The INSLAW Affair: Investigative Report by The Committee on The Judiciary Together With Dissenting and Separate Views

VII. TOP DEPARTMENT OFFICIALS FRUSTRATED COMMITTEE'S INVESTIGATION

The committees investigation often encountered Department barriers to documents and agency personnel. While the committee could not prove that the Department deliberately conspired to conceal evidence of criminal wrongdoing, serious questions have been raised about the possible: obstruction of a congressional investigation; destruction of Department documents; and, witness tampering by Department officials. The following discussion demonstrates the considerable effort by the Department to delay and deter this committee from conducting a complete and thorough investigation of the INSLAW matter. Furthermore, it appears that these are similar to barriers faced by the Senate Permanent Subcommittee on Investigations when it attempted to conduct its investigation into the INSLAW allegation. [292]

The committee eventually overcame many of the obstacles put in its path by the Department and established several important precedents. First, committee investigators were ultimately given unrestricted access to all contract, personnel and administrative files of the agency, which consisted, in the INSLAW case, of several thousand documents. Second, access was given to the sensitive files of the Office of Professional Responsibility (OPR) which included not only the reports of that Office but individual interviews and sworn statements conducted during OPR investigation. **Third, for the first time known to the committee, the FBI agreed to permit one of its field agents, Special Agent Thomas Gates, to give a sworn statement to committee investigators and to otherwise cooperate with the committee.** Fourth, the Department agreed to allow Justice officials and employees to give sworn statements without a Department attorney present. Finally, under the force of a subpoena issued by the subcommittee, the Department provided more than 400 documents, which it had identified as related to ongoing litigation and other highly sensitive matters and "protected" under the claims of attorney-client and attorney work product privileges.

A. DEPARTMENT ATTEMPTS TO THWART COMMITTEE INQUIRY

The committees investigation began with an August 1989 letter from Chairman Brooks to Attorney General Thornburgh initiating an investigation into a number of serious allegations regarding the Department of Justices (DOJ) handling of a contract with INSLAW, Inc., and asked for the Department's

full cooperation with committee investigators.

Attorney General Thornburgh responded on August 21, 1989; and while seriously questioning the need for a comprehensive investigation, he stated:

> Nevertheless, I can pledge this Department's full cooperation with the committee in this matter, and I have so instructed all concerned agency employees, with the understanding that we will have to make arrangements to protect any information, documents, or testimony that we may proffer to the committee from interested vendors and litigants, including INSLAW. [293]

Armed with the Attorney General's pledge of cooperation, the committee nevertheless immediately encountered severe resistance by Justice officials when they were asked to provide access to agency files and personnel. On September 29, 1989, Department officials told committee investigators that they would not be given full and unrestricted access to agency files and individuals associated with the INSLAW contract. The Department insisted that committee investigators instead go through the cumbersome and lengthy process of putting all requests for documents, interviews and other materials in writing. [294] Initially, even INSLAW's contract files, which were readily accessible to the General Accounting Office (GAO), were denied to the committee. The Department also insisted that a Department attorney be present during any interviews of Department employees. During this time even individuals who had left the Department refused to be interviewed. **This refusal possibly stems from pressure exerted by the Department which strongly believed that: "Justice has to speak through one voice," regarding the INSLAW matter. [295]**

As part of these negotiations the Department's Office of Legislative Affairs (OLA) informed committee investigators that some of the requested information would be made available, but because of Privacy Act and trade secret concerns the Department wanted the chairman to put each request in writing. The alternative was for the committee to obtain individual releases from as many as 50 individuals. The committees request for access to the Public Integrity Section files was also denied. OLA also stated that the Office of Professional Responsibility was concerned with the Privacy Act and regarded its files "as highly sensitive, potentially hurtful, and is concerned that the information could be misused."

As a result of the Department's position, the chairman stated in a January 9, 1990, letter to the Attorney General that he could not devise any better way to preclude an investigative body from obtaining objective and candid information, on any matter, than by intimidating employees who otherwise may cooperate with an investigation. [296] He added that the presence of a Department attorney would undercut the committees ability to interview persons in an open, candid, and

timely manner, and he was deeply troubled by the continued lack of cooperation by Department employees. The chairman again personally informed the Attorney General of his concerns about the continued delays and resistance to providing needed information when they met on January 29, 1990.

The chairman requested immediate, full and unrestricted access to Department employees and documents. [297] In a February 1990, response the Department agreed to allow its employees to be interviewed without Department counsel present. However, the Department delayed access to numerous files and negotiated for several months about the confidentiality of a variety of documents requested for the investigation.

The Attorney General and the chairman reached another agreement in April 1990 on access to information. At this time, the Department agreed to provide free and unrestricted access to INSLAW files and Department employees. At the Department's fiscal year 1991 authorization hearings on May 16, 1990, Attorney General Thornburgh again indicated that the Department had decided to provide access to the committee for the INSLAW investigation:

> . . . I have discussed with you and other members of this and other committees, our willingness to examine on a case-by-case basis any request that comes from the Congress. . . . But rather than lay down a bunch of reasons why we cant release materials I prefer . . . to discuss ways and means in which we can work with you and your staff to figure out ways that we can produce materials as I think we have accomplished in your request regarding INSLAW and Project Eagle. [298]

The Attorney General's statement clearly indicated a willingness to supply the requested materials to the committee as long as some agreement was reached to protect this material from being improperly released. Unfortunately, the Department's ability to abide with its agreement was short lived.

On June 15, 1990, the Department informed committee investigators that there were 64 boxes of INSLAW litigation files which they listed on a 422-page index. At this time, Department officials refused to give committee investigators the index because it included "privileged" information that the Department was concerned would be made available to INSLAW. [299] Finally, on June 28, 1990, the Department's Acting Assistant Attorney General for Legislative Affairs agreed to provide the litigation file indices on the condition that they not be released to the public by the committee. [300] However, Department officials refused to identify what documents were privileged or available. At the same time numerous interviews and sworn statements were being taken by committee investigators; however, these interviews were impaired by the lack of documentation from which to draw

investigation-related questions.

By letter dated September 6, 1990, the OLA Deputy Assistant Attorney General again refused to permit committee staff access to what he declared were "privileged" work-product and attorney/client documents. [301] This judgment originated from Ms. Sandra Spooner, lead Department counsel on INSLAW's litigation, who reviewed each file and removed those she believed to be "privileged" attorney/client or work product documents. Committee investigators finally gained access to the Department's "INSLAW Files" in late October 1990. However, soon thereafter the Department increased the number of documents and/or files withheld from an initial 175 to 190. On November 19, 1990, the Department again increased the number of documents and/or files withheld from the committee to 193. [302]

The chairman protested the additional obstacles raised by the Department. The Attorney General responded that his pledge of free and unrestricted access did not include, "privileged" attorney-client or work product documents. [303] This posture became the focus of a hearing on December 5, 1990.

The Judiciary Committees Subcommittee on Economic and Commercial Law convened on December 5, 1990, to address the Department's refusal to provide access to "privileged" INSLAW documents. During this hearing Steven R. Ross, General Counsel to the House Clerk, stated that:

. . . the Attorney General's claimed basis for this withholding of documents is an attempt to create for himself and his functionaries within the Department an exemption from the constitutional principle that all executive officials, no matter how high or low, exercise their authority pursuant to law and that all such public officials are accountable to legislative oversight aimed at ferreting out waste, fraud, and abuse. [304]

Mr. Ross added that the Department was attempting to redefine committee investigations to mean that congressional investigations are justifiable only as a means of facilitating the task of passing legislation. Mr. Ross stated: [305]

What that proposed standard would do would be to eradicate the time-honored role of Congress of providing oversight, which is a means that has been upheld by the Supreme Court on a number of occasions, by which the Congress can assure itself that previously passed laws are being properly implemented.

After providing several examples of Department attempts to withhold information by claiming attorney/client privilege, including Watergate, Ross concluded by stating: [306]

It is thus clear, in light of history of claims by the Department that it may be excused from providing the Congress in general and this committee in particular with documents that it deems litigation sensitive, that Congress broad power of investigation overcomes those litigative concerns. [307]

After the December 1990 hearings, Attorney General Thornburgh once again agreed to provide the committee full and unrestricted access to all INSLAW-related documents. [308] Both sides agreed to a two-step procedure in which documents would be reviewed first by committee investigators followed by a written request for copies of a specific item. [309] Access was given for the first time in May 1991, to the files of the Civil Divisions Chief Litigating Attorney, Ms. Sandra Spooner. These files consisted of documents and information which had been consolidated from various quarters of Justices office complex, located at 550 11th Street, N.W., Washington, DC. During the review of these files, committee investigators were informed that Ms. Spooner had self-selected and removed approximately 450 documents on the purported basis of various asserted "privileges," including "attorney work product" and "attorney client" despite the agreement between the Branches and despite the confidentiality safeguards established to protect just such documents. She also removed all documents related to communications between the Department and Congress, as well as those related to the Department of Transportation Board of Contract Appeals proceedings. Ms. Spooner also informed the investigators for the first time that an indeterminate number of documents and possibly entire file folders were missing.

On May 29, 1991, committee staff requested that the Department abide by the Attorney General's April 23 agreement and provide copies of all documents contained in the INSLAW index. The Department was also requested to explain why some of Ms. Spooners files could not be found. [310]

The Assistant Attorney General for Legislative Affairs wrote on May 29, 1991, that the Attorney General's April 23 agreement did not include documents related to: (1) matters pending before the District Court, (2) appellate litigation, or (3) matters pending before the DOTBCA. [311] Consequently, the committee was denied over 400 documents and files. The Assistant Attorney General made no mention of the missing files in his letter.

B. AUTHORIZATION AND OVERSIGHT HEARINGS

On July 8, 1991, the committee chairman announced his plans to hold authorization and oversight hearings on July 11 and 18 to discuss the Department's fiscal year 1992 budget request. The chairman indicated that as part of these hearings, he would be asking, among other things, Attorney General Thornburgh about his failure to live up to the several previous commitments he had made to the committee to provide full and open access to the Department's INSLAW files. **Chairman Brooks opened the July 11, 1991, hearing by noting that oversight of executive branch policy and activity is at the heart of the congressional mandate as an integral component of the checks and balances architecture of constitutional government.** He further noted that Department officials had continued to resist meaningful outside review of their activities by refusing to cooperate with GAO and congressional investigations. **Chairman Brooks expressed grave concern that the Department seemed increasingly bent on pursuing controversial theories of executive privilege and power at the expense of removing government from the sunshine of public scrutiny and accountability. [312] This tendency appeared to be an increasing problem under the stewardship of Attorney General Thornburgh and had seriously hindered and delayed several congressional investigations, including the INSLAW case. [313]**

The chairman concluded the hearing by stating that the Judiciary Committee must carefully consider the actions needed to be taken to require production of documents requested from the Department and urged that all committee members attend the July 18, 1991, hearing, during which Attorney General Thornburgh would be asked to respond to these issues. [314]

On July 18, 1991, the committee reconvened to review the Justice Department's fiscal year 1992 authorization request for appropriations and to hear the testimony of Attorney General Thornburgh. Unfortunately, the Attorney General decided at 7 p.m. the night before to refuse to appear. [315]

Committee Chairman Brooks responded to the Attorney General's unprecedented nonappearance to a duly noticed hearing:

> In light of the extreme importance of this proceeding, it is particularly unfortunate and deeply disturbing that the Attorney General notified us last night, late last night, that he would refuse to appear before us this morning. He refuses to attend for a myriad of reasons even though his appearance was duly scheduled for 1 full month. [316]

The chairman noted the seriousness of the issues facing the Department and the need to resolve them

as quickly as possible. He was particularly concerned with the Department's lack of cooperation with the committee on the INSLAW investigation. He concluded by expressing concern over the "great damage" that had been done to the relationship between the Judiciary Committee and the Justice Department stating:

I am shocked and saddened by the appearance of the empty chair before us and all the other chairs that he asked to be reserved for his people. The unanswered request and the delayed response are becoming the symbols of an increasingly remote and self-centered Justice Department that seems bent on expanding the accepted boundaries of executive branch power and prerogatives. [317]

C. THE DEPARTMENT REPORTS KEY SUBPOENAED DOCUMENTS MISSING

On July 25, 1991, the Subcommittee on Economic and Commercial Law issued a subpoena to the Attorney General requiring that he provide all documents within the scope of the committee investigation listed in the subpoena. 318 On July 29, the Attorney General provided as many subpoenaed documents as possible, but stated that some documents were lost including, but not necessarily limited to, many documents from Ms. Spooners files, such as: [319]

A memorandum to Ms. Spooner which allegedly involved a discussion and chronology of INSLAW's data rights claim.

Ms. Sandra Spooners notes to file concerning the transcript of Peter Videnieks PSI deposition.

An August 10, 1989, facsimile with attachment from Ms. Janis Sposato to Ms. Sandra Spooner concerning a response to Chairman Brooks.

A May 28, 1989, routing slip from Elizabeth Woodruff to Ms. Spooner concerning the whistle-blower protection statute.

Ms. Spooners notes described as numerous attorney notes.

An August 4, 1988, memorandum from Stuart Schiffer to John Bolton transmitting a memorandum from Stuart Schiffer to Thomas Stanton.

A September 21, 1989, memorandum from Roger Tweed to Ms. Spooner regarding facilities for use by the INSLAW case auditors.

Patricia Bryans notebook of outlines, notes, and documents prepared by counsel to facilitate compromise discussions.

Also, many documents that were provided were incomplete (i.e., missing pages or attachments), or were of such poor quality that they could not be read. Because Ms. Spooners files lacked an index, it was also impossible to ascertain whether other documents or files were missing as well. Based on the numbering system used by the Department, however, it appears numerous additional documents are missing.

On July 30, 1991, Mr. W. Lee Rawls, Assistant Attorney General, stated that Ms. Spooners documents not provided to the committee:

. . . ha(ve) not yet been found and neither Ms. Spooner nor any other employee who would normally have access to it knows how it may have been lost. . . . Under these circumstances, the litigation team under Ms. Spooners direction has endeavored to reconstruct the missing volume from other files containing the same documents. We are now providing the committee with a reconstructed volume that contains all but eight of the fifty-one documents that were contained in the original file. [320]

It is unclear whether the Department formally investigated why these documents disappeared, as the committee requested in June 1991.

During a July 31, 1991, subcommittee meeting convened to discuss the Attorney Generals noncompliance with the subpoena, Chairman Brooks concluded:

My concern with the missing documents flows from the fact that our investigation is looking into allegations by those who claim that high level Department officials criminally conspired to force INSLAW into bankruptcy and steal its software. It is alleged this was done to benefit friends of then Attorney General Edwin Meese. Under these circumstances, I fully expected that the department would take great care in protecting all these documents. Unfortunately, the fact of missing documents will now leave lingering questions in the minds of some who have closely followed the investigation about whether documents may have been destroyed. [321]

The question of unauthorized destruction of Government documents again came up recently when the committee received information from Ms. Lois Battistoni, a former Justice Department employee, that Department employees were involved in the illegal destruction (shredding) of documents related to the INSLAW case. This matter has not been investigated by the committee. [322]

D. DEPARTMENT INTERFERES WITH MICHAEL RICONOSCIUTO'S SWORN STATEMENT TO THE COMMITTEE -- REFUSES REQUEST TO INTERVIEW DEA AGENTS

On March 29, 1991, Mr. Riconosciuto was arrested by DEA special agents for possession and distribution of a controlled substance. It is important to stress that Riconosciuto began cooperating with the Hamiltons and provided the committee with information about the alleged conspiracy by the Justice Department to steal INSLAW's PROMIS software well before the time of his arrest.

The Department interfered with committee attempts to obtain information from Mr. Riconosciuto. Following Mr. Riconosciutos arrest, the committee contacted his attorney, John Rosellini, to request that the committee be given permission to interview his client. On April 1, 1991, arrangements were made to conduct the interview with Mr. Riconosciuto. Facilities for a private interview were made available by the Kitsap County chief jailer, Larry Bertholf, for the committee interview of Mr. Riconosciuto, which was to be conducted on April 4, 1991.

During the negotiations with Mr. Riconosciutos attorney, the Department called the committee and advised that, if the interview was to be conducted at all, it would be held at the U.S. Court House in Seattle, WA. Prior to commencing the interview of Mr. Riconosciuto, the Department attorney handling Mr. Riconosciutos prosecution was asked by committee investigators to provide a sworn statement that the committees interview of Riconosciuto would not be monitored or recorded by the Department. The Department attorney refused to provide the statement, advising that he would not under any circumstances agree to such a request. He stated that it was not Department policy to record private conversations held between clients and their attorney, and he considered the committee as being in the same category.

