reeder's character and integrity are, however, currently under challenge by the United States Government. Reeder was indicted for insurance fraud by the U.S. Attorney's Office in Rhode Island in June 1993. Moreover, Bua apparently did not place Reeder before the grand jury or even under oath.

Bua also credits Earl Brian's denial that he was at the September 10, 1981 weapons demonstration in Indio, California, and notes that Brian's denial is supported by various documents, including Brian's personal calendar and expense records purporting to show Earl Brian as being on the East Coast of the United States on the day in question. Bua further notes that the notations on some of these documents were made by one of Brian's subordinates.

Earl Brian's veracity and the reliability of documents furnished by Earl Brian are open to question, however, as the result of Brian's decision not to contest a civil lawsuit filed by the U.S. Securities and Exchange Commission (SEC) on June 28, 1993 against Earl W. Brian and several former subordinates at Financial News Network (FNN). In a 60-page civil complaint filed in U.S. District Court for the District of Columbia, the SEC charged Brian with securities fraud, with causing the creation of fraudulent documents, with executing and backdating fraudulent documents, with directing a subordinate to execute a fraudulent and backdated document, and with making materially false or misleading statements. Brian settled his part of the SEC lawsuit the very day it was filed by agreeing to be bound by a permanent injunction not to commit securities fraud in the future, and not to make or cause others to make a materially false or misleading statement in the future.

Bua determined that Riconosciuto is not to be believed, but that Earl Brian and Peter Videnieks are "credible witnesses, both in their demeanor and in the substance of their statements."

In reaching that conclusion, Bua apparently did not speak to the former FNN Director of Administrative Services, Ms. Margaret Wiencek. INSLAW, however, not only spoke to Margaret Wiencek but also obtained from her a copy of a sworn statement she gave recently to the U.S. Customs Service Internal Affairs investigators who were interviewing Wiencek about Peter Videnieks. Videnieks left DOJ in September 1990 to become Director of Operational Procurement at the U.S. Customs Service.

In her sworn statement, Wiencek describes a file at FNN Headquarters that contained copies of correspondence to and from Dominic Laiti, then Chairman of Earl Brian's Hadron, Inc., relating to the PROMIS software and INSLAW, Inc. Wiencek also claims personally to have taken telephone messages at FNN Headquarters from Peter Videnieks and Michael Riconosciuto during the first quarter of 1987. That is the quarter when INSLAW filed a pleading in U.S. Bankruptcy Court for the District of Columbia concerning the covert DOJ effort in 1985 to force INSLAW into Chapter 7 liquidation.

(b) Ari Ben Menashe

Section III.B.2., Bua's Investigation of the Alleged International Distribution of INSLAW's PROMIS, contains a detailed analysis of Bua's statements about Ari Ben Menashe's claims and alleged claims.

That analysis is not repeated in this section. One example of Ben Menashe's credibility regarding the international distribution of PROMIS is his sworn statement in 1991 about the pivotal role played in this area by an Israeli espionage official, Rafi Eitan. In early 1993, INSLAW was able independently to corroborate Eitan's collaboration with DOJ in the 1983 theft of PROMIS.

Bua states that Ben Menashe's claims have been "convincingly denied by two witnesses whose statements we believe," . . . "Earl Brian, under oath, and Robert McFarlane, in a telephone interview."

As noted earlier, Brian's acceptance on Monday, June 28, 1993 in U.S. District Court for the District of Columbia of the permanent injunction sought by the U.S. Securities and Exchange Commission (SEC) not to engage in securities fraud in the future, raises valid questions about the veracity and integrity of Earl Brian, one of the witnesses upon whom Bua relied.

Although Bua detailed Riconosciuto's criminal record, he failed to mention that the other witness upon whom he relied in dismissing Ben Menashe's claims, Robert McFarlane, also has a federal criminal record, arising from his conduct in the Iran/Contra affair as National Security Advisor to the President of the United States. McFarlane's conviction was for lying.

© Charles Hayes

The Bua Report contains several redacted pages relating to the grand jury testimony of Charles Hayes.

INSLAW, of course, has no way of knowing what Charles Hayes said or did not say before Bua's grand jury, but Hayes executed an affidavit on November 30,1992 claiming that on or about August 26, 1992 he had appeared to testify before the grand jury in Chicago; that he gave testimony concerning his "direct knowledge of the commission of felonies" "related to the INSLAW affair"; that he submitted a list of names of witnesses who have direct knowledge of the INSLAW affair and supplied the addresses and telephone numbers of those witnesses; and that none of the witnesses had been contacted as of November 30, 1992.

Hayes had previously told Mr. and Ms. Hamilton that he met with Earl Brian, Richard Secord and Oliver North in Sao Paulo, Brazil, in the mid-1980's while those three individuals were purchasing weapons for the Contras in Nicaragua, and Brian was marketing INSLAW's PROMIS software to the Government of Brazil.

(d) Richard Babayan

Bua apparently did not bring before the grand jury or even interview Richard H. Babayan, who provided an affidavit to INSLAW on March 22, 1991, concerning a PROMIS software sales presentation by Earl W. Brian and Richard Secord to the Government of Iraq during 1987. In his affidavit, Babayan also claims that a Miami, Florida, resident, Sarkis Saghanolian, assisted Earl Brian in completing the sale of the PROMIS software to Iraq "for use primarily in intelligence services, and secondarily in police and law enforcement agencies."

INSLAW furnished a copy of this affidavit to Bua in January 1992, but Bua apparently never interrogated Babayan; Richard Secord, named by both Babayan and Hayes as a Brian colleague during PROMIS marketing forays abroad; or Sarkis Saghanolian.

2. Bua's Investigation of the Claimed Circumstantial Evidence of a Conspiracy

(a) The September 1983 Fund-Raising Trip to New York City by Earl Brian, Dominick Laiti, and Paul Wormeli

Bua quotes from William Hamilton's December 1989 affidavit about Earl Brian, Hadron Chairman Dominick Laiti, and Hadron Executive Paul Wormeli gathering in New York City in September 1983 to raise equity capital from the Wall Street Investment Bank, Allen and Company. In his affidavit, Hamilton quotes Wormeli as stating that the equity capital was to finance Hadron's expansion in criminal justice information systems. In his affidavit, Hamilton also quotes Wormeli's former secretary, Marilyn Titus, as stating that the purpose of the trip was "to raise capital to buy the court software."

Bua quotes Titus as stating that "she does not believe she ever told William Hamilton that the purpose of the 1983 fund raising trip was to raise capital to obtain PROMIS or INSLAW." (Emphasis added.) Titus was apparently not placed under oath, and she was also apparently asked to confirm a statement that is different from the one that Hamilton claims that Titus made.

Bua states that Laiti insisted the equity capital was intended to be used by Simcon, Hadron's police information systems subsidiary in 1983. Bua also claims that "Wormeli essentially confirmed what Laiti told us." What Wormeli had told INSLAW, however, is that he was shocked to discover that Laiti was seeking to raise $7 million in equity capital for criminal justice information systems because Simcon could only use $2 million. Wormeli told INSLAW that he never was told how the other $5 million was going to be used.

Wormeli also told INSLAW that during the September 1983 fund raising visit to Allen and Company, he and Laiti not only met with Mark Kesselman, a Vice President, but also met with Herbert A. Allen, Jr., then the Chief Executive Officer of Allen and Company. Wormeli told INSLAW that at the time of the 1983 visit, Allen and Company owned about $5 million of Hadron's common stock.

Bua apparently did not subpoena records of Allen and Company about the Hadron fund raising effort in 1983, and did not interview Herbert A. Allen, Jr. What Bua did do is have a trans-Atlantic telephone interview with Kesselman in Switzerland. Kesselman claims that he could not even remember the name of the company seeking the funds. With a $5 million equity investment in Hadron, Herbert A. Allen, Jr., presumably, would have been able to remember the name of the company and possibly important details concerning the intended use of the proceeds. With such a substantial investment in Hadron in 1983, Allen and Company may also have had documents relating to Hadron's planned expansion in criminal justice information systems that could explain the $5 million for which Wormeli cannot account.

(b) The 53rd Street Ventures Connection

(1) Patricia Cloherty's Alleged Claims about Earl Brian

On Thursday, May 5, 1988, the CBS Evening News with Dan Rather broadcast an unusually long, approximately seven minute, segment on the INSLAW affair, highlighting the alleged role of Earl W. Brian in the DOJ theft of the PROMIS software.

The annual meeting of the National Association of Venture Capitalists was at that very time taking place in Washington, DC, and both Richard D'Amore and Patricia Cloherty were in attendance. D'Amore was on INSLAW's board of Directors and was a partner in Hambro Venture Capital, then the lead venture capital investor in INSLAW. Cloherty and her husband, Daniel Tessler, controlled 53rd Street Ventures, which also then had an equity investment in INSLAW. Cloherty also had by this time become the Chief Operating Officer of Alan Patricoff and Associates, a very large venture capital firm

in New York City that had controlled 53rd Street Ventures until 1984, when Cloherty and Tessler took it over.

