Author: Dhillon

Working Book Title: INFORMATION SYSTEM SECURITY: a management challenge

Version: 1

Date: May 27, 2003

CASE STUDY: IT WON'T PART YOUR HAIR. THE INSLAW AFFAIR

It Won't Part Your Hair. The INSLAW Affair

Richard Hamilton, the founder of INSLAW, in a presentation to the department of Justice said,

> If a target person suddenly started using more water and more electricity and making more phone calls than usual, it would be reasonable to assume he has guests staying with him. Enhanced Promis could then start searching for the records of his friends and associates. If any of those were found to have stopped using their own essential utilities, then it could be surmised that he or she might be staying with the original target. So the net would widen. Enhanced Promis has the capability to conduct simultaneous searches on 100,000 persons. If they are suspected of being linked to the original suspect, the software can search all the police and crime records in the country, for the original target and all his known or suspected associates. The software is also sophisticated enough to uncover details which would reveal the true identity of anyone using an alias. It could then discover all the contacts that alias has made. And so on. In theory, Enhanced Promis has the ability to track every citizen in the United States by accessing [his or her] personal data files. The barest details of their lives would be sufficient: a birth certificate, a marriage license, a driver's license, an employment record. (Thomas 2001, 36)

Background

The Law Enforcement Assistance Administration (LEAA) was created in the 1970s to assist law enforcement agencies across the country. The primary goal of the LEAA was to standardize management information systems by helping law enforcement offices in tracking and recording of criminal cases. During this time multiple databases were being used by such agencies as the United States Department of Justice (DOJ), the Internal Revenue Service and numerous Unites States Attorneys Offices to manage and track cases. Furthermore, such database systems made sharing and collecting of information difficult across agencies. The LEAA was charged with funding various systems software and one of the information management software that they funded was the Prosecutors Management Information System (Promis).

<u>Richard Hamilton</u>
After returning from a tour of duty in Vietnam, Richard Hamilton, joined the National Security Agency (NSA). While in Vietnam, Hamilton was responsible for establishing an electronic eavesdropping network and surveillance posts, which tracked the movement of the Vietcong in the jungles of Vietnam. Being fluent in Vietnamese, Hamilton created a Vietnamese-English dictionary for use by the NSA to translate Vietcong messages and interrogate prisoners. During Hamilton's three years at the NSA, he was working on developing "the ultimate surveillance tool- a program that could track the movement of literally untold number of people in any part of the world" (Thomas 1991, 184).

The Creation of Institute; metamorphosis of INSLAW

In 1973 Richard and wife Nancy Hamilton and Dean Merrill created a not-for-profit organization called Institute of Law and Research (Institute). The Institute relied completely on LEAA grants and awards. During the 1970s, the Institute obtained a number of cost-plus grants and cost-plus contracts largely from the LEAA.(Bason 1988, Finding 2) Utilizing such LEAA grants the Institute developed the first generation of Promis (hereinafter Old Promis), and other software automation programs. Old Promis focused mainly on assisting state and local prosecutors in automating record keeping and case management activities. (Bason 1988, Finding 3) Old Promis was designed to run on mainframes and minicomputers. (Bua 1993, 16)[i] During the initial developmental years, state and local offices primarily used Old Promis.

Three year "cost plus" contract

In 1979 the Institute entered into a three year "cost –plus" contract with the LEAA. (Bua 1993, 16) Under the contract the Institute was responsible for the upkeep and maintenance of Old Promis. According to Judge Bua's report "the contract called for the Institute to create certain upgrades and enhancements to Old Promis" (Bua 1993, 16).

Under President Carter's Administration the LEAA was terminated and subsequently liquidated in 1981. Once the Institute learned that its primary source of funding, namely the LEAA ceased to exist, the Institute became a for-profit corporation and changed its name to INSLAW in January 1981. Since the LEAA was terminated in 1981 and an additional year of the contract remained, the DOJ turned over the remaining portion of the contract to its Bureau of Justice Statistics (BJS). Due to a lack of funds the BSJ was unable to complete the final year of contract, therefore, $500,000 was allocated by the EOUSA. According to court documents the Institute agreed to make five specific enhancements to Promis known as "BSJ Enhancements." (Bryant 1989, 2) Note: This later became part of the contract dispute.