Following Mr. Riconosciutos sworn statement, the committee asked for permission from the Department to interview the DEA arresting agents. This request was critical because Mr. Riconosciuto had alleged that a tape recording of a conservation between him and a Justice Official (Mr. Peter Videnieks) was confiscated by DEA agents at the time of his arrest. This tape allegedly shows that Mr. Videnieks threatened Mr. Riconosciuto with retribution if he talked to the Judiciary Committee investigators. As has been the practice throughout this investigation the Department refused to cooperate with the committees request, using the justification that Mr. Riconosciutos

prosecution was an ongoing investigation. The Department has also refused to allow the committee access to its investigative files on Mr. Riconosciuto.

Since his arrest, Mr. Riconosciuto has been convicted of the drug related charges, and he is currently imprisoned. Although this incident diminishes his credibility as a witness, the timing of the arrest, coupled with Mr. Riconosciutos allegations that tapes of a telephone conversation he had with Mr. Videnieks were confiscated by DEA agents, raises serious questions concerning whether the Department's prosecution of Mr. Riconosciuto was related to his cooperation with the committee. As described in other sections of this report, the committee received sworn testimony and recovered documents which support aspects of Mr. Riconosciutos story, and ties Mr. Riconosciuto, Dr. Brian, and an individual named Robert Booth Nichols to U.S. intelligence agencies and in the case of Mr. Nichols, possibly, organized crime.

E. DEPARTMENT OFFICIAL MAY HAVE ATTEMPTED TO INFLUENCE A KEY WITNESS

During the sworn statement of FBI Special Agent Thomas Gates on March 25, 1992, he and his attorney, Richard Bauer, stated that Ms. Faith Burton from the Department's Office of Congressional Affairs had told them that the committee, as a matter of policy, provided the Department with copies of all depositions taken in the INSLAW investigation. The clear implication was that the Department would know everything that had been said by Special Agent Gates in his sworn testimony. It was apparent that this lack of confidentiality concerned Special Agent Gates attorney and this may have had a chilling effect on Special Agent Gates testimony to the committee. **Special Agent Gates and his attorney were informed that the committee policy in fact prohibited giving copies of the confidential sworn statements to anyone but the person who gave the statement or to that persons attorney. [323]**

On March 26, 1992, committee investigators met with Ms. Burton to discuss this issue. Ms. Burton stated that the allegations made by Special Agent Gates and his attorney were "totally false," and that it didnt make any sense because she "knew the policy that the Department didnt get the transcripts." Ms. Burton stated Special Agent Gates and his attorney must have misunderstood her and attributed the misunderstanding to their long flight. Committee investigators asked Ms. Burton if she said anything to imply directly or indirectly that the Department received or reviewed copies of the committees sworn statements, she responded "absolutely not."

On March 26, 1992, Special Agent Gates and his attorney were informed of Ms. Burtons response and Special Agent Gates was asked if it was possible that he misunderstood what Ms. Burton had said. Special Agent Gates responded:

Its always possible, but it was fairly clear to me, what she said.

Mr. Bauer further stated that there was:

. . . a clear indication that there was a receipt of transcripts and a review of transcripts.

In fact, Mr. Bauer and Special Agent Gates stated that Ms. Burton had told them before their meeting with committee investigators that, "to date, the Department has reviewed all transcripts and no wrongdoing has been found." (Emphasis added.)

VIII. JUDGE BASON'S ALLEGATIONS OF JUSTICE DEPARTMENT'S IMPROPER INFLUENCE ON THE JUDICIAL SELECTION PROCESS

In February 1984, Judge Bason was appointed to fill the unexpired term of Judge Roger Whalen who voluntarily resigned as the bankruptcy judge for the District of Columbia. Judge Bason was the sole bankruptcy judge for the District of Columbia from February 1984 through February 1988. As a result, he personally heard the sworn statements and observed the witnesses during the INSLAW litigation.

In 1987, Judge Bason sought reappointment pursuant to the bankruptcy amendments and Federal Judgeship Act of 1984. Judge Bason, however, lost his reappointment bid and was replaced by S. Martin Teel, Jr., a Department attorney who had represented the Government and who had appeared before Judge Bason in the INSLAW bankruptcy case. According to Judge Bason, Martin Teel was appointed to the judgeship through his primary expertise focused on tax law with extremely limited bankruptcy litigation experience. [324]

After learning that his bid for reappointment failed, Judge Bason alleged that the Department had influenced the selection process resulting in his removal from the bench. [325]

On December 5, 1990, Judge George F. Bason, Jr., testified before the subcommittee under oath that his failed bid for reappointment as a bankruptcy judge was the result of improper influence from within the Department. Judge Bason also stated that new information came to his attention that in his opinion leaves no doubt that the Department manipulated the process before the panel:

One of the Justice Department's lawyers was heard saying to another, "Weve got to get rid of that judge."

Judge Bason also stated that in May 1988, a news reporter who allegedly had excellent contacts and sources in the Department suggested to him that the Department could have procured his removal from the bench by the following means:

"The district judge chairperson of the Merit Selection Panel (Judge Norma Johnson) could have been approached privately and informally by one of her old and trusted friends from her days in the Justice Department. He could have told her that I was mentally unbalanced, as evidenced by my unusually forceful anti-government opinions. Her persuasive powers coupled with the fact that other members of the Panel or their law firms might appear before her as litigating attorneys could cause them to vote with her." [326]

This reporter also told Bason that a high level Department official had boasted to him that Bason's removal was because of his INSLAW rulings. Judge Bason added that there is every reason to believe that Department officials would not hesitate to do whatever was necessary and possible to remove from office the judge who first exposed their wrongdoing, and that he would not have lost his job as bankruptcy judge but for his rulings in the INSLAW case. [327]

The committee could not substantiate Judge Bason's allegations. If the Department of Justice had influence over the process, it was subtle, to say the least. The judges who provided interviews to the committee investigators all agreed that they had little firsthand knowledge of the experience or performance of the candidates, including the incumbent judge. As a result, the members of the Council had to rely on the findings of the Merit Selection Panel (MSP). The MSPs findings were provided to the Council by Judge Norma Johnson, whose oral presentation played a large role in the selection. The other members of the MSP said that Judge Johnson firmly ran the MSP in these matters and that they relied on her judgment. [328] Judge Bason asserts that Judge Johnson was easily accessible to the Department because she had previously worked with Stuart Schiffer, the Department of Justice official who led the move to have Judge Bason removed from the INSLAW case. [329] The committee has no information that Judge Johnson talked to Mr. Schiffer about INSLAW, Judge Bason or the bankruptcy judge selection process.

A. CONFIDENTIAL MEMORANDUM

During the committees investigation, one of the judges provided an apparently unofficial document that had been given to several Appeals Court judges when Judge Bason requested that the decision

of the Circuit Court regarding his nonreappointment be reconsidered. The document was a December 8, 1987, "confidential memorandum" to Judge Johnson. The memorandum was unsigned (though the judge who provided the document and a member of the MSP identified the author of the memorandum as another member of the MSP, that individual denied that he had written the memorandum) and was marked at the top "read and destroy." The memorandum states that "its purpose is to help elucidate in particular our reasoning in ranking the candidates as we did." [330]

The memorandum describes each of the four final candidates for the position of bankruptcy judge. What is striking about the memorandum is that the description of each candidate except Judge Bason begins with positive commentary about the individual. The section describing Judge Bason begins "I could not conclude that Judge Bason was incompetent." Other phrases used to describe Judge Bason include "he is inclined to make mountains out of molehills," "Judge Bason seems to have developed a pronounced and unrelenting reputation for favoring debtors," and finally, "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." [331]

The written report of the MSP, which was very brief (consisting of less than 2 pages and dated November 24, 1987), did not include any of the observations included in the confidential memorandum. [332] The Judicial Council met on December 15, 1987. The unofficial confidential memorandum to Judge Johnson was dated on December 8, 1987. When the committee interviewed several of the members of the MSP and the Council, they were shown a copy of the memorandum but did not recognize it. When asked why the memorandum was not destroyed as it indicated on the top of the document, the judge who provided the committee with the memorandum stated that it was an important document and that it would be improper to destroy it.

B. CONDITION OF THE CLERKS OFFICE UNDER JUDGE BASON

According to Judge Robinson, Judge George Bason inherited a mess (administratively) in the clerks office when he took over for former Judge Roger Whalen. However, several of the judges interviewed believed Judge Bason was responsible for the deficiencies in the Bankruptcy Court. [333] Committee interviews with members of the MSP and several members of the Council echo the sentiments that Judge Bason's nonreappointment was heavily influenced by the poor administration of the clerk's office. Yet most of the district and circuit judges interviewed said that they had little or no contact with Judge Bason and were not in a position to have firsthand knowledge of the condition of his court. **Nonjudicial members of the MSP said that: (1) No statistics were examined to determine the condition of the court, (2) Judge Bason was not interviewed regarding the condition of the court, and (3) neither the clerk of the Bankruptcy Court, nor any members of Judge Bason's staff were**

interviewed regarding the condition of the court. In fact, the determination that the administrative condition of the court was "poor" was based solely on the comments of "a couple" of lawyers, one female member of the clerk's office and two people who might have been associated with the Administrative Office of the U.S. Court who apparently were interviewed during the selection process.

Judge Bason stated that the only explanation ever offered him regarding the reason behind his failed bid for reappointment was related to inefficiency in the District of Columbia's Bankruptcy Clerk's Office. It has also been reported that Judge Bason inherited a Bankruptcy Court which was in an administrative shambles. [334] By May 1986, however, Judge Robinson said Judge Bason was getting the system under control, which was reported in the Judicial Conference report for the D.C. Circuit that year. Judge Robinson also stated, in defense of Judge Bason, that "very few judges have any knowledge of how to administer a court" and once the new clerk was hired there was a vast improvement in the courts operation. [335]

Committee investigators interviewed Judge Bason, the current bankruptcy clerk, and the former bankruptcy clerk. None of these individuals were ever questioned during the 1987 bankruptcy judge selection process about the administration of the Bankruptcy Court. Judge Bason stated that there was no mechanism in place for Circuit or District Court judges to personally evaluate the administrative condition of the Bankruptcy Court. [336] According to Judge Bason, there were no other judges, besides Judge Robinson, in the D.C. Circuit or District Courts who were in a position to personally evaluate the operation of his court. [337]

Considering that poor administrative controls seemed to be one of the primary reasons for Judge Bason's failed attempt at reappointment, it is unusual that neither Judge Bason nor the other individuals most responsible for the administration of the court were interviewed by the Panel. Judge Robinson made a telling comment to committee investigators when he said it is unfortunate bankruptcy judges are selected by judges furthest removed from the Bankruptcy Court. [338]

Mr. Martin Bloom, clerk of the Bankruptcy Court, told committee investigators that "there were difficulties in many areas" when he began employment with the D.C. Circuit Bankruptcy Court in 1986. He said the "financial books and records did not balance . . . " and "there were some critical areas in management, both in personnel resources and equipment resources, that were lacking." According to Mr. Bloom, the relationship between Judge Bason and the previous clerk had broken down, resulting in a decline in office procedures. [339]

Mr. Bloom added that problems may have existed in the clerks office "because the office was not managed efficiently or effectively" due to a lack of management capabilities and a lack of staff. When

asked if the Bankruptcy Court judge was responsible for this lack of management capabilities he responded that "I can only relate to the responsibilities in the clerks office. In no way or in any way will I look towards the judge," implying that the office had not been managed properly by the previous clerk. [340] He added that when he reported to the court "it seemed that no one . . . had any understanding of closing (cases)." [341] Mr. Bloom stated, however, that by "the latter part of 1987, administratively, I think the court was up to par." [342] Mr. Bloom further stated that Judge Bason took an active role in providing whatever assistance he could in improving the administrative condition of the court.

C. DEPARTMENT'S ATTEMPTS TO HAVE BASON REMOVED FROM INSLAW CASE FAIL

Internal Department of Justice documents indicate that Justice officials were concerned about Judge Bason's handling of the INSLAW case very early in the litigation. They believed that the judge was not sympathetic to the Department's position and that he tended to believe INSLAW's assertions. Those concerns increased throughout the litigation to the point where, by the summer of 1987, the Department was actively seeking ways to remove Judge Bason from the case.

Richard Willard, the Assistant Attorney General of the Civil Division, in a June 1987 letter to Deputy Attorney General Arnold Burns, wrote that "Judge Bason's conduct in this case was so extraordinary that it warranted reassignment to another judge." [343]

The Department believed that Judge Bason disregarded the sworn statements of Department witnesses. The Department also believed that Judge Bason made lengthy observations regarding the credibility of its witnesses and that Judge Bason's uniformly negative conclusions were based on inferences not supported by the record. [344]

Mr. Burns asked the Civil Division to "consider initiatives for achieving a more favorable disposition of this matter." [345] In response to this Stuart Schiffer, the Deputy Assistant Attorney General of the Civil Division, asked Michael Hertz, Director, Commercial Litigation Branch, Civil Division, to investigate the possibility of having Judge Bason disqualified from the INSLAW case on the grounds of bias. [346] The Department hoped to challenge the judges findings of fact by claiming them to be unsupported by the evidence and reflecting a justification to reach a preordained conclusion. This position was founded primarily on the Department's observations that some of Judge Bason's findings of fact were "rambling and based on deductions that are both strained and have flimsy support." [347]

Mr. Hertz informed Mr. Schiffer that the facts simply did not support a legally sufficient case of bias to disqualify Judge Bason from the remainder of the INSLAW case. Mr. Hertz also stated that he was "fairly

confident" that any motion to dismiss Judge Bason would not succeed and the denial of any such motion could not be successfully challenged on appeal. He cited the following reasons: **(1) The Department had no evidence that what they viewed as "Judge Bason's incredible factual conclusions or alleged bias," actually stemmed from an extrajudicial source, as the case law required; (2) the research revealed that adverse factual findings and inferences against the Government are insufficient to support a claim of bias; and (3) even adverse credibility rulings about some of the Governments witnesses in the prior phase of the INSLAW proceedings were not on their own sufficient to disqualify Judge Bason from the remainder of the proceedings. [348]**

Mr. Hertz advised that attempting to demonstrate bias by Judge Bason could adversely affect any future appeal by the Department on the Findings of Fact. He also advised Mr. Schiffer that as much as the Department may disagree with Judge Bason's findings:

. . . they are not mere conclusory statements. Instead they reflect a relatively detailed judicial analysis of the evidence, including reasons for believing certain witnesses and disbelieving others, as well as consideration of what inferences might or might not be drawn from the evidence. [349]

During August 1987, Assistant Attorney General Willard reported to Mr. Burns that the Department:

. . . developed a good trial record; however, there is virtually no reason for optimism about the judges ruling. Even though our witnesses performed admirably and we believe we clearly have the better case, Judge Bason made it apparent in a number of ways that he is not favorably disposed to our position. [350]

On September 28, 1987, Judge Bason removed any doubt when he ruled that the Department violated the automatic stay by using "trickery, fraud and deceit" to steal INSLAW's proprietary computer software.

On October 29, 1987, Mr. Schiffer wrote in a memorandum to the Chief of the Civil Division that:

Bason has scheduled the next (INSLAW) trial for February 2 (1988). Coincidentally, it has been my understanding that February 1 (1988) is the date on which he (Bason) will either be reappointed or replaced. [351]

Judge Bason learned from Chief Judge Patricia Wald, U.S. Court of Appeals, that he would not be reappointed to the bankruptcy bench on December 28, 1987. [352]

On January 19, 1988, the Department filed a motion that Judge Bason recuse himself from further participation in the case, citing that he was biased against the Department. This motion was filed even though Michael Hertz had previously advised against such a move. Following a hearing on January 22, 1988, the Bankruptcy Court denied the Department's motion. On January 25, 1988, the Department argued a motion before Chief Judge of the District Court Aubrey Robinson for a writ of mandamus directing Judge Bason to recuse himself. Chief Judge Robinson denied the Department's writ ruling:

I cant see anything in this record that measures up to the standards that would be applicable to force another judge to take over this case. There isn't any doubt in my mind, for example, that the Declaration filed (by the Justice Department) in support of the original motion is inadequate. [353]

The Department again raised the issue of Judge Bason's recusal in its appeal to the District Court. District Court Judge William Bryant upheld the two previous court rulings stating:

This court like the courts before it can find no basis in fact to support a motion for recusal. [354]

IX. CONCLUSION

Based on the committees investigation and two separate court rulings, it is clear that high level Department of Justice officials deliberately ignored INSLAW's proprietary rights in the enhanced version of PROMIS and misappropriated this software for use at locations not covered under contract with the company. Justice then proceeded to challenge INSLAW's claims in court even though it knew that these claims were valid and that the Department would most likely lose in court on this issue. After almost 7 years of litigation and $1 million in cost, the Department is still denying its culpability in this matter. Instead of conducting an investigation into INSLAW's claims that criminal wrongdoing by high level Government officials had occurred, Attorney Generals Meese and Thornburgh blocked or restricted congressional inquiries into the matter, ignored the findings of two courts and refused to ask for the appointment of an independent counsel. These actions were taken in the face of a growing body of evidence that serious wrongdoing had occurred

which reached to the highest levels of the Department. The evidence received by the committee during its investigation clearly raises serious concerns about the possibility that a high level conspiracy against INSLAW did exist and that great efforts have been expended by the Department to block any outside investigation into the matter.