On Friday, May 6, 1988, Richard D'Amore visited William Hamilton at INSLAW's offices in Washington and told him that he had seen Patricia Cloherty at the venture capitalists conference and had mentioned to her the previous evening's telecast on INSLAW and the alleged role of a venture capitalist by the name of Earl Brian. According to D'Amore, Cloherty responded by stating, in words or substance, that she "knew all about Earl Brian's role in the INSLAW case."

According to William Hamilton's desk calendar for Tuesday, May 10, 1988, Hamilton telephoned Patricia Cloherty at Alan Patricoff and Associates. Without disclosing to her that D'Amore had recounted his conversation with Cloherty, Hamilton asked whether Earl Brian or his InfoTechnology, Inc., venture capital firm had ever done any deals with Alan Patricoff and Associates or 53rd Street Ventures through early 1984 when Patricoff and Associates managed 53rd Street Ventures. Cloherty claimed not to know and did not commit to try to find out when Hamilton asked that she do so. Hamilton did tell Cloherty about the alleged role of venture capitalist Earl Brian as a partner in the DOJ corruption against INSLAW, and Cloherty did not disclose to Hamilton that she knows Earl Brian and, in fact, had served on a board of directors with him during the 1980's, disclosures that Cloherty made to Bua.

In his December 1989 affidavit, Hamilton quotes the statement about Earl Brian that Cloherty allegedly made to D'Amore in May 1988, without providing the aforementioned background details about the CBS Evening News story being telecast while Richard D'Amore and Patricia Cloherty, each with venture capital investments in INSLAW, were in Washington, DC, for a national conference of venture capitalists.

According to Bua, both Cloherty and D'Amore denied having had such a conversation in May 1988, and D'Amore denied having told Hamilton about such a conversation.

Bua apparently did not place Cloherty or D'Amore under oath. Bua never asked Hamilton for further information, such as some of the contextual details described above, that Bua could have used in trying to refresh the recollections of Cloherty and D'Amore or, alternatively, in trying to impeach their testimony. Moreover, Bua could have easily verified the CBS telecast on Brian and INSLAW occurring while Cloherty and D'Amore were together in Washington, DC, at a venture capital conference.

Instead of doing such work, however, Bua uncritically accepted Cloherty's and D'Amore's non-sworn denials and then irresponsibly used those denials to support his conclusion that Hamilton's sworn representations cannot be relied upon.

Bua quotes Daniel Tessler as stating that "his wife, Patricia Cloherty, has no knowledge of Earl Brian . . . ." Bua then quotes Patricia Cloherty as not only admitting that she knows Earl Brian but also admitting to have served with Earl Brian during the 1980's on the Board of Directors of the National Association of Small Business Investment Companies. 53rd Street Ventures is, in fact, a Small Business Investment Company.

Bua should also have wondered how Hamilton could have correctly associated Patricia Cloherty with Earl Brian, when Cloherty's own husband professes not to have known of any such association, unless Hamilton's highly plausible account of his May 1988 conversation with D'Amore in Washington, DC, is true and accurate.

(2) Daniel Tessler's Non-Sworn Denial of Hamilton's Sworn Statement about Tessler Demanding Voting Rights to the Hamiltons' Common Stock on the Eve of INSLAW's Chapter 11 Bankruptcy Filing

In his December 1989 affidavit, Hamilton states that Daniel Tessler appeared at INSLAW in December 1984, just several weeks before INSLAW was finally forced to file for Chapter 11 bankruptcy protection, and gave William Hamilton an ultimatum to turn over to Tessler by the close of business that day the voting rights to Mr. and Ms. Hamilton's controlling interest in INSLAW. Otherwise, neither 53rd Street Ventures nor Hambro Venture Capital would even attempt to help INSLAW raise new capital to avoid financial collapse, according to Hamilton's sworn statement about Tessler's ultimatum.

Bua reports that Tessler denied Hamilton's sworn testimony, and Bua apparently accepts Tessler's non-sworn denial without any further investigation. Someone who cannot remember his wife's business relationship with Earl Brian may not, however, have the most reliable memory. Moreover, if Tessler was acting secretly on behalf of Earl Brian when he sought the voting rights of the Hamiltons' controlling interest in INSLAW, he may have violated the Federal Banking Criminal Statute, 18 U.S.C. § 215 because Tessler was then an officer of a Small Business Investment Company (SBIC). 53rd Street Ventures, as an SBIC, is a "financial institution" as defined in section 103 of the Small Business Investment Act of 1958. Section (2) of 18 U.S.C. § 215 makes it a federal crime for anyone who

"as an officer, director, employee, agent or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;"

It may be unrealistic to expect Tessler to admit to Bua conduct that could arguably expose Tessler to prosecution under 18 U.S.C. § 215.

(3) Bua's Investigation of Hamilton's Claims about Jonathan Ben Cnaan of 53rd Street Ventures

In his December 1989 affidavit, Hamilton recounts a conversation with Jonathan Ben Cnaan of 53rd Street Ventures. According to Hamilton, Ben Cnaan disclosed to Hamilton, in October 1983, a meeting that Ben Cnaan had had in September 1983 in New York City with someone whom Ben Cnaan described at the time as a businessman with ties to the highest level of the Reagan Administration. Ben Cnaan said that the businessman had told 53rd Street Ventures about Hadron's acquisition overture to INSLAW in April 1983; about his absolute determination to gain control of the PROMIS software for use in federal government contracts; about the contract disputes having arisen in INSLAW's contract with DOJ following INSLAW's refusal to sell out to Hadron; and about the fact that those disputes would never be able to be resolved as long as INSLAW refused to let the unnamed businessman use PROMIS for federal government contracts.

Bua describes at length his efforts to find Ben Cnaan. He states that he would have liked to have talked with Ben Cnaan but then implies that it is not that important because Earl Brian has already denied being the businessman depicted in the statements attributed to Ben Cnaan, and, moreover, Hamilton does not actually quote Ben Cnaan as claiming that the unnamed businessman was Earl Brian.

Earl Brian, Dominic Laiti, and Paul Wormeli were in New York City the very same month that Ben Cnaan had the meeting with the unnamed businessman. Brian was, according to the Bua Report, on the Board of Directors of the National Association of Small Business Investment Companies. 53rd Street Ventures is a Small Business Investment Company.

Conducting a sworn interrogation of Ben Cnaan, under the circumstances, would have been extremely important. If Ben Cnaan were to identify either Earl Brian or Dominic Laiti as the businessman to whom he referred in his October 1983 meeting with William Hamilton and if Ben Cnaan would confirm the essence of the statements attributed to him in Hamilton's affidavit, it would directly tie Earl Brian and Hadron into the DOJ use of contract disputes with INSLAW as leverage to help Hadron wrest control of the PROMIS software.

Ben Cnaan apparently visited New York City in early 1993, from Israel where he currently lives. With a modest effort, INSLAW was able to discover Ben Cnaan's current address and telephone number in Israel:

Ha'Adamit #6 Herzlia, Israel Telephone 258-7787.

© The Systems and Computer Technology, Inc. (SCT) Connection

Bua professes not to understand how INSLAW's "allegations about SCT would fit into INSLAW's theory of a Hadron conspiracy." Bua further states that "there would be no apparent reason for Brian or Hadron to be attempting to control INSLAW (through SCT) in 1986."

SCT launched a "hostile takeover" bid for INSLAW in May 1986, the very month that DOJ issued its Request for Proposals for the Uniform Office Automation and Case Management Project, code-named Project EAGLE. This was the largest procurement in DOJ history. INSLAW believes that the PROMIS software was intended by DOJ to be the uniform case management software for the Project EAGLE computers. INSLAW further believes that Earl Brian's Hadron, Inc. was originally slated to receive the Project EAGLE contract award by DOJ as a sweetheart gift from Brian's long-time friend, then Attorney General Meese. INSLAW believes that Brian and DOJ abandoned the plan to use Hadron as the vehicle for the contract in the fall of 1985, following the failure of the covert DOJ effort to force INSLAW's liquidation.

INSLAW believes that, by January 1986, Brian and DOJ had substituted Tisoft, Inc. as the vehicle for the planned sweetheart Project EAGLE award. That month, Tisoft was awarded a $30 million computer systems contract by Meese's Justice Department, and Tisoft also amended its articles of incorporation to permit the sale of common stock to new outside owners who would then have majority control of the company.

Margaret Wiencek, the former Director of Administrative Services at Earl Brian's Financial News Network (FNN), claims that Patrick R. Gallagher of Tisoft, Inc. was also someone who regularly telephoned the chairman's office at Earl Brian's FNN Headquarters in Los Angeles during at least 1987.

INSLAW believes that DOJ encouraged the SCT hostile takeover bid for INSLAW in 1986 in order to preclude INSLAW from seeking redress in the courts for DOJ's 1983 theft of the PROMIS software and to remove INSLAW as an obstacle to the planned award of Project EAGLE to Tisoft and the planned implementation of PROMIS on the Project EAGLE computers.