"Pilot Project" contract

The Executive Office of U.S. Attorneys (EOUSA) paid for a Pilot Project to determine the feasibility of implementing Old Promis in the California and New Jersey districts of the EOUSA. According to Judge Bua under the Pilot Project the Institute would "modify and install a modified version of Old Promis…" (Bua 1993, 17) In addition a word processing version of Old Promis would also be created and installed in the offices in West Virginia and Vermont. The second portion of the Pilot Project requirements is not contradicted by Judge Bua's report.

During the initial Pilot Project phase the government was unable to provide its own minicomputers, therefore, the Institute provided a newer version of Promis and it ran on the Institute's VAX computers. This version of Promis is known as the "VAX time-sharing" or "Enhanced VAX timesharing." Access was obtained via remote entry terminals and printers. For nearly a year "VAX time-sharing," was accessed remotely. "VAX Promis" was installed on the District's Prime version of mini-computer. (Bason 1988, Finding 8) (This later became one of the central issues in the dispute. See 32-Bit Architecture Upgrade on page 7 of this paper).

The DOJ decided, in late 1981 to fully implement the Pilot Project. Subsequent to that on November 2, 1981 the DOJ issued a Request for Proposals (RFP.) The specifications of the

RFP were (1) implement computer based Promis software in 20 "large" United States Attorneys' Offices, and (2) create and install word processing based case management software in the remaining offices. (Bua 1993, 18)

Prior to being awarded a $9.6 million contract on March 16, 1982, INSLAW was actively seeking capital from private investors to enhance Old Promis. During the Bankruptcy Trial Hamilton testified that in May of 1981 INSLAW began the arduous task of obtaining private funds, which was essential for the survival of Promis and INSLAW. (Bason 1988, Finding 15)

Hamilton also stated that, "INSLAW also entered into a number of contracts with individual private clients to create new and important functional enhancements to Promis." Merrill also testified at the same trial that, "These enhancements were made available to other Promis users on a license basis; input and experience developed from this effort."

INSLAW and the DOJ negotiated the terms of the contract for two months and at the heart of the discussions were the proprietary rights and "the parties: respective rights in the software to be delivered under the contract" (Bua 1993, 19). Under the contract a fee provision was also included. Additionally, under the contract the DOJ retained the right to install Promis in 10 additional offices. (Bua 1993, 20) Prior to being awarded the contract, INSLAW stated, during the two months of contract negotiations, that their, i.e. INSLAW's, version of Promis contained privately funded enhancements. Furthermore, INSLAW was going to make further modifications, which were outside the DOJ's contract. (U.S. Congress, House 1992, 18)[ii]

The contract was at the center of the initial dispute and unfortunately what seem to be a 'meeting of the minds' prior to signing of the contract was anything but that. Rather, it was the start of what came to be known as the INSLAW Affair and what the Computer Law Association[iii] called "[the] largest global software theft in history." (Thomas 2001, 95)

Is the Glass Half Empty or Half Full?

The Bua Report stated that nearly a month after signing of the contract a dispute arose between INSLAW and the DOJ. The dispute was over each party's property rights. During this time C. Madison "Brick" Brewer, the Promis project manager hired by the DOJ, first initiated the thought of canceling the INSLAW contract. (The Hiring of Brewer is discussed later in this report.)

Hamilton drafted a letter on April 1, 1982, which stated that INSLAW planned to market their proprietary product called Promis 82. (Bua 1993, 21) This memorandum resulted in an April 19 meeting, which was attended by Brewer. On April 14, 1982 Brewer and other members of the Promis team discussed canceling the contract with INSLAW. (U.S. Congress, House 1992 7) During the April 19 meeting Brewer was adamant about taking a stand against Hamilton's claim of proprietary rights. Brewer stated that: "to the extent the memorandum claimed for all software developed after May 1981 was proprietary to INSLAW the memorandum was incorrect, in that the five BJS enhancements were in the public domain, even though they still

had not been delivered by INSLAW as of April 1982." Hamilton responded that INSLAW did not ever dispute the property rights for the five BJS enhancements. (Hamilton 1993, 20)