Based on the evidence presented in this report, the committee believes that extraordinary steps are required to resolve the INSLAW issue. The Attorney General should take immediate steps to remunerate INSLAW for the harm the Department has egregiously caused the company. The amount determined should include all reasonable legal expenses and other costs to the Hamiltons not directly related to the contract but caused by the actions taken by the Department to harm the company or its employees. To avoid further retaliation against the company, the Attorney General should prohibit Department personnel who participated in any way in the litigation of the INSLAW matter from further involvement in this case. In the event that the Attorney General does not move expeditiously to remunerate INSLAW, then Congress should move quickly under the congressional reference provisions of the Court of Claims Act to initiate a review of this matter by that court.

Finally, the committee believes that the only way the INSLAW allegations can be adequately and fully investigated is by the appointment of an independent counsel. The committee is aware that on November 13, 1991, newly confirmed Attorney General Barr finally appointed Nicholas Bua, a retired Federal judge from Chicago, as his special counsel to investigate and advise him on the INSLAW controversy. However, at that time the Attorney General had not empowered Judge Bua to subpoena witnesses, convene a grand jury or compel the Department to produce key documents.

INSLAW officials have voiced concerns that Judge Bua, lacking independent counsel status, would not be able to entice Department employees who were knowledgeable of the INSLAW matter to come forward and assist Judge Bua in bringing this matter to closure. Consequently, they are concerned that Judge Bua will not be able to get to the bottom of the matter, and they believe his investigation will end up being subverted by the Department.

The inability to subpoena and/or to convene a grand jury was apparently of concern to Judge Bua and, after a meeting on January 28, 1992, the Attorney General granted Judge Bua broad investigative authority which included the power to subpoena witnesses and to convene special grand juries. However because of the actions by the Department regarding potential whistleblowers such as Anthony Pasciuto, it is very likely witnesses will still feel intimidated by the Department. This problem was present throughout the committees investigation and remains a potential problem today.

Without independent counsel status, Judge Bua remains an employee of the Department of Justice.

The image problem is illustrated in a recent interview with Roger M. Cooper, Deputy Assistant Attorney General for Administration. In an interview with the Government Computer News, Mr. Cooper stated that:

The judge (Bua) will do as the attorney general wants him to do, and that's fine. I think all of us in the department would like to get it (the INSLAW matter) behind us. It's sort of an albatross.

Mr. Cooper may have meant that Attorney General Barr wants Judge Bua to conduct a thorough investigation. The committee has no reason to doubt the commitment of Judge Bua or Attorney General Barr to do a thorough investigation of this matter **the problem rests with the fact that, as long as the investigation of wrongdoing by former and current high level Justice officials remains under the control of the Department, there will always be serious doubt about the objectivity and thoroughness of the work.**

This matter has caused great harm to several individuals involved and has severely undermined the Department's credibility and reputation. Congress and the executive branch must take immediate and forceful steps to restore the public confidence and faith in our system of justice which has been severely eroded by this painful and unfortunate affair. As such, the independent counsel should be appointed with full and broad powers to investigate all matters related to the allegations of wrongdoing in the INSLAW matter, including Mr. Casolaro's death and its possible link to individuals associated with organized crime.

X. FINDINGS

1. The Department, in an attempt to implement a standardized case management system, ignored advice from vendors including INSLAW that PROMIS should not be adapted to word processing equipment. As predicted, problems arose with adapting PROMIS to word processing equipment. The Department immediately set out to terminate that portion of the contract and blamed INSLAW for its failure.

2. The Department exhibited extremely poor judgment by assigning C. Madison Brewer to manage the PROMIS implementation contract. Mr. Brewer had been asked to leave his position as general counsel of INSLAW under strained relations with INSLAW's owner, Mr. William Hamilton. INSLAW's problems with the Department, which started almost immediately after the award of the contract in March 1982, were generated in large part by Mr. Brewer, with the support and direction of high level Department officials. The potential conflict of interest in the hiring of Mr. Brewer was not

considered by Department officials. However, Mr. Brewers past strained relationship with Mr. Hamilton, and the fact that he lacked experience in ADP management and understanding of Federal procurement laws, raises serious questions about why he was selected as the PROMIS project manager.

3. Mr. Brewers attitude toward INSLAW, combined with Mr. Videnieks harsh contract philosophy, led to the rapid deterioration of relations between the Department and INSLAW. Any semblance of fairness by key Department officials toward INSLAW quickly evaporated when Mr. Hamilton attempted to protect his companies proprietary rights to a privately funded enhanced version of the PROMIS software. **In a highly unusual move, Mr. Brewer recommended just 1 month after the contract was signed that INSLAW be terminated for convenience of the Government even though INSLAW was performing under the contract**. From that point forward there is no indication that Mr. Brewer or Mr. Videnieks ever deviated from their plan to harm INSLAW. The actions taken by Messrs. Brewer and Videnieks were done with the full knowledge and support of high level Department officials.

4. Peter Videnieks, the Department's contracting officer, negotiated Modification 12 of the contract which resulted in INSLAW agreeing to provide its proprietary Enhanced PROMIS software for the Department's use. This negotiation was conducted in bad faith because Justice later refused to recognize INSLAW's rights to privately financed PROMIS enhancements. Mr. Videnieks and Mr. Brewer, supported by Deputy Attorney General Jensen and other high level officials, unilaterally concluded that the Department was not bound by the property laws that applied to privately developed and financed software.

5. Thereafter, the Department ignored INSLAW's data rights to its enhanced version of its PROMIS software and misused its prosecutorial and litigative resources to legitimize and coverup its misdeeds. This resulted in extremely protracted litigation and an immense waste of resources both for the Government and INSLAW. These actions were taken even though the Department had already determined that INSLAW's claim was probably justified and that the Department would lose in court. In fact, Deputy Attorney General Burns acknowledged this fact to OPR investigators.

6. Department of Justice documents show that a "public domain" version of the PROMIS software was sent to domestic and international entities including Israel. Given the Department's position regarding its ownership of all versions of PROMIS, questions remain whether INSLAW's Enhanced PROMIS was distributed by Department officials to numerous sources outside the Department, including foreign governments.

7. Several witnesses, including former Attorney General Elliot Richardson, have provided testimony, sworn statements or affidavits linking high level Department officials to a conspiracy to steal INSLAW's

PROMIS software and secretly transfer PROMIS to Dr. Brian. According to these witnesses, the PROMIS software was subsequently converted for use by domestic and foreign intelligence services. This testimony was provided by individuals who knew that the Justice Department would be inclined to prosecute them for perjury if they lied under oath. No such prosecutions have occurred.

8. Justice had made little effort to resolve conflicting and possibly perjurious sworn statements by key departmental witnesses about the alleged attempt by high level Department officials to liquidate INSLAW and steal its software. **It is very possible that Judge Blackshear may have perjured himself and even today his explanations for his recantation of his sworn statement provided to INSLAW are highly suspicious. The investigation of this matter by the Department's Office of Professional Responsibility was superficial.**

9. The Department;s response to INSLAW;s requests for investigations by an independent counsel and the Public Integrity Section was cursory and incomplete.

10. The reviews of the INSLAW matter by Congress were hampered by Department tactics designed to conceal many significant documents and otherwise interfere with an independent review. The Department actions appear to have been motivated more by an intense desire to defend itself from INSLAW's charges of misconduct rather than investigating possible violations of the law.

11. Justice officials have asserted that, as a result of the recent ruling by the Appeals Court and the refusal of the Supreme Court to hear INSLAW's appeal, the Findings and Conclusions of Bankruptcy Judge George Bason and senior Judge William Bryant of the District Court are no longer relevant. The Appeals Court decision, in fact, did not dispute the Bankruptcy Courts ruling that the Department "stole . . . through trickery, fraud and deceit" INSLAW's PROMIS software. Its decision was based primarily on the narrow question of whether the Bankruptcy Court had jurisdiction; the Appeals Court ruled that it did not. This decision in no way vindicates the Department nor should it be used to insulate Justice from the criticism it deserves over the mishandling of the INSLAW contract.

12. The Justice Department continues to improperly use INSLAW's proprietary software in blatant disregard of the findings of two courts and well established property law. This fact coupled with the general lack of fairness exhibited by Justice officials throughout this affair is unbefitting of the agency entrusted with enforcing our Nations laws.

13.Further investigation into the circumstances surrounding Daniel Casolaro's death is needed.

14. The following criminal statutes may have been violated by certain high level Justice officials and

private individuals:

18 U.S.C. 371 Conspiracy to commit an offense.
18 U.S.C. 654 Officer or employee of the United States converting the property of another.
18 U.S.C. 1341 Fraud.
18 U.S.C. 1343 Wire fraud.
18 U.S.C. 1505 Obstruction of proceedings before Department's, agencies and committees.
18 U.S.C. 1512 Tampering with a witness.
18 U.S.C. 1513 Retaliation against a witness.
18 U.S.C. 1621 Perjury.
18 U.S.C. 1951 Interference with commerce by threats or violence (RICO).
18 U.S.C. 1961 et seq. Racketeer Influenced and Corrupt Organizations.
18 U.S.C. 2314 Transportation of stolen goods, securities, moneys.
18 U.S.C. 2315 Receiving stolen goods.

15. Several key documents subpoenaed by the committee on July 25, 1991, were reported missing or lost by the Department. While Justice officials have indicated that this involves only a limited number of documents, it was impossible to ascertain how many documents or files were missing because the Department did not have a complete index of the INSLAW materials. The Department failed to conduct a formal investigation to determine whether the subpoenaed documents were stolen or illegally destroyed.

XI. RECOMMENDATIONS

1. The committee recommends that Attorney General Barr immediately settle INSLAW's claims in a fair and equitable manner.

These payments should account for the Department's continued unauthorized use of INSLAW's Enhanced PROMIS and other costs attributed to INSLAW's ongoing attempt to obtain a just settlement for its struggle with the Department, including all reasonable attorneys fees. If there continue to be efforts to delay a fair and equitable result, the committee should determine whether legislation is required to authorize a claim by INSLAW against the United States, pursuant to 28 U.S.C. 1492.

2. The Attorney General should require that any person in the Department that participated in any way in the litigation of the INSLAW matter be excluded from further involvement in this case, with the exception of supplying information, as needed, to support future investigations by a

independent counsel or litigation, as appropriate.

3. The committee strongly recommends that the Department appoint an independent counsel to conduct a full, open investigation of the INSLAW allegations of a high level conspiracy within the Department to steal Enhanced PROMIS software to benefit friends and associates of former Attorney General Meese, including Dr. Earl Brian, as discussed in this report. Among other matters, the investigation should also:

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scertain whether there was a strategy by former Attorneys General and other Department officials to obstruct this and other investigations through employee harassment and denial of access to Department records.

Investigate Mr. Casolaro's death.

Determine whether current and former Justice Department officials and others involved in the INSLAW affair resorted to perjury and obstruction in order to coverup their misdeeds.

Determine whether the documents subpoenaed by the Committee and reported missing by the Department were stolen or illegally destroyed.

Determine if private sector individuals participated in (1) the alleged conspiracy to steal INSLAW's PROMIS software and distribute it to various locations domestically and overseas, and (2) the alleged coverup of this conspiracy through perjury and obstruction.

Determine if other criminal violations occurred involving:

18 U.S.C. 371 Conspiracy to commit an offense.
18 U.S.C. 654 Officer or employee of the United States converting the property of another.
18 U.S.C. 1341 Fraud.
18 U.S.C. 1343 Wire fraud.
18 U.S.C. 1505 Obstruction of proceedings before Department's, agencies and committees.
18 U.S.C. 1512 Tampering with a witness.
18 U.S.C. 1513 Retaliation against a witness.
18 U.S.C. 1621 Perjury.
18 U.S.C. 1951 Interference with commerce by threats or violence (RICO).

18 U.S.C. 1961 et seq. Racketeer Influenced and Corrupt Organizations.
18 U.S.C. 2314 Transportation of stolen goods, securities, moneys.
18 U.S.C. 2315 Receiving stolen goods.

DISSENTING VIEWS OF HON. HAMILTON FISH, JR., HON. CARLOS J. MOORHEAD, HON. HENRY J. HYDE, HON. F. JAMES SENSENBRENNER, JR., HON. BILL McCOLLUM, HON. GEORGE W. GEKAS, HON. HOWARD COBLE, HON, LAMAR S. SMITH, HON. CRAIG T. JAMES, HON. TOM CAMPBELL, HON. STEVEN SCHIFF, HON. JIM RAMSTAD, AND HON. GEORGE ALLEN

We are unable to support this Investigative Report because it injects the Committee into judicial functions, publicizes unproven allegations, and recommends inappropriate United States Claims Court and Independent Counsel involvement. The Committee endorses findings by a bankruptcy judge in the INSLAW case without the benefit of Committee or subcommittee hearings on the contract dispute that is the focus of the litigation. The Report repeats, and thus disseminates, charges of wrongdoing that can damage reputations even though the Committee itself generally cannot arrive at conclusions on whether various alleged activities going beyond bankruptcy judge findings actually occurred. The Committee calls for expeditious governmental remuneration of INSLAW, although those entrusted with the enforcement of our laws in the Executive Branch are better qualified than Members of Congress to assess the utility of settling a legal controversy on terms favorable to a private litigant. A congressional reference of this matter to the Claims Court is unjustified; INSLAW has not been prevented from adjudicating its claims before an appropriate tribunal in a timely fashion, and proceedings remain pending before the Department of Transportation Board of Contract Appeals. An appointment pursuant to the Independent Counsel statute is unnecessary and potentially disruptive of a criminal investigation currently in progress.

The recitation in an official Committee document of accusations of wrongdoing in the absence of proof satisfactory to the Committee is an unfortunate and harmful feature of the Report. This practice makes it imperative to note initially in our dissent that the Report does not reach conclusions about the truth of many allegations. The Report, for example, describes allegations of a high-level Department of Justice conspiracy involving INSLAW's software but does not purport to determine whether such a conspiracy existed. Elsewhere, the Report describes former Bankruptcy Judge George Bason, Jr.s suggestions of Department of Justice impropriety in connection with his failure to gain reappointment, a process controlled by the Federal Judiciary. The Report points out, however, that "(t)he Committee was unable to substantiate Judge Bason's charges."

INSLAW, a computer software company, had contracted with the Department of Justice in March 1982 to supply case management software for U.S. Attorneys offices. Contract disputes arose between INSLAW and DOJ relating to the incorporation into the software of enhancements INSLAW claimed were

privately funded. Although the parties executed a contract modification in 1983 that facilitated software delivery to the Department of Justice, they never reached agreement on the identification of any non-government funded enhancements. INSLAW eventually filed for bankruptcy protection, and Bankruptcy Judge Bason concluded in an adversary proceeding that the Department of Justice had engaged in improper conduct.

The Report expresses basic agreement with Judge Bason's view of the evidence, although Members of the Committee on the Judiciary are not in a position to conclude one way or the other whether Judge Bason's findings hotly contested by the Department of Justice accurately reflect what actually transpired. Members of the Committee other than possibly the Chairman did not participate in this long investigation conducted by Majority investigative staff with the substantial assistance of GAO detailees. The testimony the Subcommittee on Economic and Commercial Law received from a few people involved in INSLAW litigation during a December 5, 1990, hearing on access to certain INSLAW documents is no substitute for direct familiarity with the voluminous record. We cannot assess the credibility of the many government witnesses who testified in the bankruptcy court without the benefit of hearing from them ourselves.