Bua placed quotation marks around the word "hostile" in referring to SCT's effort to purchase INSLAW in early 1986, suggesting that he doubted INSLAW's characterization of the SCT initiative as a "hostile takeover" initiative. Through third-party discovery in 1987, however, INSLAW obtained an internal SCT document prepared in conjunction with SCT's investment bankers in December 1985. That SCT document uses the words "hostile takeover" to describe the then-planned effort to acquire INSLAW.

E. Bua's Investigation of the Death of the Investigative Journalist, Danny Casolaro

1. Evidence that Casolaro Broke the INSLAW Case the Week He Died

In August 1990, Mr. Terry D. Miller, President of Government Sales Consultants, Inc., encouraged a free-lance investigative journalist by the name of Danny Casolaro to consider investigating DOJ's theft of the PROMIS software. Casolaro and Miller had previously worked together on the publication of a newsletter that focused, at least in part, on federal government computer procurement fraud, and Miller thought Casolaro had the ideal background for the INSLAW investigation. Miller is also a friend of Mr. and Ms. Hamilton.

On Saturday, August 10, 1991, approximately one year after Casolaro began his full-time, self-financed investigation of the INSLAW affair, Casolaro was found dead in the bathtub of his room in the Sheraton Hotel in Martinsburg, West Virginia. Casolaro's wrists on both arms had been slashed, with almost a dozen slashes, some deep enough to have severed the tendons. The local Martinsburg, West Virginia, authorities ruled Casolaro's death a suicide.

In the late afternoon of the Monday before his death, i.e., on August 5, 1991, Casolaro had telephoned Miller to tell him that the INSLAW case, to which Miller had directed him one year earlier, had proved to be the story of his lifetime.

Later that night, Casolaro telephoned Robert Booth Nichols in Los Angeles. Nichols has a background in CIA covert intelligence operations and, in the course of about 100 hours of telephone conversations with Casolaro during the previous 12 months, Nichols had served as a sounding board for Casolaro's probe of the clandestine world of U.S. and foreign intelligence operations. According to Nichols' statement to William Hamilton, Monday night's telephone call from Casolaro was the first time in their year-long colloquy when Casolaro was not seeking any information. Casolaro told Nichols that he had just come back from a meeting with a source on the INSLAW case, that he now knew everything there was to know about the INSLAW case, that the Hamiltons were going to be quite excited, and that Casolaro had to return right away for another meeting with the same source to collect the final piece of documentary evidence. Nichols described Casolaro that night as "euphoric."

Also Monday night, Casolaro met with Ann Klenk, a fellow journalist and long-time friend, at a pub frequented by Casolaro. According to Klenk, Casolaro said he had just returned from West Virginia, where he had met with a source on the INSLAW case, and that he had already broken the INSLAW case, but that he had to return right away to West Virginia to pick up a final piece of the evidence.

The next day, Tuesday, August 6, 1991, Casolaro telephoned William Turner in Winchester, Virginia, and told him that he would be having a follow-up meeting later in the week in Martinsburg, West Virginia, with some employees from the office of Senator Robert Byrd of West Virginia. Casolaro described one of the employees as a relative of Ms. Barbara Videnieks and further described that person as his source on INSLAW. According to Turner, Casolaro asked him to remove two numbered and sealed packets of Casolaro's INSLAW documents from Turner's home safe and bring them the 20-mile distance to Martinsburg, West Virginia, on the afternoon of Friday, August 9, 1991 so that Casolaro could show them to Ms. Videnieks' relative. Ms. Barbara Videnieks is the Chief of Staff to Senator Robert Byrd. Her husband, Peter Videnieks, was the DOJ Contracting Officer on INSLAW's PROMIS contract. According to Michael Riconosciuto, Peter Videnieks was also a close associate of Earl Brian in Brian's alleged international sales and distribution of PROMIS. Ms. Margaret Wiencek, former Director of Administrative Services at Financial News Network (FNN) Headquarters in Los Angeles, claims, in sworn testimony, to have taken telephone messages from Peter Videnieks in 1987

in the office of the FNN Chairman. Earl Brian was Chairman of FNN in 1987. Both Videnieks and Brian have, however, denied under oath even knowing each other.

On Wednesday, August 7, 1991, Casolaro socialized with a friend by the name of Ben Mason. Casolaro told Mason that he had broken the INSLAW case but had to return to Martinsburg, West Virginia, the following day for a final meeting with some individuals with whom he had just recently met.

On Thursday, August 8, 1991, Casolaro traveled to Martinsburg, West Virginia, and checked into the Sheraton Hotel.

On Friday afternoon, August 9, 1991, Turner met with Casolaro in the parking lot of the Sheraton Hotel and delivered both sealed packets of Casolaro's INSLAW documents, as well as documents relating to Turner's own case. Turner's own case involved alleged federal contract fraud at Hughes Aircraft, where Turner had apparently been employed as a flight simulation engineer. Casolaro reconfirmed to Turner that his meeting with Ms. Barbara Videnieks' relative and one other employee from Senator Byrd's office was still on for Friday night. Casolaro warned Turner "to watch his rear," and made arrangements to meet Turner the following day, Saturday, in the Washington, DC, area to celebrate.

On Saturday morning, August 10, 1991, Casolaro was found dead in the bathtub of his Sheraton Hotel room.

Turner has contemporaneous handwritten notes about his conversations with Casolaro on Tuesday and Friday of the week Casolaro died. Bua neither questioned Turner nor sought copies of his notes.

Bua never questioned Terry Miller or Ben Mason either. Although Bua or one of his Assistant U.S. Attorneys spoke by telephone with both Ann Klenk and Robert Nichols, no one from Bua's team ever attempted to probe their knowledge of Casolaro's investigative work in the days preceding his death.

Notwithstanding these facts, Bua stated that he was persuaded from his review of the investigative records of the local Martinsburg authorities "that Mr. Casolaro's death was fully and fairly investigated and that the conclusion of the local authorities that his death was a suicide was amply supported by the facts."

Bua details various items of physical evidence from Casolaro's hotel room that he claims "strongly supports the conclusion of the local authorities that the death was a suicide." Bua fails, however, to take any cognizance of the fact that none of Casolaro's investigative working papers was found in the hotel room. Casolaro always carried such files with him, was seen leaving Washington for Martinsburg with the files, and was seen in Martinsburg with the files. Moreover, the two packets of Casolaro's sensitive INSLAW documents and the Hughes aircraft documents that Turner claims to have personally delivered to Casolaro in Martinsburg, West Virginia, Friday afternoon were also missing.

Riconosciuto claimed in a sworn affidavit, prior to his arrest in early 1991, that Peter Videnieks had threatened him with prosecution and conviction if he testified about the INSLAW matter. Casolaro was evidently having a secret follow-up meeting in Martinsburg, West Virginia, with someone in Senator Byrd's office who is related to Peter Videnieks' wife, Barbara.

In a telephone conversation one weekend shortly before his death, Casolaro read to William Hamilton detailed biographical data about various employees in Senator Robert Byrd's office and told Hamilton that he believed he could break the INSLAW case by penetrating Senator Byrd's office.

Casolaro had told the Hamiltons of other connections to Peter and Barbara Videnieks and Senator Robert Byrd's office during the final two months of his life. On June 12, 1991, for example, Casolaro said that he had spoken by telephone with Peter Videnieks at Videnieks' office at the U.S. Customs Service but that Videnieks had declined to answer Casolaro's questions about INSLAW and had, instead, referred Casolaro to Charles Ruff, the Washington, DC, attorney whom DOJ was paying to represent Peter Videnieks in the House Judiciary Committee's investigation of the INSLAW case.

Casolaro also told the Hamiltons about a series of meetings he had had during the final month of his life with a covert intelligence operative of the U.S. Army Special Forces whose name is Joseph Cuellar. According to Casolaro, Cuellar, during a purportedly chance encounter at Casolaro's neighborhood pub in mid-July 1991, asked Casolaro what line of work he was in and, upon hearing Casolaro describe his journalistic investigation of the INSLAW case, asserted that he knew all about INSLAW because Peter Videnieks was one of his closest friends. According to Casolaro, Cuellar also stated that his ex-wife worked for Ms. Barbara Videnieks in Senator Byrd's office. Casolaro told the Hamiltons that Cuellar had later persuaded Peter Videnieks to meet Casolaro and discuss the INSLAW case with him. The Hamiltons never heard whether the meeting actually took place, however.

Lynn Knowles, a friend of Casolaro's, attended at least two of the meetings between Casolaro and Cuellar. Bua never sought to interview Knowles, and there is no reason to suspect that Bua sought to interrogate Cuellar either. She told William Hamilton that she and Cuellar had spoken by telephone several days after Casolaro's death and that Cuellar said the following to Knowles, in words or substance:

What Danny Casolaro was investigating is a business. If you don't want to end up like Danny or like the journalist who died a horiffic death in Guatemala, you'll stay out of this. Anyone who asks too many questions will end up dead.