INSLAW and DOJ came to an agreement about the need for a sign-off. INSLAW would receive a sign-off while the DOJ would be assured that the marketing of Promis 82 would not negatively affect the delivery of the EOUSA contract. Roderick Hills, INSLAW's outside attorney, assured Associate Deputy Attorney General Stanley Morris that Promis 82 contained "enhancements undertaken by INSLAW at private expense after the cessation of LEAA funding." Morris replied, in a August 11, 1982 reply that: " To the extent that any other enhancements (beyond the public domain Promis) were privately funded by INSLAW and not specified to be delivered to the Department of Justice under any contract or other agreement, INSLAW may assert whatever proprietary rights it may have" (Fricker 1993, 6). In a critical 1988 deposition, then deputy attorney general, Arnold Burns said, " Our lawyers were satisfied that INSLAW's lawyers could sustain the claim in court, that we had waived those [proprietary] rights"(Fricker 1993, 4). INSLAW was on the verge of entering into a commercial contract with IBM. IBM was seeking a "sign-off" from the DOJ prior to signing a contract with INSLAW. The response of Burns satisfied IBM and in December 1982 signed a contract with IBM thereby establishing the first co-marketing arrangement for the public sector.

The initial dispute over proprietary rights evolved into two separate but related issues: (1) Advance Payment Dispute and (2) Modification 12.

<u>Advance Payments Dispute</u>
The advance payment dispute first surfaced in November 1982. INSLAW voluntarily informed the DOJ that it had violated this portion of the contract.

Contractors usually receive payments 60 to 90 days after the delivery of goods and services. The advance payment clause is often used to help financially troubled contractors receive payments immediately after the deliver portions of a contract. This clause prevents the contractor from using the contract's financial payout as collateral for loans. Such a clause affords the government protection against financial risk. INSLAW used its $9.6 million invoice as collateral for a loan from the Bank of Bethesda. INSLAW conceded that this was "technical violation" of the contract; it vehemently opposed termination of the advance payment clause of the contract because it presented no financial risk to the government. (Bua 1993, 25) In fact, DOJ auditors concluded that the loan presented no financial risk to the government (Bason 1988, Finding 199) This dispute would not be resolved until Modification 12 was signed by INSLAW and the DOJ.

<u>Modification 12</u>
On November 19, 1982, the DOJ sent INSLAW a letter, which stated:

> Pursuant to Article XXX of the subject contract the Government requests that you provide immediately all computer programs and supporting documentation developed for or relating to this contract. (Bua 1993, 27)

According to the court records, the DOJ was concerned about the financial situation of INSLAW. This concern stemmed from Robert Whitley's, DOJ's auditor responsible for the

INSLAW contract, review of financial records, which ultimately led Whitley to the conclusion that INSLAW was insolvent. According to the Bua Report, the INSLAW's comptroller told the DOJ that INSLAW had missed one payroll. In lieu of such financial concerns, the DOJ was concerned that it had not received any deliverables from the contract and feared that INSLAW's financial situation would prevent it from completing the contract. As of November of 1982, the DOJ had not received any copies of the Promis software. Furthermore, they had not yet purchased the hardware and thus were still using the "VAX time-share" version made available by INSLAW for use by the DOJ on a temporary basis.

The advance payment clause became the main dispute point during a February 4, 1983 meeting. Furthermore, INSLAW informed the DOJ that the "VAX-time sharing" version of Promis contained proprietary enhancements. In response to an escrow proposal the DOJ on March 18, 1983 proposed a modification to the contract. INSLAW and DOJ agreed to the contract modifications and Modification 12 took place on April 11, 1983. (Bua 1993, 32)

Modification 12 stated that:

> The purpose of this Supplement Agreement is to effect delivery to the Government of VAX-Specific Promis computer programs and documentation requested by the Government on December 6, 1982, pursuant to Article XXX—Data Requirements, and to at this time resolve issues concerning advance payment to the Contractor. (Bua 1993, 32)

Modification 12 as it relates to the DOJ's responsibilities stated that:

> The government shall limit and restrict the dissemination of the said Promis computer software to the Executive Office for United States Attorneys, and to the 94 United States Attorneys' Offices covered by the Contract, and, under no circumstances shall the Government permit dissemination of such software beyond these designated offices pending resolution of the issues extant between the Contractor and the Government under the terms and conditions of Contract NO. JVUSA-82-C-0074. (Bua 1993, 32)

Based on the above modifications, INSLAW turned over to the DOJ copies of the data, software and code of the "VAX time-share" version on April 20, 1983.

Enhanced Promis?