Although the district court affirmed the bankruptcy courts order in most respects, the United States Court of Appeals for the District of Columbia concluded that the bankruptcy court lacked jurisdiction and therefore reversed the district court and directed the dismissal of INSLAW's complaint. The United States Court of Appeals for the District of Columbia after noting that "(t)he bankruptcy and district courts here both concluded that the Department raudulently obtained and then converted enhanced PROMIS (software) to its own use " commented that "(s)uch conduct, if it occurred, is inexcusable." (Opinion, p. 15.) We find ourselves in the similar position of criticizing the conduct described by lower courts "if it occurred."

The Report erroneously claims that DOJ litigated the INSLAW matter "even though it knew in 1986 that it did not have a chance to win the case on merits" and observes that "(t)his clearly raises the specter that the Department actions taken against INSLAW in this matter represent an abuse of power of shameful proportions." The only support for these sweeping statements, however, appears to be a misconstruction of a 1988 DOJ Office of Professional Responsibility interview with Deputy Attorney General Arnold Burns. In that interview, Mr. Burns recounted that "I wanted to know, as a lawyer, why we didnt make a claim against INSLAW for the royalties on the theory that we were the proprietary owners." (OPR Interview, p. 12.)

This context relating to a possible DOJ counterclaim is critical to understanding Mr. Burns comment that DOJ lawyers were "satisfied that INSLAW could sustain the claim in court, that we had waived those rights. . . ." Mr. Burns goes on to point out in the Office of Professional Responsibility interview

that he "had concluded in good faith . . . that unless there was movement on their (INSLAW's) part on that (proprietary rights) issue, not having anything to do with our counterclaim then, just a question of whether they have the right to collect royalties from us, that this was not susceptible of settlement and I so advised Mr. Ratiner (INSLAW's attorney) on August 28, 1986." (OPR Interview, p. 13.) Mr. Burns apparently learned that DOJ had waived its rights to seek royalties from INSLAW (by way of a counterclaim) for making the PROMIS software available to others but never suggested that INSLAW had a legitimate claim against the Department or that the Department had waived its right to oppose such a claim. The August 28, 1986, letter Mr. Burns refers to states explicitly: "We believe that INSLAW's claim for license fees is wholly without merit, and that your clients expectations with respect to compensation in this regard are entirely unjustified and unjustifiable."

The unidentified correspondence that Mr. Burns refers to as waiving rights51 may be a subject of some discussion in the Report itself. The Report points out that INSLAW's attorney, in a May 26, 1982, letter to Associate Deputy Attorney General Stanley E. Morris, "provided a detailed description of what the company planned to do to market the software commercially. . . ." Mr. Morris response can be viewed as acquiescing to sales by INSLAW to third parties.

In view of the Reports heavy reliance on its construction of a small part of a single interview with the Office of Professional Responsibility, it seems unusual that the Report cites no effort to question Mr. Burns in the course of the Committees investigation. This omission appears particularly glaring in view of other evidence contradicting the Reports perception of how DOJ viewed the merits of its case. Justice Management Division General Counsel Janis Sposato, for example, "concluded (in 1985) that INSLAW's claim to its privately financed enhancements had no merit." (83 B.R. 89 at 154 (Bkrtcy. D. Dist. Col. 1988).) Although the Report claims that DOJ "fought two judgments that it believed were in error based on technical, legal issues rather than on the merits of the case," DOJs appellate brief in the district court contains 65 pages devoted to arguing that various factual findings by Judge Bason are clearly erroneous.

The Reports repeated references to the Department of Justices violation of the automatic stay are confusing in view of the ruling on this point by the United States Court of Appeals for the District of Columbia in the INSLAW litigation. Circuit Judge Williams opinion for the Court states:

Inslaw claimed that the Department had violated the stay provision by continuing, and expanding, its use of the software program in its U.S. Attorneys offices. The bankruptcy court found a willful violation . . ., and the district court affirmed on appeal. . . . Because we find that the automatic stay does not reach the Department's use of property in its possession under a claim of right at the time of the bankruptcy filing,

even if that use may ultimately prove to violate the bankrupts rights, we reverse. (Court of Appeals opinion, p. 3.)

The lower courts erroneously construed Bankruptcy Code Section 362 (automatic stay) and the Report perpetuates that misconstruction in spite of the appellate decision.

Judge Bason's opinion is particularly critical of the PROMIS Project Manager in the Executive Office of U.S. Attorneys. **At an earlier point in his career, C. Madison Brewer had served as general counsel for INSLAW's predecessor corporation. Although we do not endorse DOJs decision over ten years ago to select Mr. Brewer as Project Manager in view of his former association with INSLAW's predecessor fairness to DOJ requires noting that the earlier employment had terminated more than five years before Mr. Brewers selection, DOJ did not know at the time of his selection that he apparently had been encouraged to leave his former employment, and INSLAW waited until Mr. Brewer expressed views it regarded as unfavorable before complaining to DOJ about his service as Project Manager.**

The Report is highly critical of DOJs response to allegations of wrongdoing relating to INSLAW. In that connection, the Report does not give appropriate credit to the Department for promptly initiating an Office of Professional Responsibility investigation following Bankruptcy Judge Bason's September 28, 1987, oral ruling in which he said "the Department of Justice took, converted, stole, INSLAW's enhanced PROMIS by trickery, fraud, and deceit. . . ." (P. 9 of transcript.) Deputy Attorney General Arnold Burns asked OPR to "conduct a complete and thorough investigation into the allegations of bias and misconduct by various Justice Department officials against Inslaw" in an October 14, 1987, memorandum (quoted on p. 4 of OPR report) preceding by over three months the filing of formal findings of fact and conclusions of law (on January 25, 1988), in the INSLAW case. OPR, in a detailed 91-page report, ultimately concluded that the allegations relating to a number of individuals were unsubstantiated.

After reviewing February 1988 allegations from INSLAW's President William Hamilton against high level Department of Justice officials, the Public Integrity Section of the Criminal Division concluded that "(t)he facts submitted by Hamilton are not sufficiently specific to constitute grounds to investigate whether any person covered by the Independent Counsel statute committed a crime." A Special Division of the United States Court of Appeals for the District of Columbia recounts in a per curiam opinion:

Upon receiving the INSLAW material . . . the Department of Justice had promptly conducted a thorough review of the allegations in conformance with the Independent Counsel Act, determined that they were

insufficient to warrant a preliminary investigation under the standards of 28 U.S.C. 591(d) (footnote omitted), and accordingly closed the matter. (In Re: INSLAW, INC. at p. 4 (September 8, 1989).)

The Report describes at great length a series of allegations of wrongdoing going beyond Judge Bason's findings in the INSLAW litigation about which the Report does not reach conclusions. The propriety of reciting such allegations in a public report in the absence of sufficient evidence to reach conclusions is questionable. The release of such raw data may cause needless injury to reputations. This modus operandi is antithetical to the criminal process model in which the government does not disseminate allegations unless the evidence justifies a criminal prosecution. Some of the allegations, in addition, relate to the conduct of foreign governments and dissemination of such material may have potential impacts on our foreign relations. There are major problems also with the credibility of some of the individuals whose allegations are aired. One individual making allegations is referred to in the Report itself as "a shady character . . . recently convicted on drug charges."

The Report erroneously attributes the fact that "the Committee could not reach any definitive conclusion about INSLAW's allegations of a high criminal conspiracy" in part to "the lack of cooperation from the Department." In reality, however, the Department provided the investigators access to voluminous records and facilitated extensive interviews with its employees. The Report itself delineates various "important precedents" that were established in terms of access an acknowledgment that clearly contradicts an argument that DOJ frustrated the investigation.

The Report concludes that "(i)n the event that the Attorney General does not move expeditiously to remunerate INSLAW, then Congress should move quickly under the congressional reference provisions of the Court of Claims Act to initiate a review of this matter by that Court." INSLAW, however, still has the opportunity to appear before the Department of Transportation Board of Contract Appeals. No conduct by the government has prevented INSLAW from litigating this matter in a proper forum within the period of the statute of limitations. It clearly is not the fault of the United States that INSLAW and its attorneys decided to initiate a proceeding in a court that lacked jurisdiction.

Strong policy reasons oppose permitting litigants against the government to avoid the strictures of statutes of limitation. Designed to bar stale claims, statutes of limitation are predicated both on the evidentiary problems involved in arriving at the truth many years after events and on the potential injustice of greatly protracted legal proceedings. We simply do not have equities justifying extraordinary relief in the INSLAW matter in view of the fact that sweeping allegations remain unproven by the Reports own acknowledgment.

The Report recommends the appointment of an Independent Counsel in spite of the fact that a former

federal judge (Nicholas Bua of Chicago, a President Carter judicial appointee) is actively investigating INSLAW and is subpoenaing witnesses to testify before a federal grand jury. There appears to be every indication that Judge Bua and his staff are operating with complete independence in the Department of Justice. An appointment pursuant to the Independent Counsel statute is superfluous at this point however one views the evidence and is likely to result in unnecessary delay, expense, and duplication of effort. Judge Buas investigation must be permitted to go forward and reach a conclusion if we hope to dispose of lingering allegations as expeditiously as possible. He has the authority to get to the bottom of this matter and his efforts must be facilitated rather than circumvented.

All Committee Republicans voted against the adoption of the Investigative Report.

Hamilton Fish, Jr.
Carlos J. Moorhead.
Henry J. Hyde.
F. James Sensenbrenner, Jr.
Bill McCollum.
George W. Gekas.
Howard Coble.
Lamar S. Smith.
Craig T. James.
Tom Campbell.
Steven Schiff.
Jim Ramstad.
George Allen.

SEPARATE DISSENTING VIEWS OF HON. TOM CAMPBELL

I concur in the dissenting views but write separately to add emphasis to three points.

First, the Majority Report places a great deal of reliance on the findings of the Bankruptcy Judge and refers to those findings as having been upheld by the Federal District Judge as well. The Majority Report accepts those findings as fact.

But our committee does not know if they are fact or not. The Bankruptcy Judge lacked jurisdiction to enter the findings that he did, as the Majority Report acknowledges. The Majority Report claims as a result that the factual findings of the Bankruptcy Judge were not cast in any doubt, since the reversal of his judgment was on jurisdictional grounds what the Majority Report terms a legal technicality.

Legal technicalities are what you call holdings of law that devastate your case. You call them unassailably learned conclusions of law if they support your case.

The reason the U.S. Court of Appeals finding of no jurisdiction devastates the Majoritys case is that this decision renders the Bankruptcy Judges findings of no effect. The key point is this: if the Bankruptcy Judge had jurisdiction, then the three judges of the U.S. Court of Appeals on review would have had to consider whether to uphold those findings or not. But well never know what they would have done with those findings.

The Department of Justice makes a strong case the findings were not substantiated by the evidence. It is wrong to say that the findings were left untouched on appeal the U.S. Court of Appeals simply never got to them because they didnt have to. To hold that they retain any significance at all would require reviewing courts, having already found a lower courts decision to be without jurisdiction, to proceed nonetheless to review each and every finding by that court, lest someone subsequently says those findings were "left untouched" on appeal. It is axiomatic in our legal system that when a court is found to lack jurisdiction on appeal, all of its findings of fact and conclusions of law are from that moment without the slightest weight.

The Federal District Judge did uphold the findings of the Bankruptcy Judge, prior to the Court of Appeals holding they both lacked jurisdiction. The Majority Report tries to make this sound as though two completely separate decisionmakers passed on the facts and law presented. In reality, however, a federal district judge will affirm the findings of a bankruptcy judge unless they are clearly erroneous. So all that can be concluded is that one bankruptcy judge found as the Majority Report states, and one federal district judge could not call those findings clearly erroneous.

Hence, the tendency of the Majority should be resisted to intimate that the "score" is somehow 2 to 0. If anything, it might be 1+ to 0, since the Federal District Judges finding of no clear error does not constitute a separate analysis of the facts except on the most generous of review standards.

But, once again, we have no idea how the three federal appeals court judges would have ruled. They may well have found the Bankruptcy Judges conclusions to be clearly erroneous. If they did, the "score" would have been 1+ to 3, even adopting the somewhat bizarre assumption that one federal judges opinion is entitled to the same weight as any others, though some sit on a higher court.

But we don't know, because the U.S. Court of Appeals judges found the conclusions to have been without jurisdiction. In reality, therefore, the only meaningful score is 0 to 3; since the unanimous opinion of the three reviewing judges was that the findings of fact below should have no legal

effect.

Secondly, the Majority Report, and some Majority Members at the Committee Markup, suggested that the involvement of Judge Nicholas Bua made the case for an Independent Counsel stronger. **It is argued that the Attorney General has, by appointing Judge Bua to conduct an outside investigation, admitted that the Department of Justice is incapable of proceeding in this matter in a fair way.**

This is a dangerously erroneous position to maintain. Its logical conclusion is that the Attorney General never appoint an outsider to assist him, except through the mechanisms of the Independent Counsel statute. This would be regrettable. The Attorney General should remain free in those cases where an Independent Counsel is not appropriate nevertheless to seek a report from an outside source. To hold otherwise will discourage future Attorneys General from seeking the judgment of outsiders. There is no knife-edge between Justice Department proceeding entirely internally and the appointing of an Independent Counsel middle courses are still available, and in this case, may well be useful.

Third, and last, much was made at the Committee Markup of statements made under oath by the Honorable Elliot Richardson, who is counsel for one of the parties in this matter.

I cannot name a public figure for whom I have higher regard than Mr. Richardson.

However, it remains that his views are not evidence. He was not a party to any of the contract negotiations at issue in this case. His conclusions are entitled only to the weight they deserve as arguments offered by counsel for a very interested party.

Cogent argument by a very respected attorney representing one side in a lawsuit is valuable to a court; it is not dispositive. That we accord it more weight than that shows how different we are, in fact, from a court.

The Inslaw matter is proceeding properly through the route of administrative remedy, with subsequent judicial review awaiting. T**his Committee errs in deciding factual matters in dispute on behalf of one side, errs in effectively awarding that side damages, and errs most fundamentally in taking a judicial and administrative matter into the legislative branch.**

Tom Campbell.

Part 1 of 2

NOTES:

1 INSLAW, Inc., is a Washington, DC, based company engaged in computer software and systems analysis, particularly case management and decision support applications for legal and criminal Justice oriented organizations.

2 INSLAW, Inc., v. United States, opinion of U.S. District Court Judge William Bryant, at p. 52A.

3 INSLAW Inc, v. United States, Ch 11. Case No. 85 00070, Adv. No. 86-00069, transcript of oral decision at 9 (Bankr. D.D.C. September 28, 1987).

4 INSLAW, Inc, v. United States, 83 B.R. 89 (Bktcy. D. Dist. Col. 1988) at 158 (Finding 399).

5 Sworn statement of C. Madison Brewer, In the matter of: Office of Professional Responsibility Investigation No. 88-137, June 29, 1988, p. 35.

6 INSLAW, Inc., v. United States, 83 B.R. 89 (Bktcy. D. Dist. Col. 1988) at 123 (Finding 165).

7 There were two additional sites (Southern District of California and District of New Jersey) which were used as pilot sites prior to the award of the March 1987 contract to INSLAW.

8 INSLAW, Inc., v. United States, 83 B.R., op cit., p. 17.

9 Mr. Riconosciuto provided an affidavit to the Hamiltons stating that Mr. Videnieks had worked for the CIA and had threatened him with retribution if he talked to committee investigators.

10 In an October 26, 1988, FBI Interview of James Garrity. Garrity (who was Judge Blackshear's attorney) stated that DOJ lawyer Dean Cooper had called him (Garrity) and said that Judge Blackshear's testimony was wrong and that DOJ was concerned that something should be done to correct it. Mr. Garrity informed Judge Blackshear of this information who later recanted his testimony. Mr. Garrity was an attorney with the Department at that time.

11 In a January 20, 1988, letter to Mr. Pasciuto from B. Boykin Rose, Associate Deputy Attorney General, Mr. Pasciuto was informed he was being terminated. Mr. Rose describes Mr. Pasciuto's providing information to the Hamiltons as "atrocious judgment."

12 The procedures for the selection of a bankruptcy judge include: (1) Public notice of the vacancy, (2) applicants submit an application illustrating they meet the minimum qualifications to the circuit executive, (3) the applications are reviewed by a Merit Selection Panel, led by a district judge and

appointed by the Judicial counsel or Counsel delegates, (4) the panel evaluates the applicants and selects the four most qualified candidates based on a review of applications and interviews of the applicants and interested parties, and (5) the selections are forwarded to the Judicial Council, which reviews the report of the panel and recommends at least three nominees to the Court of Appeals which makes the final selection.