2. The Question of the FBI's Role in the Investigation of Casolaro's Death

Bua also absolves DOJ of having exerted any influence on the investigation executed by the West Virginia authorities, "beyond the normal and expected assistance law enforcement agencies typically provide one another." Bua further describes this exception as "assistance and information sharing between the local authorities and the regional FBI office…"

Bua apparently did not look into the FBI's role in the execution of a search warrant in William Turner's home in September 1991 or in the refusal, long after criminal charges against Turner were dismissed, to return to Turner documents taken from Turner's home safe. About six weeks after Casolaro's death, Turner, who has one artificial leg, was arrested and charged with the robberies of two local area banks. That same month, the FBI assisted local authorities in executing a search warrant in Turner's home. The official inventory of the search lists the seizure of a spiral notebook that Turner claims contains detailed notes about his collaboration with Casolaro and that Turner says was taken by the FBI from Turner's home safe. This is the same home safe where Turner claims he stored sealed packets of Casolaro's sensitive documents on INSLAW.

The local authorities dropped the bank robbery charges against Turner after keeping him in pre-trial incarceration in the county jail for over six months. FBI "enhancements" of the photographs taken by hidden bank cameras reportedly established that Turner was not the robber. At a preliminary hearing, an eye witness to one of the robberies, a bank teller, also reportedly acknowledged that Turner could not have been the robber she saw run out the bank because his artificial leg would obviously have prevented Turner from running.

Turner claims that the local FBI office in Winchester, Virginia, has refused to return the documents seized from his home in September 1991, on the grounds that the Martinsburg, West Virginia, authorities do not wish to have those documents returned. On May 26, 1993, Turner filed a motion in the U.S. District Court for the Western District of Virginia in Harrisonburg, Virginia, seeking to compel the FBI to return his documents and other personal property. The motion is pending.

In its September 1992 Investigative Report, the House Judiciary Committee stated that it had deposed for two days FBI Special Agent Thomas Gates, who had been discussing the INSLAW investigation with Casolaro during the final four weeks of Casolaro's life. Gates evidently testified that Casolaro had told him about a specific threat on his life, shortly before Casolaro was found dead. Gates also testified to the House Judiciary Committee that the FBI may have jurisdiction to investigate the possible murder of Casolaro under the Interstate Transportation in Aid of Racketeering (ITAR) statute.

Bua, apparently, inexplicably failed to interview FBI Special Agent Thomas Gates. Notwithstanding this failure, Bua makes the following statement in his report on page 247:

A private citizen's death, whether a suicide or a murder, is outside the normal jurisdiction of the federal government. Instead, it is a state or local matter. Accordingly, we find nothing unusual in the fact that DOJ did not undertake to investigate Casolaro's death.

F. Bua's Comments about the Alleged Sham Contract Disputes

In Section III,C.1., INSLAW details Bua's seemingly superficial investigation of specific allegations from a credible source that Presidential appointee D. Lowell Jensen engineered INSLAW's contract disputes in the spring of 1983 in order to force INSLAW out of business so that DOJ's PROMIS-based business could be awarded to political friends and supporters of the then current administration. As demonstrated in this section, there is an obvious contrived quality to each of the two major contract disputes and additional evidence suggestive of a key role for Jensen in either engineering the dispute, e.g., the dispute about the amount of fee owed INSLAW in light of the termination for convenience of the word processing part of the contract, or in perpetuating a wholly contrived dispute, e.g., apparently refusing to allow DOJ attorney Janis Sposato to act independently in seeking to resolve the computer time-sharing billing dispute on the merits.

In Section III,D.2(3), INSLAW details Bua's failure to interrogate Jonathan Ben Cnaan about what he was told in September 1983 by someone he would only identify as a "businessman with ties to the highest level of the Reagan Administration" who was determined to wrest control of PROMIS from INSLAW for use in federal government contracts. Ben Cnaan, in a meeting with William Hamilton in October 1983, quoted the unnamed businessman as boasting that INSLAW had been hit with contract disputes at DOJ right after INSLAW refused to be purchased by Earl Brian's Hadron and further boasting that the contract disputes would prove insoluble unless and until INSLAW agreed to allow the businessman to use the PROMIS software in federal government contracts.

Either of the two aforementioned investigative leads could, if properly pursued, have produced external evidence in support of INSLAW's claim that the contract disputes that arose in the spring of 1983 were sham disputes concocted in order to drive INSLAW out of business so that DOJ could award the PROMIS case management software business to political friends and supporters.

Bua stated that he "did not believe it was appropriate . . . to attempt to determine the esoteric government cost accounting issues . . . ." underpinning those contract disputes, but that he did examine the disputes sufficiently in order to be able "to determine whether the DOJ's positions and

actions leading up to the parties' disputes were so clearly baseless or without foundation as to give rise to a reasonable inference that the origins of the disputes must have been motivated by improper purpose and a desire to force INSLAW into baniam tcy."

1. DOJ's Refusal, Apparently at the Behest of Presidential Appointee D. Lowell Jensen, to Resolve, on the Merits, Its Main Contract Dispute with INSLAW, a Dispute That is Self-Evidently Contrived

Bua's inquiry led him to conclude that "the government's positions about overcharging and cost overruns were founded upon legitimate, good faith concerns and the desire to protect the government's interests, and not out of the desire to bankrupt INSLAW or to force its liquidation."

Bua bases his conclusion in part, at least, on the fact that both DOJ's Audit Staff and the Defense Contract Audit Agency (DCAA) agreed that INSLAW's computer time-sharing costs under its PROMIS Implementation Contract were "essentially unauditable." Moreover, Bua quotes DCAA as finding that DOJ overpaid INSLAW for the computer time-sharing services by approximately $590,000.

In examining the criticism that INSLAW's computer time-sharing costs are "essentially unauditable," it is important to position that criticism in context: The U.S. Government has never had any problem auditing the costs in INSLAW's computer cost center, and there has never been any material disagreement between DOJ and INSLAW on the "actual and allowable" costs in the computer cost center. For the peak year of INSLAW's PROMIS time-sharing services under the DOJ contract, i.e., Fiscal Year 1983, the computer cost center had slightly more than $2.5 million in "actual costs, allowable under U.S. Government contracts." (This amount includes $344,229 of Fiscal Year 1982 computer center costs that DOJ "carried forward" into Fiscal Year 1983 for reimbursement purposes.)

Almost all of the business of INSLAW's computer center in 1983 was with various U.S. Government customers, and, in light of the fact that INSLAW and the U.S. Government have always been in basic agreement about the amount of "actual and allowable" computer center costs that fiscal year, one might reasonably ask what is the problem.

The problem is what subset of the $2.5 million in actual and allowable computer center costs during Fiscal Year 1983 should be allocated to one particular U.S. Government contract, i.e., DOJ's PROMIS Implementation Contract.

When DOJ and INSLAW negotiated the PROMIS Implementation Contract during the winter of 1982, DOJ officials told INSLAW that DOJ wished to pay only for successful use of INSLAW's computer time-sharing services by U.S. Attorneys' Offices as measured by such indices as the number of successfully completed update or inquiry transactions and the number of devices used to access the time-sharing service by the U.S. Attorneys' Offices. DOJ told INSLAW, further, that it would not reimburse computer time-sharing costs except in relationship to such measures of successful use of the time-sharing service by U.S. Attorneys' Offices.

Based on these DOJ guidelines, INSLAW and DOJ negotiated a time-sharing billing formula that both parties believed would fairly compensate INSLAW for its expected computer time-sharing costs by measuring not costs, but the aforementioned indices of successful use of the PROMIS time-sharing service. Once the parties to a contract negotiate the terms for the computer time-sharing billing formula or algorithm, the vendor writes a piece of computer software that automatically keeps track of the very indices that the parties have agreed will serve as the basis for the billings. Conversely, the piece of the computer software is not written to track factors that are not to be taken into consideration in computing the computer time-sharing billings such as the subset of the computer

center's actual and allowable costs that are allocable on any given day to the PROMIS Implementation Contract.

DOJ has consistently refused to acknowledge the fact that the reason that the subset of INSLAW's actual and ndeewable computer center costs that should properly be allocated to the PROMIS Implementation Contract cannot be verified through a standard U.S. Government cost- incurred audit is that the time-sharing billings were not supposed to be either based on incurred costs or subject to an incurred cost audit.

In 1985, Deputy Attorney General D. Lowell Jensen arranged, at INSLAW's request, an effort to negotiate a settlement of the computer time-sharing billing question and the other disputes under the contract. Janis Sposato, who chaired the negotiations for DOJ, insisted on DOJ's right to try to reconstruct, by rule of thumb, the estimated subset of actual and allowable computer center costs for Fiscal Year 1983 that were actually incurred in performance of the computer time- sharing service under the PROMIS Implementation Contract. DOJ and INSLAW had about 10 negotiation sessions in 1985, with most of the time spent on trying to reconstruct the actual time- sharing costs for 1983. DOJ and INSLAW had already managed to establish the reasonableness of most of the Fiscal Year 1983 computer time-sharing billings under the DOJ contract when Sposato and INSLAW discovered another cost category that was sufficiently large by itself to remove any remaining question about the billings under the negotiated formula. In other words, the negotiations had led to the inescapable conclusion that DOJ would not have overcompensated INSLAW for computer time-sharing costs during Fiscal Year 1983 if DOJ had honored its Negotiated Agreement on computer time-sharing billings under that contract.