Hamilton testified that Enhanced Promis was being marketed to other federal agencies. That is INSLAW was making structural changes to Enhanced Promis and marketing the new product. The new marketed software packages were: (1) JAILTRAC, which was used at correctional institutions (2) DOCKERTRAC (3) MODULAW, which was used by insurance and private law firms and (4) CJIS, which expanded on a countywide basis for the administration of justice. (Bason 1988, Finding 21)

According to court documents and trial testimony, INSLAW made the following enhancements to Old Promis (1) Data Base Adjustments (2) Batch Update and (3) 32 Bit Architecture upgrade. During the Bankruptcy hearing, Judge Bason found the statements of INSLAW to be of a credible nature. Furthermore, Judge Bason ruled that the government's assertion by its expert that the accounting records of INSLAW did not support INSLAW's 'claimed' enhancements, was not credible and was contrary to the evidence presented by INSLAW. A detailed explanation of the accounting practice and procedure that were presented at trial may be obtained by reviewing *INSLAW, Inc v. United States of America*, 83 B.R 89, 1988, findings 46-66.

Judge Bason further stated,

> Because INSLAW's records are within the standards for record keeping within the industry, including time records and documentation concerning software maintenance, and indeed are exceptionally good, the Court considers INSLAW's records more than sufficient for the purposes of establishing the existence of and funding for the enhancement and changes claimed as proprietary by INSLAW.

Data Base Adjustments

The Database Adjustment subsystem, which contained nine subroutines, was designed to be able to modify the structure of a Promis database that is already in use without causing any damage or harm to the data. (Bason 1988, Finding 25) This was one of the significant modifications and attractive features of the Promis software. For example, if the Utility Company's database has a current structure of only first name, last name, and phone number of an individual, using the Database Adjustment subsystem one could say adjust the structure of the database to include address, city, state and zip code for both the new and old listings. According to Hamilton's testimony restructuring a database permits more flexibility and is more accommodating and has great sophistication when used for office automation. At the time of the Bankruptcy trial, Hamilton stated that the government was in control and possession of the nine programs in the Database Adjustment subsystem. The government's expert witness admitted, "Database Adjustment is an enhancement to Promis and believed that any commercially viable software program should have the capability of adjusting the database" (Bason 1988, Finding 31).

Batch Update

The Batch Update subsystem alleviates the need for inputting information one record at a time using keyboards at video terminals. This process also reduced the errors that resulted from human data entry. Once again the government's expert witness stated that a "Batch Update subsystem is a very significant feature of Promis that must be present in order even to begin to enter the marketplace" (Bason 1988, Finding 33). Hamilton testified that this portion of the enhancement was not required as part of the deliverable goods under the EOUSA Contract.

32-Bit Architecture Upgrade
The 32- Bit Architecture was created between June and September 1981. The public domain (Old Promis) was 16-bit and ran on PDP 11/70 computers, which was a model of a computer designed by Digital Equipment Corporation. Additionally, Old Promis also ran on computers sold by other manufactures. DEC replaced its 16-bit PDP line with the new more powerful VAX line of computers.

Approximately $8.3 million (private, non federal funds) were spent by INSLAW between May 1981 through March 1985 towards enhancements of Promis. The DOJ's staff auditors in which they concurred with INSLAW's $8.3 figure performed an audit. Furthermore according to court testimony approximately $13 million private funds were available to INSLAW. (Bason 1988, Finding 43)

Judge Bason ruled that,

> On the basis of the foregoing and the record as a whole [specific enhancements mentioned above], this Court finds that the enhancements that INSLAW developed either with private funds, or with a combination of private funds under government contracts specifically permitted INSLAW to retain private rights, were not in the public domain but were INSLAW's private property" (Bason 1988, Finding 45).

C. Madison "Brick" Brewer

Brewer was hired by Hamilton to serve as general counsel for the Institute. His tenure at the Institute was between 1974 and 1976. Brewer was hired to act as the liaison and interpreter of what public prosecutors offices wanted and the products and services that the Institute could offer.

According to Hamilton's testimony and court documents, Brewer was incapable and unable to perform his duties. Hamilton eventually told Brewer , "I think you ought to find [an] alternative-that you ought to leave the Institute" (U.S. Congress, House 1992 23). Prior to firing Brewer on April 1976, Hamilton gave a raise to Brewer. This raise was an effort not to hurt INSLAW's reputation as well as concerns raised by Brewer that his salary at the United States District Attonye's Office (USDAO) would be determined by his salary at the time of termination while at INSLAW. Brewer returned to the USDAO.