13 Hearing, House Judiciary Committee's Subcommittee on Economic and Commercial Law December 5, 1990, Serial No. 114.

14 House Judiciary Committee hearing, July 11, 1991, Serial No. 12, p. 3.

15 Statements of Chairman Jack Brooks before the Subcommittee on Economic and Commercial Law, "Meeting to Authorize Issuance of a Subpoena for Documents From the Department of Justice," July 25, 1991.

16 July 30, 1991 letter from Assistant Attorney General W. Lee Rawls to the Honorable Jack Brooks, Chairman Committee on the Judiciary.

17 Statement of Chairman Jack Brooks before the Subcommittee on Economic and Commercial Law, "'Meeting on the Return of Subpoenas," July 31, 1991.

18 INSLAW, Inc., v. United States of America and the U.S. Department of Justice, Findings of Fact and Conclusions of Law (Case No. 85-00070) Adversary Proceeding No. 86-0069, p. 59.

19 Memorandum to the File from Mr. Peter Videnieks, Contracting Officer, Department of Justice, illegible date, pp. 1-2.

20 Memorandum of the U.S. District Court for the District of Columbia concerning the consolidated appeal of the final judgment entered by the U.S. Bankruptcy Court in favor of INSLAW November 22, 1989, p. 22a. Also see January 14, 1982, letter from Dr. Dean C. Merrill, INSLAW vice president to Mr. Peter Videnieks, Department contracting officer, p. 9.

21 Ibid., p. 21a.

22 Letter with attached memorandum to Mr. Stanley E. Morris, Associate Deputy Attorney General and a member of the PROMIS Oversight Committee, from Mr. Roderick M. Hills Latham & Watkins, April 2, 1982.

23 In a memorandum to INSLAW's counsel, an INSLAW employee stated that, during the period from May 1981 to May 1982 INSLAW developed a number of enhancements using over $1 million of private funds and that no Federal funds were expended on these enhancements. Memorandum to Jim Rogers, Latham, Watkins & Hills, from Joyce Demy, June 17, 1982, Exhibit 1.

24 INSLAW, Inc., v. United States, 83 B.R. 89 (Bktcy. D. Dist. Col. 1988) at 123 (Finding 165).

25 Ibid., at 123 (Finding 165).

26 Findings of Fact and Conclusion of Law, No. 165, at 84.

27 Ibid., at 84-85

28 Findings of Fact and Conclusions of Law, No. 168, 170, pp. 85-86 and sworn statement of C. Madison Brewer, September 13, 1990, p. 74.

29 "Printed inquiry" enhancement refers to special enhancements made to PROMIS pursuant to a Bureau of Justice Statistics contract with INSLAW.

30 On August 11, 1982, Morris responded:

"We agree that the original PROMIS, as defined in your letter of May 26, 1982, is in the public domain. We also agree that the printed inquiry enhancement is in the public domain. To the extent that any other enhancements to the system were privately funded by INSLAW and not specified to be delivered to the Department of Justice under any contract or other arrangement INSLAW may assert whatever proprietary rights it may have." [Letter from Mr. Stanley E. Morris, Associate Deputy Attorney General to James Rogers, Esq., August 11, 1982, p. 1.]

31 Mr. Brewer started with the EOUSA in January 1982 and officially became the PROMIS project manager in April 1982.

32 Findings of Fact and Conclusions of Law, No. 101, 103, pp. 110-11.

33 Deposition of Laurence S. McWhorter, June 12, 1987, pp 11-12.

34 Sworn statement of C. Madison Brewer, September 13, 1990, p. 39.

35 The PROMIS Oversight Committee reviewed and approved plans developed by Mr. Brewer and the

EOUSA for implementing the PROMIS software into the EOUSA district offices. The committee membership originally consisted of the Associate Attorney General (Rudolph W. Giuliani), the Associate Deputy Attorney General (Stanley E. Morris), the Director of EOUSA (William P. Tyson), and Justice Management Division's (JMD) Assistant Attorney General for Administration (Kevin D. Rooney). The Associate Attorney General was the Chairman of the Committee. See memorandum from Mr. Kevin D. Rooney, Assistant Attorney General for Administration and Mr. William P. Tyson, Acting Director, EOUSA to Deputy Attorney General Edward C. Schmults, August 13, 1981, p. 3 (hereinafter Rooney and Tyson memorandum).

It is important to note that Mr. Jensen was heavily involved in the Department's PROMIS project. Mr. Brewer has testified that Judge Jensen, who was the Assistant Attorney General for the Criminal Division between 1981 and early 1983, attended most, if not all, of the PROMIS Oversight Committee meetings as a participant and, later, as the chairman of the committee. Mr. Brewer indicated that Judge Jensen attended these meetings before he became Associate Attorney General (and Chairman of the Oversight Committee) because PROMIS implementation was a very high priority program, and representation from all departmental offices was required. During early 1983, as Associate Attorney General and later as Deputy Attorney General, Judge Jensen was ranking Chairman of that Committee and one of its most influential members throughout he life of the PROMIS contract. Sworn statement of C. Madison Brewer, September 13, 1990, pp. 114-15.

36 Staff Study of Allegations Pertaining to the Department of Justice's Handling of a Contract with INSLAW, Inc., by the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, September 1989, p. VII.

37 Office of Professional Responsibility Deposition of Judge Lowell Jensen, June 19, 1987, p. 34

38 Findings of Fact and Conclusions of Law, pp. 49-52.

39 Testimony of John Gizzarelli at trial, July 22, 1987, p. 473.

40 Sworn statement of C. Madison Brewer, September 13, 1990, pps. 11 and 75.

41 Gizzarelli sworn testimony, pp. 474-476.

42 Memorandum from Mr. John Gizzarelli to Mr. Dean Merrill, July 1, 1982, pp. 1-3.

43 Testimony of Harvey C. Sherzer, INSLAW's attorney, June 30, 1987, pp. 63-64.

44 April 21, 1982, INSLAW Memorandum to File from J. F. Kelly and J. Doroy.

45 Sworn statement of C. Madison Brewer, September 13, 1990, pp. 155-156.

46 The advance payments clause (N)(1) from contract states that: "The amount of advance payments at any time outstanding hereunder shall not exceed:

$280,000.00 during the first 12 months of contract performance
$380,000.00 during months 13 through 20 of contract performance-
$280,000.00 during months 21 through 30 of contract performance, and
$100,000.00 for the balance of the performance of the contract."

47 Mr. Brewer stated that the reason for considering terminating INSLAW's advance payment account was that a loan INSLAW had with the Bank of Bethesda, pursuant to which a lien was placed on payments received by INSLAW from the account (not the account itself), was contrary to the contract and placed the Government in financial risk.

48 Sworn statement of Peter Videnieks, November 5, 1990, p. 62.

49 March 7, 1983, Department of Justice internal memorandum entitled "PROMIS Implementation Contract, Programmatic Risk related to possible failure of INSLAW as a business entity."

50 Sworn statement of Videnieks, op cit.

51 Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter, from Mr. Robert B. Lyon, Jr., Acting Counsel, Office of Professional Responsibility, to Mr. Harold G. Christensen, Deputy Attorney General, March 31, 1989. OPR Footnote 13, pp. 24- 25.

52 Letter from Mr. Peter Videnieks, contracting officer, to Mr. John Gizzarelli, INSLAW, Inc., December 6, 1982, p. 1.

53 Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter, March 31, 1989, p. 27.

54 March 18, 1983, letter to Harvey Sherzer, Esq., INSLAW's attorney, from Peter Videnieks, p. 2.

55 Ibid., p. 2.

56 Funds were placed by the Department into an account at the Bank of Bethesda. INSLAW could withdraw funds from the account (based on on expenses incurred) only after a voucher was signed by Mr. Videnieks.

57 Letters from Mr. Harvey G. Sherzer, INSLAW counsel, Pettit & Martin, to the Department, April 5, 1983 and April 12, 1983.

58 Letter from Mr. Harvey G. Sherzer, INSLAW counsel, Pettit & Martin, to Mr. Peter Videnieks, contracting officer, May 4, 1983.

59 Letter from Mr. Peter Videnieks, contracting officer, to Mr. Harvey G. Sherzer, Esq. Pettit & Martin, June 10, 1983, p. 2.

60 Testimony given during INSLAW, Inc. v. United States, by Mr. Jack Stanley Rugh, July 28, 1987, p. 1513.

61 Ibid., pp. 1517-1518.

62 INSLAW, Inc v. United States, 83 B.R. 89 (Bktcy D. Dist. Col. 1988) at 107 (Finding 83). Also see INFRA for Terms of Modification 12.

63 Sworn statement of Mr. Peter Videnieks, November 5, 1990, p. 94.

64 Letter to Mr. H. G. Sherzer, INSLAW's Attorney, from Mr. Peter Videnieks, contracting officer July 21, 1983.

65 Findings of Fact and Conclusions of Law, No. 316 and 317, p. 144.

66 Ibid., p. 144.

67 RFP amendments 1 and 2, November 9, 1981, and November 16, 1981, respectively.

68 INSLAW, Inc., v. United States, 83 B.R. 89 (Bktcy D. Dist.,Col. 1988) at 138 (Finding 266).

69 Ibid., at 118 (Finding 141).

70 Memorandum from Mr. C. Madison Brewer, Director, OMISS, EOUSA, to Mr. Kamal J. Rahal, Director, Procurement and Contracts Staff, Justice Management Division, August 15, 1984.

71 Analysis of INSLAW's Unsolicited Proposal of April 19, 1985, an analysis by the Executive Office for U.S. Attorneys, dated April 30 1986, p. 8. This analysis was transmitted to Mr. Jay Stephens, the Deputy Associate Attorney General, by Mr. William P. Tyson, the EOUSA Director, on May 2, 1985.

72 Letter from Ms. Janice A. Sposato, General Counsel, JMD, Department of Justice, to Mr. Harvey Sherzer, Esq., INSLAW counsel, November 15, 1986.

73 Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter; from Mr. Robert B. Lyon, Jr., Acting Counsel, Office of Professional Responsibility, to Mr. Harold G. Christensen, Deputy Attorney General, March 31, 1989, pp. 36. The report refers to 23 additional sites but this did not include the two PROMIS pilot sites which also installed INSLAW's enhanced software.

74 Findings of Fact and Conclusions of Law, p. 196. Although this finding was upheld by the District Court, the Circuit Court of Appeals found on May 17, 1991, that the automatic stay was not violated.

75 Letter from Mr. William A. Hamilton, INSLAW president, to the Honorable H. Lawrence Wallace, Assistant Attorney General far Administration, Department of Justice, September 9, 1985, p. 1.

76 INSLAW, Inc., v. United States, opinion of U.S. District Court Judge William Bryant, at p. 25a.

77 Sworn statement of Arnold I. Burns, by OPR, March 30, 1988, pp. 7-13. It is presumed that Mr. Burns is discussing a period of time around his confirmation date in July 1986.

78 Memorandum from Elliot Richardson, Esq. to Special Counsel Judge Nicholas J. Bua, January 14, 1992, p. 8.

79 The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It stops all collection efforts, all harassments, and all foreclosure actions, giving the debtor temporary relief from creditors. The automatic stay allows the Bankruptcy Court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed orderly and efficiently, unimpeded by uncoordinated proceedings in other arenas.

80 Staff Study Of Allegations Pertaining To The Department of Justice's Handling Of A Contract With INSLAW, Inc., by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, September 1989, p. 5.

81 Ibid.

82 Ibid.

83 Ibid., p. 9.

84 Ibid.

85 Letter from Mr. Leigh S. Ratiner, INSLAW counsel, to Mr. Peter Videnieks, contracting officer, March 14, 1986, pp. 1- 2.

86 INSLAW, Inc., v. United States, opinion of U.S. District Judge William Bryant, at pp. 49a-50a.

87 INSLAW, Inc., v. United States, opinion of U.S. District Court Judge William Bryant, at 50a.

88 INSL.AW, Inc., v. United States, opinion or U.S. District Judge William Bryant at pp. 56a.

89 INSL.AW, Inc., v. United States, opinion of U.S. District Judge William Bryant at pp. 31a-56a.

90 October 12, 1990, brief for the appellants, p. 16.

91 Ibid., pp. 16, 24, 28, 30, 45.

92 INSLAW, Inc. v. United States, et al., case No. 90-5053 and United States of America v. INSLAW, Inc., et al., case No. 90 05052, U.S. Court of Appeals decision on the appeal, May 7, 1991, p. 15.

93 Proceeding of a hearing before the DOTBCA In the matter of INSLAW, Inc. v. Department of Justice, et al., case No. 1609, November 13, 1991, p. 49.

94 Ibid., p. 37.

95 Proceedings of a hearing before the DOTBCA In the matter of INSLAW, Inc. v. Department of Justice, et al., case No. 1609, November 13, 1991, p. 37.

96 Sworn statement of Mr. Edwin Meese, July 12, 1990, p. 48.

97 Proceeding of a hearing before the DOTBCA In the matter of INSLAW, Inc. v. Department of Justice,

et al. case No. 1609, November 13, 1991, p. 37.

98 See Shane, supra at 304.

99 28 U.S.C. 2509(c).

100 The Appellate Mediation Program operates under a court order issued on November 28, 1988, and amended on April 19, 1989. The program is intended to benefit the parties by providing a forum which encourages the settlement of cases, or at least the resolution or simplification of some of the issues, through an independent and neutral mediator. Source: Brochure issued by the court entitled, "Appellate Mediation Program."

101 Ibid.

102 October 1, 1990, Washington Post article, entitled: "Obsessed by a Theory of Conspiracy," p. 24.

103 Report of the independent counsel concerning Edwin Meese III, September 20, 1984, pp. 34-35.

104 Memorandum to Special Counsel, Judge Nicholas J. Bua from Elliot L. Richardson, Esq., January 14, 1992, pp. 1-16.

105 Courts have defined a "license" in the following ways:

". . . a right granted which gives the grantee permission to do something which he could not legally do absent such permission; leave to do a thing which the licensor [the party granting the license] could prevent .... [G]enerally speaking, [it] means a grant of permission to do a particular thing, to exercise a certain privilege, or to carry on a particular business or to pursue a certain occupation." 160 P.2d 37, 39.

"In the law of property, a license is a personal privilege or permission with respect to some use .... " 230 S.W. 2d 770, 776.

"Because a license represents only a personal right, it is generally not assignable." 34 N.Y.S. 693.

(Source Law Dictionary, Mr. Steven H. Gifis, Barron's Educational Series, Inc., Woodbury, New York.)

106 Memorandum to INSLAW from Peabody, Rivin, Lambert & Meyers, April 16, 1979, p. 1.

107 Memorandum of interview with Mr. Hamilton, January 30, 1992, p. 1.

108 Letter from William Hamilton to the Honorable Harold R. Tyler, February 23, 1979, p. 1.

109 INSLAW and the courts were unaware that Deputy Attorney General Burns had determined in 1986 that INSLAW owned its enhanced version of PROMIS and the Department would lose in court on this issue.

110 Jack S. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to file, April 22, 1983

111 Mr. Jack S. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to file, May 6, 1983.

112 See section of the report titled, "'The Allegators."

113 Mr. Videnieks provided an initial sworn statement to the committee on November 5, 1990. On March 21, 1991, Michael Riconosciuto provided a sworn affidavit to the Hamiltons in which he described an alleged relationship between Mr. Videnieks and Dr. Brian. On March 22, 1991 committee investigators attempted to schedule a second deposition with Mr. Videnieks through his attorney, Charles Ruff, to discuss these new allegations. On March 25, 1991 Mr. Ruff stated that Mr. Videnieks would not agree to provide a second deposition. Subsequently, Mr. Ruff was contacted on another occasion in which he again stated that Mr. Videnieks would not provide a second deposition. It should also be noted that at the Justice Department's request, Mr. Videnieks testified at the trial of Michael Riconosciuto (see infra)

114 Mr. Jack S. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to C. Madison Brewer, May 12, 1983. Also, note that this action took place after Modification 12 was signed on April 11, 1983, and the Enhanced PROMIS was turned over to the Department.