Instead of disposing of the computer time-sharing question, however, Sposato announced shortly thereafter, in words or substance, as follows: "My management upstairs is unwilling to allow me to make any more concessions." At the time, Sposato reported directly to the Assistant Attorney General for Administration, whose offices were on the same floor as Sposato's. That individual, however, reported, in turn, directly to Deputy Attorney General Lowell Jensen, whose offices were several floors upstairs. INSLAW inferred then and infers now that Sposato was alluding to Deputy Attorney General Lowell Jensen's unwillingness to permit a resolution on the merits of the Fiscal Year 1983 computer time-sharing issue because it was DOJ's main "fig leaf" for its wrongful withholding of payments under the contract.

Although Sposato did not disclose it to INSLAW, DOJ already knew that INSLAW's computer time-sharing billings for Fiscal Year 1983 were reasonable. In 1987, INSLAW obtained through discovery an internal DOJ memorandum authored in 1981 by the Assistant Attorney General for Administration, purporting to estimate what it should cost for a vendor in Washington, DC, to provide 12 months of PROMIS computer time-sharing services to the very same U.S. Attorneys' Offices supported by INSLAW in Fiscal Year 1983. DOJ's "should cost" estimate was slightly higher than INSLAW's billings for Fiscal Year 1983 under the Negotiated Agreement for time-sharing billings. The DOJ memorandum also explicitly anticipated the need for the very kinds of contractor technical support personnel that DOJ had ignored in determining that INSLAW's computer time-sharing costs were excessively high.

How, then, did DCAA decide that DOJ had overpaid INSLAW for such services? Number one, DOJ strenuously resisted INSLAW's repeated requests before the Department of Transportation Board of Contract Appeals (DOTBCA) to produce to INSLAW and to DCAA DOJ's records and notes on the 1985 so-called negotiations on this very subject. DOJ never produced the documents, and the DOTBCA judge declined to order DOJ to produce them. Number two, DCAA, in applying its own rules of thumb

without talking to INSLAW, made some very significant mistakes of fact. Although Bua makes no mention of it, INSLAW filed before DOTBCA a sworn affidavit from the senior DCAA auditor on INSLAW acknowledging such material errors of fact in the DCAA audit and stating that DCAA "should have considered the materiality of such reallocations of cost once it had been advised of the issues above and of the cost impact to the PROMIS Implementation Contract for Fiscal Year ended 30 September 1983."

The total costs under the three-year PROMIS Implementation Contract that are in dispute between the DCAA audit report and INSLAW are about $1.2 million. The computer time-sharing billing question alone accounts for all but $100,000 of that amount.

2. Presidential Appointee D. Lowell Jensen Leads DOJ Effort to Withhold Payment of INSLAW's Profit by Blaming INSLAW for DOJ's Own Delays in the Word-Processing Part of the INSLAW Contract

DCAA and INSLAW also have a disagreement on one other issue: the amount of fee or profit payable to INSLAW under the PROMIS Implementation Contract. As with the negotiated time-sharing billing algorithm, the amount of fee earned is not properly subject to an incurred cost audit. INSLAW is claiming $1,145,000 in fee, and DCAA has recommended $687,000 in fee, a difference of $458,000.

The amount of fee earned by INSLAW is related primarily to the legal effect on "target costs" under INSLAW's contract of the DOJ's February 1984 termination, for the convenience of the government, of the word processing part of the PROMIS Implementation Contract. In other words, it is primarily a legal question, not an incurred cost audit question. As with the computer time-sharing billing issue, however, an honest decision by DOJ would expose the truth about the contrived and wrongful basis for the withholding and, thereby, deprive DOJ of its other principal "fig leaf."

DOJ had required the winning vendor to implement in each of the 70 smaller U.S. Attorneys' Offices, on government-furnished word processing machines, a rudimentary case management software capability. In February 1984, Presidential appointee D. Lowell Jensen approved a DOJ decision to terminate the word processing part of the contract for the convenience of the government. The legal effect of a convenience termination is that the contractor bears no financial responsibility for the partial termination.

In December 1983, however, Jensen had secretly pre-approved a plan for DOJ Contracting Officer Peter Videnieks to terminate INSLAW's PROMIS Implementation Contract, apparently in its entirety, for INSLAW's alleged default on the word processing part of the contract. INSLAW did not find out about this until it obtained DOJ documents in litigation discovery in 1987.

What prompted the Jensen decision to transform an apparent, planned complete termination for default into a partial termination for convenience was an internal February 1984 legal opinion by DOJ's internal contract administration counsel, William Snider. Snider pointed out that DOJ could not sustain a case against INSLAW for delay in the word processing phase of the contract because DOJ itself had been late in selecting the word processing hardware for this portion of the contract, a prerequisite to INSLAW's ability to begin the work, and because DOJ had failed thereafter to negotiate with INSLAW a new, legally binding schedule for the word processing part of the contract.

DOJ Administrative Counsel William Snider authored the internal legal opinion in the month of February 1984, when the Senate Judiciary Committee commenced its hearings on the confirmation of Edwin Meese as Attorney General of the United States, and when Judiciary Committee member, Senator Max Baucus, sent a team of General Accounting Office auditors into DOJ on an emergency investigation of INSLAW's PROMIS Implementation Contract. Senator Baucus' office had received a

tip from a DOJ whistleblower to the effect that as soon as Meese was confirmed as Attorney General, he and Jensen planned to award a "massive sweetheart contract" to unnamed "friends" to implement the PROMIS software in every litigative office of DOJ.

Jensen's wrongful role in the word processing dispute is even more obvious than his role in the computer time-sharing billing dispute. DOJ has been unwilling, however, to admit the increasingly inescapable fact that DOJ officials concocted the contract disputes in order to get leverage over INSLAW in DOJ's theft of the PROMIS software.

G. Bua's Investigation into Possible DOJ Complicity in the Failure of Judge Bason to Obtain Reappointment to the U.S. Bankruptcy Court

A Merit Selection Panel, headed by U.S. District Judge Norma Johnson, was appointed in 1987 to make recommendations to the D.C. Judicial Council, as well as to the ultimate appointing authority, the U.S. Court of Appeals for the District of Columbia, about the ranking of various applicants, including incumbent Judge George F. Bason, Jr., for the new, 14-year term of sole U.S. Bankruptcy Judge for the District of Columbia.

The Merit Selection Panel gave its number one ranking to a DOJ attorney, S. Martin Teel, who had no judicial experience and very little bankruptcy law experience. Teel had represented the U.S. Government before Judge Bason in the INSLAW bankruptcy proceeding in an attempt in 1987 to convince Judge Bason to force INSLAW into liquidation.

On September 18, 1987, while the Merit Selection Panel was sitting, Judge Bason announced his oral ruling in the adversary proceeding of INSLAW, Inc. v. the U.S. Department of Justice. In that ruling, Judge Bason found that DOJ officials "took, converted, stole" INSLAW's proprietary PROMIS computer software product "through trickery, fraud and deceit." S. Martin Teel argued for INSLAW's liquidation before Judge Bason approximately a month after the aforementioned oral ruling.

1. The Merit Selection Panel Determined that It Would Be Inappropriate to Permit Judge Bason's Inslaw Ruling to Influence Its Evaluation of Bason

Bua reports that the Panel members agreed that the Inslaw opinion should not influence their evaluation of Judge Bason and that based on his inspection of the notes of the Panel and of the Judicial Council, "There is no indication that the Inslaw ruling played any role in the process."

Bua noted that the Merit Selection Panel extended invitations to both DOJ and to INSLAW counsel Charles R. Work to appear before the Panel to discuss their respective views of Judge Bason and that INSLAW counsel Charles Work did make such an appearance, but that DOJ declined the opportunity. Bua then makes the following statement:

It would be odd, however, if DOJ had foregone an opportunity to fully express its views of Judge Bason in an ex-parte proceeding with a pledge of confidentiality, in favor of a covert mission to unseat him. We found no evidence of any such covert effort by DOJ.

In view of Bua's aforementioned statement that Panel members did not consider it appropriate for Judge Bason's adverse ruling against DOJ to influence their evaluation of Bason's candidacy, DOJ would have been well advised not to have proceeded openly. As is explained hereafter, Bua found that DOJ did, in fact, wish to unseat Judge Bason, and that one DOJ attorney, at least, conveyed his negative view of Judge Bason directly to the Chair of the Merit Selection Panel.

2. DOJ Civil Division Attorney Stuart Schiffer, Currently the Acting Assistant Attorney General for the Civil Division, Assumes the Leadership Role to Separate the Inslaw Case from Judge Bason

According to the House Judiciary Committee's September 1992 Investigative Report entitled The INSLAW Affair, Deputy Attorney General Arnold Burns, in approximately July 1987, asked the Civil Division to "consider initiatives for achieving a more favorable disposition" of the INSLAW adversarial proceeding against DOJ being tried before Judge Bason. The Committee also reported that, based on Burns' request, Stuart Schiffer, Deputy Assistant Attorney General in the Civil Division, initiated research by Civil Division attorneys in July 1987 "to investigate the possibility of having Judge Bason disqualified from the INSLAW case on the grounds of bias."