<u>Brewer's selection as DOJ's Promis Project Manager?</u>
As the cliché states, "you don't have to be a rocket scientist" to conclude that the hiring of Brewer should have raised serious questions especially from within the DOJ whose interests in completing the contract was at stake. One is immediately confronted with the obvious issue of a conflict of interest. Whether or not Brewer considered Hamilton "a messianic personality" (Bason 1988, Finding 106) or "a very troubled individual" (Finding 107), the hiring of a former employee, whose departure from INSLAW is mired with questions and allegations, to administer

a project against that former employer is an egregious and perhaps willful exercise in poor judgment.

Brewer was hired by William P. Tyson of the EOUSA to serve as Promis project manager. Laurence McWhorter, then Deputy Director of the EOUSA, stated that it was precisely his prior employment and knowledge of INSLAW that was a factor in his hiring by the DOJ. McWhorter said that Brewer was hired to "run the implementation of a case tracking system for U.S. attorneys [and] basically direct the implementations of a case tracking system in U.S. attorney's offices" (U.S. Congress, House 1992 12). However, Brewer testified that he was "not a computer person" and he was to act as a coordinator between the DOJ and INSLAW. Furthermore, he had no experience managing computer projects and was not familiar with Government ADP procurement law. (21) The house committee was even more perplexed by the hiring of Brewer after speaking with Tyson, Brewer, McWhorter, and other department officials.

Wire Magazine conducted a two-year investigation into the INSLAW Affair. During the spring of 1981 Richard Mallgrave was approached by McWhorter to supervise the pilot installation of Promis. McWhorter was Mallgrave's supervisor. Mallgrave claims that McWhorter said, "we're out to get INSLAW."

"We were just in his [McWhorter's] office for what I call a B.S. type discussion. I remember it was a bright sunny morning….[McWhorter] asked me if I would be interested in assuming the position of Assistant Director for Data Processing…basically working with INLSAW. I told him… I just had no interest in that job. And then almost as an afterthought, he said, 'We're out to get INSLAW.' I remember it to this day" (Fricker 1993, 4).

Once Mallgrave turned down the position, Brewer was hired by the DOJ. Given the obvious and self-reported lack of legal (Government ADP law) and computer management, Brewer was involved with any and all decisions related to the INSLAW contract. Brewer testified in Federal Court that his decisions and actions regarding the INSLAW contract were continuously reported to the highest levels of the DOJ, namely Lowell Jensen, then Deputy Attorney General.

INSLAW's Allegations

INSLAW's allegations were far reaching and implicated numerous high ranking U.S government officials, other foreign government and various private individuals. The allegations are summarized as:

(1) High Ranking DOJ officials conspired to steal Promis
(2) Enhanced Promis was obtained through fraud and deceit
(3) Promis was wrongfully distributed in the US and sold internationally.

Given the depth and breath of this case it is not possible to address all possible evidence to either corroborate or refute the allegations. Just to name a few chapters in the INSLAW Affair; after three court cases, two congressional investigations, an internal DOJ investigation, numerous articles written by investigative reporters and the deaths of two individuals, there are conceivably

more questions about the INSLAW allegations than answers. All of INSLAW's allegations have started with the following premise, as a reward for Dr. Earl W. Brain, who was the master mind behind the October Surprise[iv], high ranking DOJ official conspired to drive INSLAW into solvency, therefore, being forced to sell Promis to Dr. Brians computer company, Hardon. The theft conspiracy was corroborated by people that were involved with either (1) developing the Trojan Horse[v] enhancement to Promis (2) selling of Promis (3) intelligence officers involved with both 1 and 2.

Why INSLAW's Promis?

According to expert testimony and court documents, Promis' flexibility and ability to adapt was its greatest asset. Hamilton stated that the real power of Promis is its ability to integrate unlimited number of databases without requiring any reprogramming. (Fricker 1993, 3) Promis was built using COBOL and contained approximately 57,000 lines of code. In a presentation before numerous prosecutors Meese stated that Promis was "one of the greatest opportunities for [law enforcement] success in the future"(3).

In a phone interview on April 15, 2001 Hamilton explained that it was attractive to the intelligence community because it could easily track people, agents, operations and targets.