115 Memorandum to Judge Nicholas Bua from Mr. Elliot Richardson, p. 34.

116 Mr. Jack S. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to file, August 12, 1983.

117 These allegations are explored in depth in the section of the report entitled, "The Allegatars."

118 Ibid.

119 There is some measure of irony in the reaction of some current and former Department

officials in their attempt to discredit automatically these allegations simply because of the past activities of certain witnesses who have worked "both sides" of the enforcement or intelligence communities. The Department showed no similar reluctance or moral fastidiousness in its recent prosecution of Manuel Noriega, which involved the use of over 40 witnesses, the majority of whom were previously convicted drug traffickers. Obviously, a witness' perceived credibility is not always indicative of the accuracy or usability in court of the information provided.

120 The Department's unwillingness to allow congressional oversight into its affairs, in spite of an alleged coverup of wrongdoing, greatly hindered the committee's investigation of the INSLAW allegations. The Department delayed and hindered congressional inquiries into the INSLAW matter over several years. This committee consumed almost 2 years and had to resort to a subpoena to obtain key information. Even then, key Department files subpoenaed by the committee were reported lost and other key investigative files and still being denied on the basis that these files contain criminal investigative material. The committee also encountered serious problems with obtaining cooperation from U.S. intelligence and law enforcement agencies. While some limited level of assistance was eventually provided from these groups, it often took months to arrange even minimum cooperation. The committee also encountered virtually no cooperation in its investigation of the INSLAW matter beyond U.S. borders. The Government of Canada refused to make its officials available to committee investigators for interviews without strict limitations on the questioning. Also, see discussion in section entitled, "INSLAW Request for Independent Counsel," for greater detail.

121 See section of report entitled, "The Allegators."

122 Memorandum to the record, June 21, 1990, prepared by William A. and Nancy B. Hamilton, p. 1.

123 The Wackenhut Corporation is an investigation and security firm based in Coral Gables, Florida. It has been alleged that Wackenhut has been contracted to conduct covert investigations and other covert projects.

124 Sworn affidavit of Michael Riconosciuto, March 21, 1991, p. 2 (on file with the committee).

125 Ibid., p. 1 [Also see section on Canada, p. 109.]

126 Ibid., p. 3.

127 Sworn statement of Michael Riconosciuto, April 4, 1991, pp. 59-71.

128 The Wackenhut-Cabazon joint venture sought to develop and/or manufacture certain materials that are used in military and national security operations, including night vision goggles, machineguns, fuel-air explosives and biological and chemical warfare weapons.

129 Sworn statement of Michael Riconosciuto, April 4, 1991, pp. 5-6.

130 Ibid., p. 6

131 During the sworn statement of Michael Riconosciuto on April 4, 1991, pp. 41-42, he stated that during a luncheon attended by Earl Brian, Peter Videnieks, James Hughes and Riconosciuto, the Enhanced PROMIS software was loaded into his car.

132 Ibid., p. 43.

133 Analysis of Riconosciuto tapes: The committee requested that GAO analyze the tapes and disks received from Riconosciuto. On November 12, 1991, GAO reported to the committee that it could recover data from only one of the five magnetic media, which it provided to the committee. The tapes and disks were several years old and had been kept in unsuitable storage facilities. The magnetic media was dirt encrusted and warped possibly from the excessive heat and humidity. The readable media appeared to be a corporate data file of accounts containing primarily individuals, names and addresses and was neither encrypted, as had been alleged by an acquaintance of Riconosciuto, nor did it contain any versions of the PROMIS software. Lacking in-house expertise in repairing severely damaged media, GAO contracted with a professional engineering firm to:

(1) Perform an engineering evaluation of the four remaining media to determine whether they could be repaired to the point that data could be retrieved from them

(2) repair the media, if possible; and

(3) retrieve any data found on the media.

By letter dated March 23, 1992, GAO reported on its work on the Riconosciuto media. GAO reported that all four of the damaged media were analyzed, but that only one contained readable data. According to GAO the readable media was a tape that contained what seemed to be instructions for installing a modification to what appeared to be a word processing software package. The format and command sequence, according to GAO, resembled those seen on non-IBM minicomputers. One disk appeared to contain some sort of instructions but could not be read.

134 During a December 1991 telephone conversation with committee investigators, Robert Booth Nichols said that he (Nichols) and Michael Riconosciuto had worked together at the Cabazon Indian Reservation in the early 1980's. Robert Booth Nichols stated that he had been hired by John Phillip Nichols who worked with Mr. Riconosciuto on the joint venture. During this December telephone conversation, Robert Nichols requested that his associate Peter Zokosky, an arms manufacturer, also be present during a future interview with committee investigators. Robert Nichols added that Mr. Zokosky had also known Michael Riconosciuto. (Memorandum of interview on file with committee.)

135 Affidavit of William A. Hamilton, December 22, 1989, p. 7.

136 Report of Independent Counsel Concerning Edwin Meese III, September 20, 1984.

137 In a March 21, 1984, Washington Post article, it was reported that sources close to Meese said he decided to invest in Biotech because of his confidence in the company's founder, Earl W. Brian. Additionally, in the early months of the Reagan administration, Biotech received a special exemption from the Small Business Administration (SBA) which enabled the firm to obtain $5 million in federally guaranteed financing. The article also reports that this exemption was facilitated by a phone call from an aide of then Vice President Bush to SBA Administrator Michael Cardenas. According to the March 21, 1984 article, before founding Biotech in 1979 Brian headed a firm called Xonics Inc. In 1977, while Brian was president, the Securities and Exchange Commission (SEC) cited the firm for making false and misleading statements to stockholders, charges that Xonics later settled in an SEC consent degree without admitting or denying the charges. This article also reported that the SEC accused the firm of violating the consent decree.

138 Report of the Independent Counsel, op. cit., p. 72.

139 Ibid., pp. 234-235.

140 Ibid., p. 244. Also, Dr. Brian's application for this position listed Mr. Meese as his supervisor.

141 Memorandum of interview on file with the committee.

142 Memorandum of interview on file with committee.

143 February 14, 1975 edition, Los Angeles Times, "Ex-Health Director Defends Tapes Move," p. 3.

144 Ibid.

145 Ibid., p. 3.

146 Mr. Hamilton, in his affidavit, asserts that had their connection been known at the time the independent counsel's investigation might well have included the theft of INSLAW's PROMIS software.

147 In a sworn affidavit by Mr. Hamilton, allegations of other unauthorized distributions of Enhanced PROMIS have been made by unnamed U.S. Government officials. Mr. Hamilton contends that these sources, who will not come forward for fear of retribution, have alleged that PROMIS has been provided to agencies within and outside the Department of Justice including the Central Intelligence Agency (CIA), DEA and the FBI. Hamilton affidavit, December 22, 1989 (on file with the committee).

148 Memorandum of interview on file with the committee.

149 Sworn affidavit of Ms. Patricia C. Hamilton, Feb. 18, 1991, p. 2.

150 Memorandum of interview on file with committee.

151 Interviews of Mr. Marc Valois, Mr. Denis LaChance, March 22, 1991, pp. 7 and 4, respectively, and Mr. Ed Bercovitz, March 7, 1991, pp. 4-8.

152 Sworn statement of Mr. Massimo Crimaldi, president of Strategic Software Planning Corporation, March 19, 1991, pp. 9-10.

153 Letter from His Excellency Derek H. Burney, Ambassador of Canada to the Honorable Jack Brooks December 4, 1991, p. 2.

154 Although the Canadian Government has continued to deny that it has INSLAWs PROMIS software, information continues to surface indicating the opposite to be true. As recently as April 1992, reports of the use of the PROMIS software by the Canadian Government have been aired through the written and televised media. These media releases include a 1-minute report on CJOH, Ottawa titled, "RCMP Using Stolen INSLAW Software;" an April 16, 1992, article in a Canadian magazine titled "Out of Canada;" an article on March 3, 1992, in a Canadian newspaper titled, "The Globe and Mail;" and a February 28, 1992 article in the Canadian newspaper titled, "The Financial Post."

Of particular interest is a report that Statistics Canada, a Canadian governmental agency, recently

admitted previous use of a public domain version of the INSLAWs PROMIS software. According to officials contacted by William Hamilton, the version of the software that had been used was obtained through the LEAA in the late 1970s. (See memorandum of interview on file with the committee). While the use of this version of the PROMIS software would be legal, the Canadian Government had previously denied any knowledge of the use of INSLAWs PROMIS software by any of its agencies.

155 In a conversation with committee investigators, William Hamilton provided information he had obtained from Charles Hayes and Juval Aviv, regarding the distribution of the PROMIS software domestically and internationally. (See December 22, 1989, affidavit of William Hamilton, on file with the committee.) In this conversation, Mr. Hamilton stated that the PROMIS software was distributed to the CIA. For greater detail see the section of the report titled, "The Allegators."

156 In addition, at that meeting, and as a result of information received from several sources (refer to the section of the report titled, "The Allegators") subsequent to the February 15, 1991 letter, committee investigators inquired whether a number of other countries, including Israel, Jordan, Singapore, Canada, Iraq and Iran, had received PROMIS software. To date, no response has been received from the CIA.

157 Dr. Brian, in his sworn statement of September 20, 1990, described the business relationship between Hadron and the U.S. Navy, the intelligence community, and specifically the CIA. He indicated that Hadron had 30-40 Federal Government contracts with the "intelligence community" (pp. 23-27).

158 Letter to the Honorable Jack Brooks from Richard J. Kerr, Deputy Director CIA, November 18 1991, pp. 1, 2, and 3.

159 Ibid.

160 Letter from the Honorable Jack Brooks to Honorable Charles Bowsher, Comptroller General of the United States, January 17, 1991.

161 Letter report to the Honorable Jack Brooks from Mr. Joseph Kelley, Issue Area Director for Security and International Relations, GAO, June 14, 1991.

162 Memorandum of interview of Mr. Carl Jackson, August 31, 1990 (on file with the committee).

163 Ibid.

164 Copies of minutes of the ADP Executive Committee Meetings, December 1988 through May 1989.

165 Mr. Miller is a 32-year veteran of the computer business. His interest in this matter resulted from his belief that INSLAW was being unfairly treated by the Department. In a series of letters to the FBI, he requested that the FOIMS system be compared to INSLAW's PROMIS software. Additionally, he has requested that he be given permission to perform the comparison. To date, the FBI has failed in his view to satisfactorily answer his questions. Mr. Miller and a INSLAW confidential informant, who is a career official in the Justice Department, have both provided information to the Hamiltons which alleged the use of INSLAW's PROMIS software by the FBI. The Department official alleged he was told by John Otto, former Acting Director of the FBI, that FOIMS is based on INSLAW's PROMIS software.

166 On file with the committee.

167 The FBI's January 26, 1991, response to Mr. Miller is on file with the committee.

168 On file with the committee.

169 On file with the committee.

170 On file with the committee.

171 In a June 23, 1992, letter from FBI Director William Session to Judge Bua, Special Counsel to the Attorney General, the Director stated that a code comparison between FOIMS and PROMIS would be performed by a neutral third party. Since the arrangements for this code comparison are now in progress, no findings have been made.

172 ADABAS (Adaptable Data Base System) is a relational data base management system with a number of utility programs.

173 Memorandum of interview on file with the committee.

174 On April 9, 1990, committee investigators requested cooperation and technical assistance in the INSLAW investigation from the General Services Administration's (GSA) Office of Technology Assessment. Although GSA agreed to cooperate with the committee, after 1 year GSA had not provided any assistance to the committee's numerous requests. In an April 11, 1991 letter to committee's chief investigator, Jim Lewin, from Thomas Buckholtz, Commissioner, Information

Resource Management Services, GSA, Mr. Buckholtz said that he had consulted with the Department of Justice regarding the committee's request and that Deputy Attorney General Stewart Schiffer informed him that GSA's compliance with the committee's request "would not adversely affect the litigation [with INSLAW] as long as GSA provided Department of Justice with all GSA findings and reports, and any responses GSA received." Mr. Buckholtz added that GSA had decided to provide all information developed by GSA to the Department if the services were provided to the committee. Finally, Mr. Buckholtz said that the committee must pay $150,000 to GSA for supporting the committee's investigation even though in the past GSA has provided such analytical and advisory services to Congress free of charge. Most disturbing and subject to ongoing review is GSA's decision to provide the agency under investigation with confidential information related to the committee's investigation.

175 Letter from Judge Nicholas J. Bua to Elliot L. Richardson, Esq., dated July 7, 1992.

176 Letter from FBI Director William S. Sessions to Mr. Nicholas J. Bua, Special Counsel to the Attorney General, dated June 23, 1992, p. 2.

177 December 22, 1989, affidavit of William Hamilton in INSLAW,. Inc. v. Dick Thornburgh, et al., pp. 19-20. Mr. LeGrand was chief investigator for the Senate Judiciary Committee at the time it is alleged that his "trusted source" provided him information regarding INSLAW.

178 Third Supplemental Submission of INSLAW in Support of Its Motion to Take Limited Discovery, dated March 23, 1991, p. 2.

179 Memorandum of interview on file with the committee.

180 Mr. LeGrand left the Senate Judiciary Committee and joined the House subcommittee in October 1989.

181 Sworn statement on file with the committee.

182 Sworn statement of Ronald LeGrand, February 14, 1991 pp. 20, 46, 52.

183 Ibid., p. 20.

184 Ibid., p. 21.

185 Ibid., p. 41.

186 Ibid., p. 82.

187 INSLAW, Inc. v. United States, Bankruptcy Case No. 85- 0070, Declaration of Ronald LeGrand. Mr. Hamilton later alleged to the committee that Roger Pauley was LeGrand's contact and trusted source within the Department. Mr. Pauley is the Director of the Office of Legislation in the Criminal Division. Mr. Pauley denied that he has had contact with Mr. LeGrand while he was with the Senate Judiciary. Mr. Pauley stated that he never told LeGrand that Judge Jensen engineered INSLAW's problems with the Department or any of the other statements attributed to Mr. LeGrand's source.

188 Interview with Ari Ben-Menashe, February 6, 1991, (on file with the committee).

189 Sworn statement of Mr. Ben-Menashe, May 29, 1991, pp. 6 and 14, on file with the committee.

190 Ibid. pp. 3, 8, and 14.

191 Ibid. pp. 14, 15, and 10. In his sworn statement, Mr. Ben-Menashe stated that the sale of PROMIS to Iraq by Dr. Brian was brokered by an alleged international arms dealer named Carlos Cardoen of Miami, FL, and Chile.

192 Ibid. pp. 11, 12, and 28.

193 Ibid., p. 3.

194 GAO has established that the equipment Mr. Hayes purchased did contain sensitive information. On June 27, 1991, Milton J. Socolar, Special Assistant to the Comptroller General, testified before the Subcommittee on Economic and Commercial Law that:

"We previously testified about a Justice security breach last summer at Lexington, Kentucky. [Justice's Weak ADP Security Compromises Sensitive Data (Public Version) GAO/IMTEC-91-6, Mar. 21, 1991] Computer equipment excessed by the U.S. attorneys' office was later found to contain highly sensitive data, including grand jury material and information regarding confidential informants. How this could have happened is disturbing in itself, but even more shocking is that it happened again. As recently as this past February, a different U.S. attorneys' office cautioned Federal and local officials that, again, sensitive information that could potentially identify agents and witnesses might have been compromised."

195 Sworn statement of Mr. Charles Hayes, February 13, 1991, pp. 5 and 23, on file with the committee.

196 Letter to the Honorable Jack Brooks from Mr. W. Lee Rawls, Assistant Attorney General Department of Justice, February 12, 1991, pp. 2 and 3.

197 Sworn statement of Mr. Charles Hayes provided to committee investigators on February 13 1991, at Lexington, KY (on file with the committee)

198 Memorandum from Mr. William Hamilton to Mr. Elliot Richardson, Esq., and Mr. Charles Work, Esq., October 22, 1990, pp. 1-2, on file with the committee.

199 Sworn affidavit of Lester K. Coleman, INSLAW, Inc. v. United States et al., Adversary Proceeding No. 86-0069.

200 Aviv met with investigators on January 26, 1991, at Interfor, Inc., offices in New York City. See memorandum of interview on file with the committee.

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201 December 22, 1989, affidavit of William Hamilton in INSLAW, Inc. v. Dick Thornburgh, et al. , p. 12.

202 Sworn statement of Peter Videnieks, November 5, 1990, p. 104 (on file with the committee).

203 Sworn statement of John Schoolmeester, October 10, 1991, pp. 5-6 (on file with the committee).

204 Sworn statement of John Schoolmeester, November 6, 1991, p. 17 (on file with the committee).

205 December 22, 1989, affidavit of William Hamilton, INSLAW, Inc. v. Dick Thornburgh, et al. pp. 18-19.

206 Sworn statement of Lois Battistoni, October 2, 1991, p. 54. See also numerous memoranda of interview on file with the committee.