3. Schiffer Had a Long-Term Friendship with the Chair of the Merit Selection Panel

In addition to being the chief DOJ official concerned with finding a way "to achieve a more favorable disposition" by separating the INSLAW case from Judge Bason," Schiffer also had a long-term personal relationship with Judge Norma Johnson, the Chair of the Merit Selection Panel. For example, according to Bua, "Judge Johnson and Stuart Schiffer were office partners when both began their legal careers as staff attorneys with DOJ in the early 1960's," and "they have stayed in touch over the years, mostly when Judge Johnson has called Schiffer to recommend one of her clerks for employment with DOJ."

According to Bua, "Judge Johnson did call Schiffer during the merit selection process," but Judge Johnson was only seeking "Schiffer's candid appraisal of two candidates from DOJ who were in the panel's short list." According to Bua, Judge Johnson told Schiffer "that she was not calling about Bason and that she did not want to hear anything about Bason," and that "Schiffer said nothing about Bason."

4. After Discussing the Inslaw Case with Schiffer, Another DOJ Attorney Contacts the Chair of the Merit Selection Panel about INSLAW

According to Bua, Schiffer did make known "his displeasure with Bason" to another DOJ attorney, Royce Lambreth, who subsequently turned over directly to Judge Johnson a copy of a transcript of Judge Bason's September 25, 1987 oral ruling against DOJ, using "a tone of voice that allowed Judge Johnson to surmise Lambreth's negative view of Bason's ruling." Shortly thereafter, Lambreth was confirmed as a U.S. District Judge for the District of Columbia.

According to Bua, "although Judge Johnson presented the opinion without commentary, at least one Panel member perceived that the opinion was presented, not because it revealed great wisdom and scholarship but because it reflected unfavorably on Judge Bason's suitability for the bench."

According to Bua, Judge Lambreth cannot recall where he obtained the transcript of Judge Bason's oral ruling in the INSLAW case. Retired Assistant U.S. Attorney Froman "has no recollection of being asked to obtain or of obtaining the INSLAW ruling," although she was the subordinate to Lambreth with responsibility for maintaining the file on INSLAW within the U.S. Attorney's Office for the District of Columbia.

Until the Bua investigation, Judge Johnson, according to the Bua Report, had maintained to the Senate Permanent Investigations Subcommittee and possibly also to the House Judiciary Committee "that she had no contacts with DOJ regarding Judge Bason and she received no negative input from DOJ regarding the INSLAW case."

Bua states that "the Senate and the House Reports both found no evidence that anyone from DOJ had attempted to influence the selection process." According to the Bua Report, however, the failure of Judge Johnson to recall the communication from then DOJ Attorney Royce Lambreth would have deprived the two investigations of any knowledge of just such an attempt.

"It was the only judicial opinion that was circulated," according to the Bua Report. During his tenure on the U.S. Bankruptcy Court, Judge Bason reportedly had approximately 70 published opinions.

Bua absolves Royce Lambreth of any questions of impropriety in regard to his previously undisclosed communications with the Chair of the Merit Selection Panel about his criticism of Judge Bason's ruling against DOJ in the INSLAW case. Bua separately absolves Lambreth whether he was acting in his then capacity as a DOJ attorney or in his then future capacity as a U.S. District Court judge. Bua was apparently ready to absolve Lambreth of wrongdoing irrespective of any final determination of the facts about his motivation.

5. The Attempt by Judge Bason's Predecessor, Roger Whelan, to Disparage Bason to the Merit Selection Panel for the Administrative Disarray in the Clerk's Office That the Chief Judge of the U.S. District Court Traces to the Tenure of Whelan Himself

The House Judiciary Committee stated as follows in its September 1992 Investigative Report: "According to [then Chief U.S. District] Judge Robinson, Judge George Bason inherited a mess (administratively) in the clerk's office when he took over from former Judge Roger Whelan."

According to the House Judiciary Committee's report, Chief Judge Robinson also stated that "Judge Bason was getting the system under control" . . ." by May 1986, and so reported that fact in the Judicial Conference report for the D.C. Circuit that year." The Committee also quotes Mr. Martin Bloom, who took over as clerk of the D.C. Circuit Bankruptcy Court in 1986, to the effect that by "the latter part of 1987, administratively, I think the court was up to par."

With Chief Judge Aubrey Robinson blaming the administrative problems in the bankruptcy court clerk's office on the tenure of former Judge Roger Whelan and with both Judge Robinson and the new clerk, brought in by Judge Bason, agreeing that the administrative problems had been cured at the latest by the latter part of 1987, it is curious that the Merit Selection Panel had concluded that the administrative problems still existed and that they were the fault of Judge Bason. Even more disturbing is the evidence from the Bua Report that the Panel reached this conclusion in large part on the basis of ex-parte communications from Judge Whelan himself:

One lawyer who commented negatively about Judge Bason to the Panel was Roger Whelan, the bankruptcy judge who preceded Bason.

What is relevant is the perception that Judge Bason was a poor administrator. That perception, accurate or not, was made known to the Panel at least by former Judge Whelan.

We note only that the Panel's apparent perception that Judge Bason was an inefficient administrator was not totally baseless, and, more importantly, was not attributable to a DOJ campaign against Bason. The Panel had heard that criticism at least from former Bankruptcy Judge Whelan . . . .

The Bua Report makes it clear that Whelan's ex-parte criticisms of Judge Bason to the Merit Selection Panel were influential in the Panel's deliberations about Judge Bason's suitability for reappointment. This fact makes it most unusual that the Panel failed to interview any of the individuals most responsible for the administration of the court about Whelan's allegations that Judge Bason was a poor administrator. According to the House Judiciary Committee's September 1992 Investigative Report, the Panel failed to interview Judge Bason, Bankruptcy Court Clerk Martin Bloom, the former bankruptcy court clerk, or Chief Judge Robinson about Whelan's representations concerning Judge Bason's responsibility for the administrative problems. Moreover, according to the Committee, the Panel also failed to examine any statistics in order to determine empirically the administrative condition of the court.

6. At the Time of Whelan's Effort to Discredit Judge Bason to the Merit Selection Panel, Whelan Was Representing One of INSLAW's Creditors, a Creditor That Appeared to Have Been Acting in Collusion with DOJ in the INSLAW Affair

During 1987, Roger Whelan became counsel of record for AT&T in the INSLAW bankruptcy. AT&T has employed no fewer than five law firms of record to represent its interests in the INSLAW bankruptcy. AT&T's interests arose from its having contracted in August 1984 with INSLAW to port the INSLAW case management software for operation on AT&T's then- new line of mini-computers and from AT&T's having advanced to INSLAW that month approximately $380,000 to perform the software port. AT&T expected to recover the advance from future royalties payable to INSLAW on the basis of AT&T's sale of the INSLAW software to AT&T's law firm customers.

On February 8, 1985, the day after INSLAW filed for bankruptcy protection, AT&T's first outside counsel in the INSLAW bankruptcy proceeding filed his Notice of Appearance with the U.S. Bankruptcy Court in Washington, DC. Kenneth Rosen had previously been employed in DOJ's U.S. Trustee's Office for the Southern District of New York under Cornelius Blackshear, and Blackshear's then First Assistant Harry Jones. In a deposition, Jones, whom Bankruptcy Judge Bason ruled was supposed to relocate temporarily to Washington, DC, in 1985 in order to force INSLAW into a Chapter 7 liquidation, acknowledged that he and Rosen had continued a close social relationship since working together in the DOJ Trustee's Office in New York City, but denied ever discussing the INSLAW matter with Rosen.

AT&T had become a member of INSLAW's Unsecured Creditors Committee in an unusual fashion, through assistance from DOJ itself. DOJ's U.S. Trustee's Office for the Washington, DC, area appointed the Unsecured Creditors Committee from the creditors listed by INSLAW, in a mandatory filing with the bankruptcy court, as the 20 largest unsecured creditors. AT&T was not on the INSLAW list. After announcing the appointment of the Committee, DOJ's Trustee's Office announced the supplementary appointment of AT&T to the Committee. Between February and August 1985, when the covert DOJ scheme to force INSLAW into liquidation was under way, Rosen was extraordinarily active in the INSLAW bankruptcy. For example, Rosen deluged INSLAW, its bankruptcy counsel, the counsel for the Unsecured Creditors Committee, and the bankruptcy court with written and/or telephonic questions and objections relating to the most routine business decisions by INSLAW such as hiring a replacement financial controller. Rosen's behavior was so striking that it elicited two letters of rebuke from the Unsecured Creditors Committee, the first from the Committee's counsel and the second from a businessman on the Committee. Rosen's co-counsel in the INSLAW bankruptcy was Shea and Gould, a firm that does not normally represent AT&T. Shea and Gould had, however, served for many years, including 1985, as the mergers and acquisition counsel for Hadron, Inc. and for Earl Brian's other companies. This was also Rosen's first time representing AT&T.