"I wasn't shocked when they [intelligence agencies] adopted it." Hamilton said during a phone interview.

When asked about all that has been written about Promis' capabilities he said, "Well some of the things that has been said it can do it may not do. It won't part your hair."

Promis was designed to be very flexible and adaptable software. We understood that it could be adapted to track parcels of land sales in Ireland, he added.

High Ranking DOJ official Conspired to Steal Promis

At the time of development Promis was rivaled by another similar program called DALITE. DALITE was also created using LEAA grants in the mid 1970s under the direction of Lowell Jensen. Jenson's relationship and disdain for Promis took shape when Promis won a very substantial and lucrative Los Angeles County contract over DALITE.

Between 1981 and 1986 Jensen served as Associate Attorney General. Jensen was the District Attorney for Alameda County in California. Jensen was appointed to the DOJ by then Attorney General Edwin Meese III who worked under Jensen at the Alameda County DA's Office.

In May 1986, Leigh Ratiner, a senior partner at a firm representing INSLAW filed a lawsuit against the DOJ for theft of Promis. In that complaint over 50 references were made to Jensen. A 23-paragraph section described "personal involvement" of Jensen. (Hamilton 1993, 3) The law firm rejected the complaint and new counsel was assigned. The new draft did not contain any references to Jensen and only inserted a single reference, at the request of INSLAW. Three months after filing the lawsuit, the firm fired Ratiner. Ratiner was offered a severance package in

excess of $500 thousand and contractually bound him to secrecy. Shortly before the firing of Ratiner, Senior Partner Leonard Garmet met with a high-ranking DOJ official while discussing the INLSAW and Johanthan Pollard case.[vi] Hamilton stated that he was told that Ratiner was fired for naming Jensen in the lawsuit.

Jensen Bias

Immediately after his appointment to the DOJ, Jensen told (voluntarily) to an INSLAW employee his belief that the first two generations of Promis were inferior to DALITE. (Bason 1988, Findings 30-38) During his tenure at the DOJ, Jensen attended the Promis Oversight Committee meetings. Brewer testified part of his duties was to brief Jensen's staff while Jensen was in the Criminal Division. Once Jensen was promoted to Associate Attorney General, he became the superior of the Executive Office for which both Videnkiens and Brewer work. It was shortly after Jenson's promotion that Videnkiens suspended payments to INSLAW. Videnkeins informing them of the suspension of payment sent a formal letter to INSLAW. The only person that was copied on that letter was Jensen. (Finding 263) Videnkeins claims that he never met Jensen and does not recall why Jensen was copied on the July 18, 1983 letter.

In 1983 Hamilton was told, by Tyson, that Brewer was the least of INSLAW's worries. Tyson was referring to Jensen.(Bason 1988, Finding 314 & 315) The House Report named Jensen and others as possibly violating racketeering statutes. (Mintz 1992, 1) The recorder) The Report stated "[Justice Officials], supported by Deputy Attorney General Jensen and other high-level officials, unilaterally concluded that the department was not bound by the proprietary laws that applied to privately developed and financed software." Furthermore, the Report criticized Jensens lack of interest in investigating INSLAW's claims against bias in the DOJ.

Jensen stated that he did complete an investigation and found no internal bias against INSLAW. There is also a conflict of statements between Jensen and Meese. Meese stated under oath that he knew very little about the INSLAW problem and that he recalls no specific conversation with anyone at the DOJ. However, Jensen stated in a deposition that "I have had conversations with the attorney general about the whole INSLAW matter…as to what had taken place in the Promis development and what had taken place with the contract and what decisions had been made by the department with reference to that" (Mintz 1992, 3). Jensen added that Meese was very interested in the details of the contract and negotiation.