207 Memorandum of interview, February 14, 1992 (on file with the committee).

208 Daniel Casolaro had indicated to a number of individuals that the INSLAW affair was part of a much deeper tangle of intrigues that he called the Octopus. They included the Iran-Contra arms deals and BCCI.

209 Telephone interview of Sergeant Swartwood, Martinsburg, West Virginia Police, August 12, 1991. Sergeant Swartwood told committee investigators that Mr. Casolaro's death had been handled as a suicide and that the scene had not been protected.

210 Elliot Richardson, a former Attorney General, now representing INSLAW, called for a Federal investigation of Mr. Casolaro's death:

"I believe he was murdered, but even if that is no more than a possibility, it is a possibility with such sinister implications as to demand a serious effort to discover the truth." [October 21, 1991, New York Times.]

In a memorandum to Department of Justice Special Counsel Judge Nicholas Bua, Mr. Richardson urges that further investigation of Mr. Casolaro's death is needed. Mr. Richardson stated that

"During the 3 days preceding his [Mr. Casolaro] death he told four friends in the course of four different telephone conversations that he was about to go to West Virginia to meet someone from whom he was confident of receiving definitive proof of what had happened to the PROMIS software and to INSLAW. There is no apparent reason why Casolaro would have lied to those four friends, nor is there any apparent reason why his friends would deliberately and concertedly misrepresent what he said to him. It is not likely, on the other hand, that Casolaro had unrealistic expectations either toward the significance of the evidence he anticipated receiving or toward the prospect that it would be delivered. He had, after all, been on the INSLAW case for 1 year, and he was bound to know as well as any other of the investigative reporters then pursuing it that promises of hard evidence had often been made and just as often disappointed."

In the light of these facts, the key question is, with whom was Danny Casolaro expecting to meet and with whom did he meet? In our view the answer to that question should be relentlessly pursued.

[Elliot Richardson memorandum to Judge Bua, January 14, 1992, pp. 43-44 (on file with the

committee).]

211 Washington Post, January 27, 1992, p. B2.

212 Telephone interview of Anthony Casolaro, M.D., August 12, 1991. Dr. Casolaro also told committee investigators that on August 5, 1991, Danny Casolaro said to him, "someone else told me I better back off the story." Dr. Casolaro also said that Olga Mokros, Danny Casolaro's housekeeper, received a phone call in which the caller said, "you're dead, you bastard." Olga also told Dr. Casolaro that following Danny Casolaro's death, she noticed that a stack of typed pages that usually sat on top of Danny Casolaro's desk was missing. Dr. Casolaro told the Washington Post (January 27, 1992, p. B2) that it was suspicious that none of Mr. Casolaro's investigative notes or papers were found in his car, hotel room, or at his home after his body was discovered. Mr. Casolaro's brother thought that this was suspicious because all throughout the time that Mr. Casolaro had been conducting his investigation, he always carried his notes with him. Mr. Casolaro's brother said:

"Somebody cleaned out his car and his room. If my brother did that, it seems as though [his papers] should have been found." Washington Post, January 27, 1992, p. B2.

213 Sworn statement of Richard Stavin, March 13, 1992, pp. 23-24 (on file at committee).

214 Memorandum of interview with Robert Booth Nichols, January 21,1992 (on file with the committee).

215 Sworn statement of Special Agent Thomas Gates, March 26, 1992, p. 10 (on file with the committee).

216 Interstate Transportation in Aid of Racketeering (ITAR). Sworn statement of Special Agent Thomas Gates, March 26, 1992, p. 56.

217 Ibid., p. 61. It should be noted that throughout his deposition, Agent Gates repeatedly connected various strands of his conversations with Casolaro, as well as other aspects of the INSLAW investigation, to a single individual, Robert Booth Nichols. In making certain statements, Gates acknowledged that Nichols had filed a law suit against him because of another crime investigation in which he participated which was centered in southern California. Nevertheless, Gates maintained that important and highly pertinent information regarding the past history of

Nichols existed in sealed wiretap and confidential grand jury investigations which, by law, Agent Gates is prohibited to disclose in the absence of a subpoena. In this regard, the committee was provided by Richard Stavin with a 72-page affidavit submitted by Special Agent Gates to a Federal court which contained the results of a FBI wiretap on individuals in the entertainment industry suspected of having ties to organized crime. The committee takes no position on any of Gates' assertions or suppositions vis-a-vis Nichols, except to note again that they were duly sworn statements.

218 Sworn statement of Michael Riconosciuto, April 4, 1991 (on file with the committee) see discussion supra, at pp. 99-102.

219 Sworn statement of Earl Brian, September 20, 1990 (on file with the committee).

220 April 2, 1991, affidavit of Earl Brian, INSLAW, Inc v. United States, et al., No. 85-0070, p. 2.

221 Riverside County District Attorney's Office Special Operations Report, October 10, 1991, pp. 2-4 (on file with the committee).

222 It should be noted that other information was received by the committee relating to whether Dr. Brian was involved with other individuals in various Wackenhut, Inc./Cabazon Indian Reservation business ventures in California during the early 1980's. While any degree of corroborating evidence on this point does not establish whether Dr. Brian was involved in INSLAW-related matters under investigation, it has been cited by others for the proposition that Dr. Brian, contrary to his sworn affidavit, had indeed heard of Wackenhut-Cabazon enterprise thus casting into doubt other assertions. According to a law enforcement police report on file with the committee, Dr. Brian together with Michael Riconosciuto, among others, attended a weapons demonstration at Lake Cauchilla gun range in Indio, CA, during the evening of September 10, 1981. See Riverside County District Attorney's Office Special Operations Report, October 10, 1991, pp. 2-4 (on file with the committee).

Further, in an article which appeared in the March 30, 1992, edition of the Washington Business Journal, Art Welmas, the former chairman of the Cabazon Tribe stated that Dr. Brian had been seen on the reservation and that his name was frequently mentioned by Mr. Riconosciuto and Dr. John Nichols the manager of the reservation's operations. 'Brian must have been involved," Welmas said in the article. "His name was mentioned and discussed on a daily basis." See, Washington Business Journal, March 30, 1992.

Finally, there have been a number of speculative reports and fragmentary records purporting to

link Robert Booth Nichols, through a company called Meridian Arms Corporation, and Michael Riconosciuto to certain covert intelligence activities, including a joint venture between the Cabazon Indian Reservation and Wackenhut, Inc. The continuing intersection of the names of Michael Riconosciuto, Dr. Earl Brian, Robert Booth Nichols and the Cabazon Indian Reservation are certainly intriguing and curious asssociations, but without the requisite degree of causation and factual convergence necessary to draw conclusions at this time into potential wrongdoing in the INSLAW matter.

223 This allegation is key to INSLAW's claim that the Department attempted to put the company out of business and transfer its principal asset Enhanced PROMIS to Hadron, Inc., a company controlled by Dr. Earl Brian, farmer Attorney General Meese's friend and associate.

224 Judge Blackshear was appointed to the bench in November 1985. Prior to this time he was the U.S. Trustee for the Southern District of New York.

225 Mr. Jones, who has professed ignorance of a possible role in any attempt to convert the company to chapter 7 status, is now a bankruptcy judge.

226 Sworn statement of Anthony Pasciuto before the House Committee on the Judiciary, June 4, 1991, pp. 18-20, 26-29, 47. Also, Proffer of Anthony Pasciuto provided to the Senate Permanent Subcommittee on Investigations, July 15, 1988, pp. 1-2.

227 In a sworn statement with committee investigators on April 24, 1991, Mr. Stanton denied that he wanted INSLAW converted, but stated that he called Judge Blackshear to request Mr. Jones about handling the INSLAW bankruptcy because of his experience in bankruptcy cases. Mr. Stanton stated that, in his view, Judge White and his support staff were relatively inexperienced in bankruptcy matters and Mr. Stanton:

". . . was afraid that our staff there was not up to a complex situation if a complex situation developed."

Mr. Stanton stated that Judge Blackshear informed him that he could not spare Mr. Jones from his New York duties, and Mr. Stanton stated the issue went no further.

228 Staff study, dated September 1989, by the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, on Allegations Pertaining to the Department of Justice's Handling of a Contract with INSLAW, Inc., p. 29.

229 Sworn statement of William C. White, In re: INSLAW, Inc., Bankruptcy case No. 85-00070 March 23, 1987, pp. 16, 20-23.

230 Sworn statement of the Honorable Cornelius Blackshear, In re: INSLAW, Inc, Bankruptcy Case No. 85-00070, March 25, 1987, pp. 8-11. Mr. Stanton provided a sworn statement to INSLAW counsel and stated that he had asked Judge Cornelius Blackshear to detail his then First Assistant, Harry Jones to Washington to take over the management of the INSLAW case. Mr. Stanton further stated, however, that he never pressured, directed, or suggested to Mr. White or anyone else that INSLAW be converted. Sworn statement of Thomas J. Stanton, In re: INSLAW, Inc, Bankruptcy Case No. 85-00070, pp. 26-33.

231 Record of FBI interview of Cornelius Blackshear, November 10, 1988, p. 3.

232 Record of FBI interview of James Garrity, assistant U.S. attorney, dated October 26, 1988, p. 2.

233 In an interview with committee investigators on March 27, 1992, Judge Martin S. Teel, Judge Bason's replacement, said that, prior to his appointment as bankruptcy judge in February 1988, he was the Assistant Chief of the Department's Tax Division. At that time, he supervised the tax portion of both the UPI and INSLAW matter for the Department. Judge Teel refused to provide a sworn statement about his activities with the Tax Division.

Judge Teel said the decision to ask the court to convert INSLAW's bankruptcy status from chapter 11 to chapter 7 in 1987 originated with the IRS, not the Department -- and had nothing to do with the Department's conflict over the INSLAW contract. Judge Teel said that, by statute the Department of Justice is responsible for representing the IRS in tax cases. Judge Teel said that the Department of Justice cannot initiate tax litigation but can only act in response to request from a client (IRS). Judge Teel said, however, that on occasion, there can be a "backwards flow" in which the Department suggest to the IRS to request filing a conversion but added that this (INSLAW) wasn't one of those times. When asked if there was a conflict of interest when one part of the Department was being sued, and another part of the Department was suing the same business, Judge Teel responded, that it was the policy of the Tax Division to administer tax laws equally. Judge Teel said that no one is insulated from the U.S. Tax Laws and that if INSLAW believed that they were insulated from tax laws they were mistaken. Judge Teel refused to provide a sworn statement on this matter.

234 In a sworn statement provided to committee investigators on April 24, 1991, Mr. Stanton contradicted Judge Blackshear's description of events. Mr. Stanton stated that he called Judge Blackshear to request Harry Jones handling the INSLAW bankruptcy because of his experience in

bankruptcy cases. Mr. Stanton stated that, in his view, Mr. White and his support staff were relatively inexperienced in bankruptcy matters and Mr. Stanton:

". . . was afraid that our staff there was not up to a complex situation if a complex situation developed."

Mr. Stanton stated that Judge Blackshear informed him that he could not spare Mr. Jones from his New York duties, and Mr. Stanton stated the issue went no further. Mr. Stanton stated that he spoke with Mr. White once about the INSLAW bankruptcy and this involved a request for INSLAW's bankruptcy petitions and schedules. Mr. Stanton stated that he had no conversations with Mr. White or Mr. Brewer regarding conversion of INSLAW from chapter 11 to chapter 7.

Mr. Stanton stated that he could not explain the discrepancy between his recollection about the Jones detail and what Judge Blackshear indicated in his sworn statements. Mr. Stanton maintained that he specifically talked to Judge Blackshear about assigning Mr. Jones to work on the case.

235 Sworn statement of Judge Cornelius Blackshear, January 25, 1991, pp. 2, 59-60, 69-73, 86-88.

236 Ibid., pp. 50-51.

237 Ibid. p. 157.

238 Ibid., pp. 73-76.

239 Ibid., pp. 109-120

240 PSI staff found Blackshear's recantation to be "implausible" and inconsistent with their investigative findings. For example, the staff determined that Blackshear provided information on four separate occasions that was consistent with the story Pasciuto told the Hamiltons at their breakfast meeting; furthermore, facts the staff uncovered did not support Blackshear's recantation statements that he confused INSLAW with UPI.

241 Sworn statement of Cornelius Blackshear, op cit., p. 156.

242 Ibid. pp. 106-109

243 Ibid., pp. 78-79

244 On October 24, I991, at the request of the committee, Judge Bason provided a copy of his complaint.

245 Judicial Council of the Second Circuit, Complaint Against Judicial Officer Under 28 U.S.C. 372 (c), filed by George F. Bason, Jr., former U.S. bankruptcy judge for the District of Columbia, Statement of Facts, pp. 1-2.

246 Ibid., pp. 4-5.

247 Letter from Gary Howard Simpson, Pasciuto's attorney, to Mr. Arnold I. Burns, Deputy Attorney General, Department of Justice, March 17, 1988.

248 Sworn statement of Anthony Pasciuto, June 4, 1991, pp. 18-20, 26-29.

249 Mr. Stanton stated under oath that he recommended Mr. Pasciuto for the Assistant Trustee position in Albany, NY. The Deputy Attorney General, Arnold Burns, was required to sign as the approving official. Mr. Stanton, however, stated that, after Mr. Pasciuto provided his statement, the appointment paperwork was returned to Mr. Stanton, unsigned, from Mr. Burns' office with no explanation. Mr. Stanton claims he never received an explanation from Mr. Burns about why Mr. Pasciuto's appointment was not approved. However, he inferred that discrepancies between Mr. Pasciuto's depositions and his statement at the June 1987 bankruptcy trial may have been factors in the decision to decline Mr. Pasciuto's appointment. Sworn statement or Thomas Stanton, April 24, 1991.

250 Sworn statement of Anthony Pasciuto, op. cit. pp. 4-69.

251 Memorandum from the Office of Professional Responsibility to the Deputy Attorney General regarding allegations of misconduct by Anthony Pasciuto, dated December 18, 1987, p. 9.

252 Letter from Gary Howard Simpson to Arnold Burns, Deputy Attorney General in response to the Department's termination notice to Anthony Pasciuto.

253 Department officials attending the oral reply proceedings included Deputy Attorney General Burns and two officials from the Justice Management Division.

254 Settlement agreement and mutual release between the Department and Mr. Pasciuto. Mr. Pasciuto's attorney, Gary Simpson, in an oral reply to the Department stated that he would advise Mr. Pasciuto that he ought not to remain employed by the Department and that Mr. Pasciuto would best be

served by going to work elsewhere.

255 Memorandum from the Department's Office of Professional Responsibility to the Deputy Attorney General regarding allegations of misconduct by Anthony Pasciuto, dated December 18, 1987, p. 8.

256 Ibid., p. 9.

257 On February 26, 1988, INSLAW filed a complaint with the Department's Public Integrity Section (PIS), alleging that Judge Blackshear and Trustee White had committed perjury. On May 2, 1988, Acting Assistant Attorney General John C. Keeney, of the Department's Criminal Division, requested that the FBI open a criminal investigation into allegations of perjury by Judge Blackshear and Trustee White.

The FBI investigation included statements from Mr. White, Judge Blackshear, Mr. Stanton and Mr. Jones. The FBI decided to limit the scope of its investigation because supposedly there were no witnesses with firsthand knowledge to refute the sworn statements of these witnesses.

The FBI concluded that the description of events by Judge Blackshear, Mr. White, and Mr. Stanton were consistent in every important respect, and that it could not use the information suggested by INSLAW to prosecute any persons for perjury.

The FBI, however, felt that it was possible that it could prove that Mr. Pasciuto perjured himself, relying on the statements of Mr. White, Mr. Stanton and Judge Blackshear. The Department decided not to pursue Mr. Pasciuto because:

". . . Pasciuto seems to have been punished adequately for his role in this case. He lost his job and endangered his career."

258 Written proceedings of the Oral Reply to Proposed Removal Action in the Matter of Anthony Pasciuto, Deputy Director for Administration, EOUST, dated March 23, 1988.

259 "To be sure, the United States need not prove motive to make out a perjury case. The United States must, however, present a jury with a realistic fact situation in order to have any chance to convince a jury that the defendant lied. While INSLAW may have convinced Judge Bason that the truth was completely diametrical to the testimony, I believe it highly unlikely we could ever convince a rational jury or this beyond a reasonable doubt." [Memorandum from David Green, Trial Attorney,

Public Integrity Section to Gerald McDowell, Chief, Public Integrity Section, June 14, 1989, p. 18]

260 Deposition of Judge D. Lowell Jensen, June 19, 1987, pp. 23-25.

261 Ibid., p. 34

262 Ibid.

263 Meese stated in his interview with this committee that he could not recall any discussions with Jensen about office automation or case tracking at the Department; he stated that if he had, it would have been casual conversation. Interview of Edwin Meese III July 12, 1990, p. 23.