In June 1986, AT&T told INSLAW that it had fired Rosen as its counsel in the INSLAW case.

In April 1986, Dixon and Dixon, an Omaha, Nebraska, law firm, filed its Notice of Appearance in the INSLAW bankruptcy on behalf of AT&T. Roger Whelan became Washington co-counsel for Dixon and Dixon in the INSLAW bankruptcy, although INSLAW does not know the exact date of Whelan's retention by AT&T.

The first move that Dixon and Dixon made on behalf of AT&T was an attempt to strip INSLAW of protection against hostile takeover bids, by trying to convince the Unsecured Creditors Committee, which had always supported INSLAW's periodic requests for extensions in the "period of exclusivity," to refuse any more extensions. This AT&T initiative occurred in April 1986. Several weeks after this

unsuccessful effort by AT&T's new lead counsel, a Pennsylvania-based computer services company, Systems and Computer Technology (SCT), secretly approached INSLAW's Unsecured Creditors Committee with an offer of several millions of dollars in cash for INSLAW's creditors if the Committee would support the forced sale of INSLAW to SCT. SCT had met with DOJ officials, in advance of its hostile takeover attempt, to discuss the prospects for settling INSLAW's contract disputes once SCT acquired INSLAW and removed William A. Hamilton as President. One of the DOJ officials that SCT met with was a Presidential appointee from the same California county as Edwin Meese and Lowell Jensen.

Sidley and Austin, which normally serves as AT&T's outside general counsel and bankruptcy counsel, became the fifth counsel of record for AT&T in the INSLAW bankruptcy. Sidley and Austin and Dixon and Dixon attended virtually every bankruptcy court hearing on INSLAW during 1988 and early 1989 and sought aggressively to block INSLAW's Plan of Reorganization on behalf of their client, AT&T.

7. At the Time of Roger Whelan's Ex-Parte Denigration of Judge Bason to the Merit Selection Panel, Thomas C. Papson, a member of the Panel, was Counsel of Record to AT&T in an Unrelated U.S. Government Contract Appeals Proceeding, and Whelan was Counsel of Record to AT&T in the INSLAW Bankruptcy

Thomas C. Papson, a member of the Merit Selection Panel, was counsel of record for AT&T at the General Services Board of Contract Appeals (GSBCA) during 1987 on litigation relating to contract awards. The contracts in question were precursors to the award by the General Services Administration of the massive FTS-2000 contract for a new telephone service for the United States Government, one of the largest, if not the largest, contracts in the history of the United States Government.. AT&T eventually won the majority position in the FTS-2000 contract award.

8. The Mysterious "Read and Destroy" "Confidential Memorandum" to the Chair of the Merit Selection Panel Highly Critical of Judge Bason, a Memorandum That No One Acknowledges Authoring

According to the House Judiciary Committee, a federal judge gave the Committee a "Confidential Memorandum" dated December 8, 1987, that contained instructions at the top that it should be destroyed after reading. The judge who furnished the copy to the Committee told the Committee that "it was an important document and that it would be improper to destroy it." The memorandum was addressed to Judge Norma Johnson, but the author's name is not shown on the document. The author of the unsigned confidential memorandum is a member of the Merit Selection Panel, according to the federal judge who furnished the copy to the Committee and according to one other member of the Merit Selection Panel, as reported by the House Judiciary Committee.

The November 24, 1987 written report of the Merit Selection Panel did not include any of the observations contained in the December 8, 1987 Confidential Memorandum, according to the House Judiciary Committee. One of the observations in the confidential memorandum, according to the Committee, reads as follows:

Judge Bason evidenced no inclination to come to grips personally with the management challenge posed by the terrible shortcomings of the Office of the Clerk of our Bankruptcy Court.

The Bua Report disclaims knowledge of who authored the confidential memorandum, except to say that "the heart of the memo suggests that it is intended to reflect only an individual Panel member's views."

Although Bua claims not to know who authored the confidential memorandum that appears to contain untrue, derogatory information about Judge Bason's administrative abilities, he is prepared to absolve DOJ of any role in the creation or distribution of the memo:

There is no indication that someone from DOJ either prepared or planted the memo. The views expressed in the memo do not contain any criticism of Bankruptcy Judge Bason's rulings in the INSLAW matter.

Bua apparently did not entertain the possibility that DOJ could have "prepared or planted" or otherwise caused to be "prepared or planted" by others a confidential memorandum that would derail Judge Bason's appointment on grounds that, however spurious and unfounded, would obscure any possible linkage to DOJ's real motivation in getting rid of Judge Bason: anger at his ruling against DOJ in the INSLAW case.

A sitting federal bankruptcy judge was denied what should have been a relatively routine reappointment to the bench. His replacement was a clearly less qualified DOJ attorney who had unsuccessfully argued just weeks earlier for INSLAW's liquidation before the very same federal bankruptcy judge. This overt DOJ effort to force INSLAW's liquidation occurred shortly after Judge Bason had condemned DOJ for an earlier, covert effort to force INSLAW's liquidation.

The written record of the Merit Selection Panel's deliberations indicates that the failure of Judge Bason to win reappointment was largely the result of criticisms of Judge Bason's administrative abilities. According to the House Judiciary Committee's published interviews with the individuals best able to assess the conditions of the Office of the Clerk of the Bankruptcy Court during Judge Bason's tenure, the criticisms are without foundation. The Merit Selection Panel, however, accepted them as true without subjecting the allegations to even the most minimal due diligence verification.

Roger Whelan, the primary source of the disparagement of Judge Bason to the Merit Selection Panel, either knew or should have known that the criticisms he was voicing to the Panel were without foundation, because the problems he was attributing to Judge Bason were, in fact, the legacy of Whelan's own tenure as sole bankruptcy judge for the District of Columbia, according to then U.S. District Court Chief Judge Aubrey Robinson. Moreover, Judge Bason had already remedied the administrative problems he had inherited, according to the House Judiciary Committee.

Confidence in the reliability of the Merit Selection Panel's written record is, moreover, called into question by the House Judiciary Committee's discovery of a "Read and Destroy" "Confidential Memorandum" containing harsh and false criticism of Judge Bason's administrative abilities. Both the House Judiciary Committee and the Bua Report agree that the Confidential Memorandum appears to have been written by a member of the Merit Selection Panel. No member of the Panel has, however, acknowledged authorship.

Although the reasons cited in the record of the Merit Selection Panel for replacing Judge Bason do not withstand any serious scrutiny, there is evidence that DOJ was seeking to remove Judge Bason because of his unfavorable rulings against DOJ in the INSLAW case, combined with the fact that there were more cases still be tried in the INSLAW case. DOJ, in fact, had secretly communicated to the Chair of the Merit Selection Panel its strong disapproval of Judge Bason's then recent oral ruling against DOJ in the INSLAW case. The Chair thereafter circulated to the other members of the Panel a transcript of Judge Bason's oral ruling, secretly furnished by a DOJ attorney. These communications between DOJ and the Merit Selection Panel were kept secret during two separate Congressional investigations into the question of whether DOJ had influenced the decision on Judge Bason's reappointment.

At the same time that Roger Whelan was disparaging Judge Bason to the Merit Selection Panel, Whelan was counsel of record for AT&T in the INSLAW bankruptcy. Whelan's client, AT&T, had evidently been working in collusion with DOJ throughout the INSLAW bankruptcy in an effort to obstruct INSLAW's successful reorganization.

While Whelan was disparaging Judge Bason to the Merit Selection Panel, Thomas C. Papson, also then an attorney of record for AT&T in an unrelated U.S. Government contract proceeding, was a member of the Panel. The Chair of the Panel, Judge Norman Johnson, who failed to disclose to two Congressional investigations ex parte communications with a DOJ attorney disparaging Judge Bason's ruling in the INSLAW case, is a long-time friend of Stuart Schiffer, currently the Acting Assistant Attorney General for the Civil Division and the DOJ official who spearheaded the effort to remove Judge Bason from the INSLAW case.

In light of the foregoing, the following statement in the Bua Report would appear to be open to question in any serious, independent investigation:

The Panel also heard from bankruptcy practitioners, including a former bankruptcy judge, who opposed Bason's reappointment for reasons wholly unrelated to INSLAW.

Exhibit B

A Synopsis of Specific Claims About U.S. Department of Justice (DOJ) Malfeasance Against INSLAW Made by Credible Individuals Who Are Fearful of Reprisal

The characterization of each witness is intended to be sufficient to enable the reader to assess the witness's credibility but not detailed enough to permit actual identification of the witness.

WITNESS #1. This individual is a computer systems specialist who worked at the World Bank Headquarters in Washington, DC for a number of years in the 1980's and who has been reluctant to come forward publicly because of fear of reprisal.