Dr. Erl W. Brian

Dr. Brian, who was fluent in Persian.[vii] He served as the Secretary of Health during Reagan's second term as Governor of California (1971-1974). (Thomas 2001, 48)

Meese's wife, Ersela Meese, privately provided financial support for Dr. Brian's business venture. According to Wire Magazine, Ersela invested $15,000 in return for 2000 shares of Biotech stock. Dr. Brian was Chairman and President of Biotech Capital Corporation, which was the controlling company of Hardon. Meese and business associate Dr. Brian owned Hardon, Inc. Hardon was a major government-consulting firm, which would play a central role in the sale of Promis. Meese and Brian discussed over dinner, the possibility of marketing the Enhanced version of Promis through Hardon. From that point on prospective investors were told of a software package that had "great Promis" (Thomas 2001, 49)

Brewer Bias

As mentioned earlier in the case, Brewer was fired by INSLAW and hired by DOJ as the project manager in charge of Promis**.** Brewer, however, initially stated that he was never asked to leave and he did not view his leaving the Institute as being fired or being forced to leave. Judge Bason stated, "On the basis of all the evidence Brewer unquestionably knew that he was being fired for cause; he had no reason to believe that he was leaving voluntarily. This Court rejects DOJ's argument in favor of Brewer's contrary contention" (Bason 1988, Finding 104).

During the contract disputes between INSLAW and DOJ, INSLAW raised questions about Brewer's conduct and perceived conflict of interest. A formal complaint was filed by INSLAW on April 1982, nearly a month after entering into the contract. INSLAW alleged that Brewer's bias to drive INSLAW into bankruptcy was supported by other DOJ officials. During an April 19, 1982 meeting Brewer was clear about his feelings toward INSLAW and particularly against its proprietary rights claim. The meeting was the first in a series to discuss the latter issue. Brewer referred to INSLAW's request as "scurrilous" and most of the people stated that Brewer "got hot" and adamant about opposing the INSLAW proprietary claim. (Bua 1993, 21)

Senate and GAO investigations also raised serious questions about the appointment and conflict of interest presented by the hiring of Brewer. Furthermore, the Permanent Subcommittee on the Investigations also reached the same conclusion and raised the same concerns as the GAO.

The court also concluded that: "On the basis of the foregoing and the evidence taken as a whole, this Court is convinced beyond a doubt that, prior to assuming this position as the Promis Project Director at EOUSA, and during the course of discharging his responsibilities in that position, Mr. Brewer was consumed by hatred for and an intense desire for revenge against Mr. Hamilton and INSLAW, and acted throughout this manner in a thoroughly biased and unfairly prejudicial manner toward INSLAW" (Bason 1988, Finding 110).

INSLAW's formal complaint asked that Brewer be recused from "further Department consideration of the proprietary software enhancement issue." Morris was concerned about the appearance of a conflict of interest by having a fired employee as the DOJ's project manger. Therefore, he instructed McWhorter to "take the point outside the Department." This proved to be a futile attempt as Brewer later testified, under oath, that he continued to be involved with the negotiations, especially on the issue of enhancements.

Protecting the DOJ's Interests

Peter Videnieks aided Brewer at his job. Prior to joining the DOJ Videnieks worked in the U.S. Customs Service. While there, he oversaw contracts between the Customs Service and Hardon, Inc. Videnieks and Laiti have denied ever meeting one another[viii]. Court documents reveal that Brewer and Videnieks took advantage of every opportunity that presented itself in opposing INSLAW and the contract. Laiti was referring to Videnieks when threating to forcing INSLAW to sell using "friends in government." (See page 15.)

Brewer and Videnieks contested INSLAW's proprietary right claims and threatened to cancel portions of the contract. Brewer indicated that he wanted to see the cancellation of the INSLAW contract shortly after arriving at the DOJ. During the later half of 1982 Brewer was continuously

battling INSLAW over proprietary rights issues and was working on canceling the advance payment portion of the contract, which would have a negative impact on INSLAW.

Brewer and Videnieks continued to assert that they were concerned about the bad financial situation of INSLAW and were merely protecting the interests of the DOJ. "We were afraid if they indeed were for financial reasons required to close their doors, then we would have to revert to a manual Promis in these U.S. Attorneys offices…" (U.S. Congress, House 1992 27)

Judge Bason concluded that the financial problems of INSLAW and the advanced payment disputes were created on the part of Brewer and Videnieks. They were manufactured to "get the goods." However, according to the Bua report their investigation revealed an ongoing and continuous concern at the DOJ about INSLAW's financial situation. They cite hand-written notes and testimony of DOJ witnesses.

Based on these concerns Videnieks sent a letter to INSLAW demanding copies of the software under Clause XXX. Hamilton stated that the version requested by the DOJ was not the one called for by the contract. Hamilton stated that when the February 4 meeting turned from the cancellation of the advance payment issue to the proprietary issues, Brewer accepted the fact that the contract did call for the pilot version plus the five BJS enhancements. (Bason 1988, Finding 219) The February 4 meeting resulted in creating Modification 12 to the contract.