264 Deposition of Lowell Jensen, op. cit., pp. 35-36.

265 INSLAW submitted a proposal suggesting an approach for implementing PROMIS in the smaller U.S. attorneys' offices, since the Department terminated INSLAW's involvement in the word processing portion of the contract.

266 Sworn statement of Jay Stephens, July 12, 1991, pp. 14-17, 42.

267 Ibid. pp. 12-14-16-17.

268 Ibid. pp. 21-33.

269 Jensen interview with committee investigators, dated April 1990.

270 OPR reports directly to the Attorney General and is responsible for investigating allegations of criminal or ethical misconduct by employees of the Justice Department. OPR's role is to ensure that Department employees continue to perform their duties in accordance with the high professional standards expected of the Nation's principal law enforcement agency. Source: U.S. Government Manual for 1989/90, p. 375

271 On June 16, 1986, OPR received a letter from Laurie A. Westly, chief counsel to Senator Paul Simon, asking OPR's view of allegations made by INSLAW against the Department, specifically Lowell Jensen, then nominee to the U.S. District Court. Ms. Westly referred to the litigation initiated by INSLAW on June 10, 1986, specifically the claim that Jensen contributed to the bankruptcy of INSLAW and had a negative bias toward INSLAW's software. In addition, she asked whether Jensen had breached any ethical or legal responsibility as a Department employee. Jensen was confirmed by the Senate as a

U.S. District Court Judge on June 24, 1986.

272 On October 14, 1987, Deputy Attorney General Arnold Burns requested that OPR "conduct a complete and thorough investigation into the allegation of bias and misconduct by various Justice Department officials against INSLAW." This referral was based on the allegations raised by the Bankruptcy Court ruling in the INSLAW case. On November 10, 1987, OPR notified Burns that it would proceed with the investigation of his referral. Source: March 31, 1989, Report of the Investigation by OPR in the INSLAW Matter.

273 OPR conducted an initial review of the bias issues in 1986 and concluded that there was no misconduct by Judge Jensen. Source: March 31, 1989, Report of the Investigation by OPR in the INSLAW matter, p. 7.

274 Interview of Robert Lyon, acting counsel OPR and David Bobzien, assistant counsel OPR with committee investigators, dated May 18, 1990.

275 March 31, 1989, Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter, pp. 63-64.

276 Ibid., p. 48.

277 May 18, 1990, interview of Robert Lyons and David Bobzien, OPR.

278 March 31, 1989, Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter, pp. 89-91.

279 November 22, 1989, memorandum on appeal before Judge Bryant, U.S. District Court for the District of Columbia, p. 38.

280 March 30 1988, interview of Deputy Attorney General Arnold Burns by OPR, p.12.

281 May 18, 1990, interview of Robert Lyonsand David Bobzien, OPR.

282 "Employee Misconduct: Justice Should Clearly Document Investigative Actions," Report to the chairman, Government Information, Justice, and Agriculture Subcommittee on Government Operations, House of Representatives, GAO/GGD-92- 31, dated February 7, 1992.

283 Ibid.

284 Ibid.

285 The bankruptcy judge, George Bason, ruled in INSLAW's favor, and in a scathing opinion found that the Department "acted in bad faith, vexatiously wantonly, and for oppressive reasons." (Judge Bason's opinion of September 2, 1987 [Opinion], at p. 215.) The judge further found that the Department "fraudulently" induced INSLAW into agreeing to provide the proprietary enhancements to the Department. (Opinion at p. 206, 53.)

286 The independent counsel statute, 28 U.S.C. §§591-99, provided that, upon receipt of information regarding the commission of a crime by a person covered by the statute, the Department must conduct a preliminary investigation if the information is sufficient to constitute grounds to investigate; i.e., whether any of these persons "may have violated" any Federal criminal law. The preliminary investigation is limited to a determination of the credibility of the source (the Department determined that INSLAW was a credible source) and the specificity of the information. 28 U.S.C. §591(d)(1). The Attorney General is a covered person under the independent counsel statute. 28 U.S.C. §591(b)(2). The Deputy Attorney General is a covered person under the statute. 28 U.S.C. §591(b)(3). D. Lowell Jensen is a covered person under 28 U.S.C. §591(b)(4) and (6) because of his former positions with the Justice Department.

287 Memorandum of William F. Weld, Assistant Attorney General, Criminal Division, February 29, 1988, p. 1.

288 July 17, 1987, letter from Judge George Bason to Attorney General Edwin Meese.

289 Memorandum from Stuart E. Schiffer, Deputy Assistant Attorney General, Civil Division to Richard K. Willard, Assistant Attorney General, Civil Division, July 7, 1987, p. 1-2.

290 July 7, 1987, memorandum from Stewart Schiffer, Deputy Assistant Attorney General, Civil Division, to Richard Willard, Assistant Attorney General, Civil Division titled: "INSLAW."

291 Unfortunately, the cooperation suggested by the District Court never occurred. Almost 1 year after the ruling, the committee was forced to issue a subpoena for the documents on July 25, 1991. See section II, entitled "Committee Investigation, Prior Studies, Hearings and Subcommittee Proceedings."

292 During April 1988, the Department began to hinder the investigation of the INSLAW matter by PSI. After failing to convince PSI not to conduct an inquiry, the Department not only failed to cooperate with PSI, but also raised barriers to restrict subcommittee access to information and to influence

witnesses not to cooperate with the investigation (p. 46 of PSI report). The Department: (1) demanded that members of its INSLAW litigation team be present during interviews with Department personnel and (2) provided only limited information about the scope and results of its investigations on the conduct of Department personnel.

PSI concluded that the Department's roadblocks to the subcommittee's investigation:

"... resulted in substantial delays and seriously undercut the subcommittee's ability to interview, in an open, candid, and timely manner, all those Department employees who may have had knowledge of the INSLAW matter .... [I]n requiring departmental attorneys to simultaneously represent both the Department and individual Department employees in this investigation, the Department violated basic principles of conflict of interest and the attorney-client relationship."

293 Letter from Attorney General Richard Thornburgh to the Honorable Jack Brooks, chairman, Committee on the Judiciary, August 21, 1989. pp. 1-2.

294 Letter from Carol T. Crawford, Assistant Attorney General to the Honorable Jack Brooks chairman, Committee on the Judiciary, September 29, 1989, p. 1.

295 Memorandum to file, October 16, 1989, documenting a telephone conversation with Jim Cole, Deputy Chief of the Department's Public Integrity Section. Also see January 9, 1990, letter from the Honorable Jack Brooks to Attorney General Richard Thornburgh.

296 Letter from the Honorable Jack Brooks to Attorney General Richard Thornburgh, January 9, 1990, pp. 1-2.

297 Ibid., p. 2.

298 Committee on the Judiciary hearing, Department of Justice Authorization for Appropriations for Fiscal Year 1991, May 16, 1990, Serial No. 94, p. 48.

299 House Judiciary Committee interview of Sandra Spooner, Department of Justice official, on June 15, 1990.

300 House Judiciary Committee hearing, December 5, 1990, Serial No. 114, pp. 195-197.

301 Ibid., pp. 203-204.

302 The amount of material included approximately 970 files/documents.

303 Letter from Attorney General Thornburgh to the Honorable Jack Brooks, chairman, Committee on the Judiciary, September 26, 1990.

304 House Judiciary Committee hearing, December 5, 1990, Serial No. 114, p. 78.

305 Ibid.

306 In the case of McGain v. Daugherty, the Supreme Court focused specifically on Congress' authority to study "charges of misfeasance and nonfeasance in the Department of Justice." The court noted with approval the subject to be investigated by the congressional committee was the administration of the Department, whether its functions were being properly discharged or being neglected or misdirected. In its decision, the Supreme Court sustained the contempt arrest of the Attorney General's brother for withholding information from Congress, since Congress "would be materially aided by the information which the investigation was calculated to elicit." Thus the Supreme Court itself has declared null any attempt at pretensions that oversight could be barred regarding "whether the Attorney General and his assistant were performing or neglecting their duties in respect of the institution and prosecution of proceedings.

307 Committee on the Judiciary hearing, op cit., p. 81.

308 Letter from Attorney General Richard Thornburgh to the Honorable Jack Brooks, chairman, dated April 23, 1991.

309 Letter from the Honorable Jack Brooks to Attorney General Richard Thornburgh, dated April 23, 1991.

310 Letter from chief investigator of the House Judiciary Committee to Assistant Attorney General J. Michael Luttig, dated May 29, 1991.

311 Letter from Assistant Attorney General W. Lee Rawls to the chief investigator of the House Judiciary Committee, dated May 29, 1991.

312 House Judiciary Committee hearing, July 11, 1991 Serial No. 12, p. 1.

313 During the hearing, the chairman indicated that the Attorney General, who was scheduled to appear before the subcommittee on July 18, 1991, was asked to be prepared to provide his reasoning behind the interbranch conflicts over GAO and congressional access to Justice documents, including those related to INSLAW. Steven Ross testified that the Department's actions concerning the release of documents in the INSLAW matter were yet another instance in which the Department has attempted to thwart a congressional inquiry into possible executive branch wrongdoing. Mr. Ross noted that "8 months had lapsed since the last hearing on access to records problems at Justice, and that committee investigators were still being refused access to let alone copies of, hundreds of INSLAW related documents." Mr. Ross also stated that "the same baseless arguments raised and rejected" at the subcommittee's December 6, 1990, hearing held to discuss this issue were again being trotted out by the Department.

314 Ibid., p. 134.

315 Attorney General Thornburgh stated: "I would also like to express my personal appreciation for the courtesy you have extended to me, Mr. Chairman, throughout my tenure as Attorney General. It is my impression that this committee has established a positive working relationship with both my office and the many components of the Department." Statement of Attorney General Richard Thornburgh before the House Committee on the Judiciary, regarding Department of Justice Authorizations for fiscal year 1992, July 18, 1991.

316 House Judiciary Committee hearing, July 18, 1991, Serial No. 12, p. 137.

317 Ibid., pp. 137, 139.

318 The chairman's July 31, 1991, statement before the House Subcommittee on Economic and Commercial Law.

319 A total of 64 sensitive Justice documents and 14 files pertaining to INSLAW are still missing or incomplete.

320 Letter from Assistant Attorney General W. Lee Rawls to the chairman, dated July 30, 1991.

321 The chairman's July 31, 1991, statement before the House Subcommittee on Economic and Commercial Law.

322 As mentioned before, Lois Battistoni is a former Department of Justice Criminal Division employee.

323 Confidential statements such as Special Agent Gates' are not made available or released in any manner. However, other types of sworn statements may be included in the printed record.

324 By letter dated January 12, 1988 (on file with committee), to the Honorable Patricia M. Wald, Chief Judge, U.S. Court of Appeals, Judge George Francis Bason, Jr., U.S. bankruptcy judge, requested a hearing before the Judicial Council of the District of Columbia Circuit because, among other reasons:

"As to the criterion of 'substantial legal experience,' the other candidate (Judge Teel) has had a considerably shorter total period of legal experience. He started as a trial attorney in the Justice Department's Tax Division, and remained such for approximately 10 years. He then became a reviewer for another period of years. For the past 7 years he has been a regional assistant section chief. As a reviewer and as an assistant section chief his duties have largely involved reviewing other peoples work, not producing his own independent work, and not appearing in court. He has appeared in the court over which I preside (Bankruptcy Court) no more than two or three times in the last 4 years. When he has appeared he has remained mostly silent and has left it to his subordinates to argue the matter before the court. To my knowledge . . . the other candidate (Judge Teel) has never appeared before the appellate court." (January 12, 1988, letter from George Francis Bason, Jr., U.S. bankruptcy judge, to the Honorable Patricia M. Wald, Chief Judge, U.S. Court of Appeals, p. 6.)

In an interview of Judge Teel conducted by the committee on February 28, 1992, Judge Teel indicated that of the six cases he had listed on his application as representing the most important litigation in which he had been involved, all six had nothing to do with bankruptcy law. In a second interview conducted on March 27, 1992, Judge Teel was asked about his experience. Judge Teel stated that he was qualified for the position because: He had 6 years of fairly extensive bankruptcy experience; he was a legal scholar; he had worked on collection matters; as a result of his experience as a tax litigator for the Department of Justice, he was able to understand and effectively handle complicated cases; he had broad experience as a litigator and that this litigation had been exclusively civil in nature; he had dealt with bankruptcy lien priority issues; that he had extensive knowledge and grasp of the Rules of Evidence and Procedure. Judge Teel provided committee investigators with a letter outlining his qualifications to be a bankruptcy judge (on file with committee).

325 House Judiciary Committee hearing, December 5, 1990, Serial No. 114, pp. 53-55.

326 Ibid., p. 55.

327 Ibid.

328 Interview of Jerome Barron, December 4, 1989 (on file with committee).

329 In a committee review conducted on July 22, 1992, Judge Bason also pointed out that Judge Tim Murphy worked with Judge Johnson at the D.C. Superior Court from 1970 to 1980. Judge Murphy left the bench on April 15, 1985, and worked for Mr. Brewer as his Assistant Director on the Justice Department's PROMIS implementation.

330 Confidential memorandum to Judge Johnson, December 8, 1987, p. 1.

331 Ibid., p. 2.

332 Report of the Merit Selection Panel, November 24, 1987.

333 House Judiciary Committee interviews of Judge Johnson, dated November 15, 1989, and Judges Wald and Mikva, dated October 16,1989.

334 Memorandum of interview of Judge Aubrey Robinson March 9, 1992.

335 Ibid.

336 Sworn statement of George F. Bason, March 20, 1992, p. 8.

337 Ibid.

338 Memorandum of interview of Judge Aubrey Robinson, March 9, 1992 (on file with the committee).

339 Sworn statement of Martin Bloom, March 4, 1992, p. 4.

340 Ibid. p. 11.

341 Ibid. p. 20.

342 Ibid., p. 5.

343 Memorandum from Richard K. Willard, Assistant Attorney General, Civil Division to Arnold 1. Burns, Deputy Attorney General, entitled: "Judge Bason's Adverse Decision in INSLAW," June 19, 1987.

Apparently Department officials attempted to discredit Judge Bason by questioning his judgment and judicial temperament. In his sworn statement to the committee, former Attorney General Edwin Meese said he was told by his staff that Judge Bason was "off his rocker." Sworn statement of Edwin Meese III, July 12, 1990, p. 46.

344 Ibid.

345 Memorandum from Stuart Schiffer, Deputy Assistant Attorney General, Civil Division to Richard K. Willard, Assistant Attorney General, Civil Division, entitled: "INSLAW," July 7, 1987.

346Memorandum from Michael F. Hertz, Director of the Commercial Litigation Branch, Department of Justice, to Stuart E. Schiffer, Deputy Assistant Attorney General, Civil Division, Department of Justice, entitled: "Feasibility of Motion to Disqualify the Judge in INSLAW," July 6, 1987.

347 Ibid.

348 Ibid.

349 Ibid.

350 Memorandum from Richard K. Willard, Assistant Attorney General, Civil Division to Arnold I. Burns, Deputy Attorney General, entitled: "INSLAW, Inc. v. Department of Justice," undated.

351 Memorandum from Stuart Schiffer, Deputy Assistant Attorney General, Civil Division to Richard Willard, Assistant Attorney General, Civil Division, entitled: "INSLAW" October 29, 1987.

352 Memorandum from Stuart Schiffer, Deputy Assistant Attorney General Civil Division to Arnold Burns, Deputy Attorney General, entitled: "Recent Developments in INSLAW v. DOJ," February 12, 1988.

353 U.S. et al., v. INSLAW, Inc., Advisory Proceeding 86-0009, opinion of Judge William Bryant. See p. 48a.

354 Ibid., see 49a.

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NOTE IN DISSENTING VIEWS OF HON. HAMILTON FISH, JR., HON. CARLOS J. MOORHEAD, HON. HENRY J. HYDE, HON. F. JAMES SENSENBRENNER, JR., HON. BILL McCOLLUM, HON. GEORGE W.

51 ". . . that somebody in the Department of Justice, in a letter or letters, as I say in this back and forthing (sic), had, in effect, waived those rights." (OPR Interview, p. 12.)

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