This individual claims to have first hand technical knowledge, supplemented by contemporaneous, handwritten notes, of the implementation at the World Bank Headquarters in 1983 of INSLAW's PROMIS computer software product, on a VAX mid-range computer from Digital Equipment Corporation. According to this individual, the World Bank acquired a VAX mid-range computer in its computer data processing center in 1983 and, thereafter, in June 1983, acquired from a source unknown to this individual, INSLAW's PROMIS software for implementation on the VAX computer. According to this individual, the World Bank's implementation of PROMIS was not in support of the traditional PROMIS application domain of legal office case management. Instead, the World Bank implemented PROMIS to track its own "international message flow," as well as the international message flow of its sister institution, the International Monetary Fund (IMF).

WITNESS #2. This individual is a current mid-level U.S. Government employee with extensive experience in intelligence/national security activities, who is fearful of reprisal.

This individual claims to have knowledge, obtained contemporaneously with the actual event in June 1983, of a meeting at the World Bank Headquarters in June 1983 concerning DOJ'S conveyance to the World Bank of the "proprietary VAX" version of INSLAW's PROMIS software. According to this individual (who also claims to have contemporaneous handwritten notes), the DOJ was represented at the meeting by D. Lowell Jensen, then Assistant Attorney General for the Criminal Division. Among others who this individual claims attended the meeting was Stanley Sporkin, then General Counsel of

the Central Intelligence Agency (CIA). According to this individual, the initiative to implement PROMIS at the World Bank came from the Bank Operations Division of the CIA.

Upon information and belief, the objective of the PROMIS implementation at the World Bank was to provide an early warning system to the U.S. intelligence community of signs of planned defaults on international loans. During the first few years of the Reagan Administration, a number of the so-called less developed countries actively considered defaulting on their international debts.

WITNESS #3. This individual is a current mid-level DOJ career employee who has been in a position to know a good deal about the INSLAW Affair for the relevant period of the 1980's, and who, INSLAW has been told by others, has first-hand knowledge of DOJ's dissemination to the World Bank in 1983 of the PROMIS software, and of the concealment or destruction by DOJ of contemporaneous, written documentation of the conveyance.

This individual, during the course of a recent meeting with attorneys for INSLAW, emphasized repeatedly that anyone who provides information to INSLAW will get into significant trouble, and that there would be swift retribution against anyone in DOJ who even talks about the INSLAW matter. This individual claims that all of the people at DOJ who are responsible for "getting" INSLAW have been promoted and awarded bonuses. This individual expresses sorrow and perhaps even shame for what DOJ has done to INSLAW, but declines to acknowledge the validity of any particular claim except through sworn testimony before an independent counsel. This individual states that no one would cooperate with any investigation unless it is truly independent of DOJ, and unless assured of no retaliation. Finally, this individual says that the exodus from DOJ of the Republican Party political appointees will be of some help on the INSLAW matter but that it will not of itself be enough because "too many career people have either been part of destroying INSLAW or have 'winked' at it."

WITNESS #4. This individual is a former very high ranking DOJ official who told an intermediary in May 1993 that his disclosure of information about DOJ's misconduct against INSLAW would lead to economic reprisals against him by the Republican Party.

According to the intermediary, this individual claims to have the following specific knowledge regarding DOJ's malfeasance against INSLAW:

It was orchestrated by Lowell Jensen who, in turn, relied principally on the Criminal Division's Executive Officer Miles Matthews;

The Justice Command Center is linked to the INSLAW scandal;

DOJ procurement executive Elizabeth "Pat" Rudd played a very important role in the INSLAW scandal; and

Other current or former DOJ officials who were personally involved in the misconduct against INSLAW are as follows:

Harry Flickinger Anthony Moscotto Anthony Liotta Carol Dinkens Thomas Stanton Charles Neal

WITNESS #5. This individual is a senior DOJ career official with extensive knowledge of DOJ information systems.

This individual claims that John Otto, while serving as one of the highest ranking FBI officials in the late 1980's, disclosed directly to this individual in a private meeting at the FBI that the FBI was about to implement the PROMIS software under the FOIMS (Field Office Information Management System)

name, and that the adoption of the tried and proven PROMIS software was expected to cure the poor reputation of FOIMS among FBI employees.

WITNESS #6. This individual is a mid-level DOJ career employee who fears retaliation unless there is an independent counsel.

This individual claims to have witnessed an admission, contemporaneously with the referenced activity, by Marilyn Jacobs, then DOJ secretary to D. Lowell Jensen, to the effect that Jensen, Jacobs' immediate supervisor, was the person behind all of INSLAW's problems at DOJ.

WITNESS #7. This individual is a high level career official of the U.S. Government, who currently holds a position of considerable responsibility and who was unwilling to be identified by INSLAW to Special Counsel Nicholas J. Bua.

This individual claims to have witnessed admissions by former DOJ Security Officer Garnett Taylor concerning the deliberate destruction of documentary evidence in the INSLAW case by DOJ security officials, and concerning the alleged role of Anthony Moscotto, currently Director of DOJ's Executive Office for U.S. Attorneys (EOUSA), in an "affirmative decision" by DOJ to remove Judge George F. Bason, Jr. as sole federal bankruptcy judge for the District of Columbia.

WITNESS #8. This individual is currently a relatively senior career employee of the United States Government who had been employed during relevant years of the 1980's in DOJ's Justice Management Division, and who is prepared to answer questions truthfully if compelled to do so by subpoena from a duly constituted government inquiry into the INSLAW Affair.

This individual claims, based on a conversation with an intermediary, that everyone from "the director level on up" within DOJ's Justice Management Division knew that the INSLAW case was caught up in a covert U.S. Government intelligence operation and that this is why there were classified intelligence/national security documents on INSLAW and the PROMIS software stored in the security vault of DOJ's Office of Security and Emergency Planning. This individual also claims to know about a connection between the Justice Command Center and the malfeasance against INSLAW, and about the award of promotions and bonuses to certain DOJ career officials for their participation in the wrongdoing against INSLAW.

WITNESS #9. This individual is a trusted friend of Mr. and Ms. Hamilton who, in turn, has a close relationship with one or more persons currently holding senior level positions in the Central Intelligence Agency. This individual has been unwilling to submit to interviews by anyone officially associated with the U.S. Government, whether in Congress or in the DOJ. This individual has served as a conduit of information that certain senior level CIA officials wish to have conveyed to Mr. and Ms. Hamilton.

This individual has conveyed the following information to Mr. and Ms. Hamilton:

The CIA secretly obtained a copy of the proprietary version of PROMIS from DOJ in order to determine whether PROMIS could be used to solve a long-standing, unmet need in the U.S. intelligence community for compatible data base management software.

The initial unauthorized use of PROMIS in the U.S. intelligence community was for an intelligence application aboard nuclear submarines. PROMIS is currently installed on every nuclear submarine of the United States and Great Britain, and the application domain for this use of PROMIS is extremely sensitive.

The CIA implemented PROMIS internally after integrating PROMIS with another piece of computer software. The CIA uses its version of PROMIS to keep track of the covert intelligence operations of U.S. and foreign governments.

PROMIS is being used as an inventory tracking system for long range missiles and nuclear warheads, in the United States as well as in several other nations that possess nuclear weapons.

The U.S. Government appointed someone by the name of Lindsey to package a reduced-functionality derivative of the CIA's version of PROMIS for Earl W. Brian to sell to the intelligence agencies of foreign governments.

One of Earl Brian's sales of PROMIS was to the military intelligence agency of the Government of Egypt, through "what appears to be a CIA holding company."

There is one use of PROMIS by the United States Government that is considerably more sensitive than any that have been identified to the Hamiltons by this individual, and so sensitive that decisions on disclosure are restricted to the four statutory members of the National Security Council, i.e., the President, the Vice President, the Secretary of State and the Secretary of Defense.

One of the places where the proprietary version of PROMIS is being used without license from INSLAW is the Office of the Attorney General of the United States.

As a condition of his nomination as Attorney General, William Barr was required to give assurances to President Bush that he would be able to maintain the cover-up in the INSLAW case.

In early 1993, elements of the CIA intercepted a person or persons in the vicinity of the Hamilton's family residence who were apparently planning to carry out some act of physical violence. On at least one other occasion, elements within the CIA have intercepted or nullified plans by others to kill Mr. and Ms. Hamilton.

WITNESS #10. This individual is a computer programmer aboard a U.S. nuclear submarine. The individual would evidently face the loss of his security clearance and possibly criminal prosecution by DOJ if he were to provide testimony in the INSLAW case.

Through an intermediary, a member of the Hamilton family was told that this individual has first hand knowledge about the fact that INSLAW's PROMIS software has been implemented aboard the U.S. nuclear submarine on which he serves, and that this individual is deeply sorry for what the U.S. Government has done to INSLAW and to the Hamilton family.

WITNESS #11. This individual is a current career employee of DOJ who lacks confidence in the ability of DOJ to fairly and thoroughly investigate the misconduct against INSLAW.

This individual claims to have witnessed DOJ officials, Garnett Taylor and James Walker, remove classified intelligence/national security documents from DOJ's Civil Division for relocation or destruction.