Getting the Goods

The bankruptcy court and the district court both concluded that Modification 12 was an attempt to gain access to a version of Promis that was not called for under the original contract.

In concurring with the Judge Bason, the district court said: "Thus, the court is drawn to the same conclusion reached by the bankruptcy court; the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

The Bua report reached a different conclusion about the intention of the DOJ in obtaining the enhanced version of Promis. The Bua report stated that Judge Bason failed to find proof that DOJ employees intentionally deceived or defrauded INSLAW. Furthermore, the report stated that Judge Bason's theory is not backed by any evidence that the DOJ set out to obtain a different version of that stated in the contract. Furthermore, the report faults INSLAW for not keeping a public domain version of Promis. In fact since they were unable to produce the public domain version they were left with no choice but to produce a version in which they would claim proprietary rights. (Bua 1993, 133)

Hamilton explains in his Rebuttal Report that at the time that the DOJ requested the copies of the software, the Pilot Project version was not complete. The first point that is raised by Hamilton is that the Government had not yet selected a computer system for implementation of the $9.6 million contract. The software contained (1) Pilot Project version (16-bit architecture) and (2) a separate part -- the 5 BJS Enhancements. The Pilot Project version, which did not contain the 5 BJS Enhancements were installed and running in the San Diego and Newark offices. Furthermore, since the Pilot Project used Prime computers and INSLAW did not want to spend

time, money and resources combining the two components and discover later that it would have to be created again to match the computers selected by the Government. Hamilton asserts that it was an unreasonable request to expect INSLAW to make the modification without knowing the Government's hardware selection. The DOJ had not yet selected a computer by the time that it made the request under Article XXX.

Court papers and the conclusion of Judge Bason indicate that the DOJ was aware that they were using a version other than the one called for by the contract. In 1981 the 32-bit VAX version became the base version for Promis. It is from this base in which other enhancements were made.(Bason 1988, Finding 38)

Since being awarded the contract in March 1982 INSLAW made available three of their 32-bit VAX 11/780 computers on a timesharing basis to be used by the 10 largest U.S. Attorney's Offices. Such an accommodation was temporary until the DOJ had percured the appropriate hardware. Once the government selected the PRIME computer, INSLAW installed the VAX version. The Pilot Version of Promis was the 16-bit version. The VAX version was chosen because the difference between the new COBOL compiler on the Prime computers selected by the government and on the VAX were less significant that the difference between the COBOL compilers in the new and old models of the government furnished Prime minicomputer. (Finding 39)

Contrary to this fact, the Bua report states that Judge Bason was in error and that "there is no evidence that anyone at the DOJ knew before February 1983 that INSLAW was unable to produce a contract version of Promis "(Bua 1993, 134**).** This is significant because Brewer and Videnieks could not have been trying to obtain a different version than the contract version because (1) they did not know that INSLAW could not deliver the contract version and (2) the DOJ was not informed that version being used (i.e. VAX time-share) was of proprietary nature and not the one called for under the contract[ix]. The report goes on to further state that their investigation has led to the conclusion that the DOJ's demands, prior to Modification 12, for copies of Promis code was in fact made in good faith and for legitimate reasons.

INSLAW maintained that the DOJ was clearly seeking the proprietary version and thus needed Modification 12 to obtain that version. Hamilton stated that as early as the Feb 4, 1983 meeting the DOJ was given notice about the proprietary nature of Promis, which led the DOJ not to negotiate independently of one another the cancellation of the advance payment and the proprietary rights. Even the Bua report acknowledged that the DOJ collapsed the two issues into one. "Thus when the DOJ used the pretense of threatened termination of advance payment as leverage to obtain the enhanced time-sharing software, it knowingly set out to obtain a version of Promis to which it was not entitled under the contract, and which DOJ understood contained proprietary enhancements belonging to INSLAW"(Hamilton 1993, 17).

<u>Prelude to Bankruptcy</u>

Pursuant to Modification 12 INSLAW delivered the VAX version to the DOJ and set out on perhaps an impossible task of providing proof of their proprietary enhancement, which required the approval of the DOJ.

INSLAW sent letters dated April 5 and April 12 in which attempts were made to demonstrate that enhancements were in fact made using private funds. The DOJ failed to assist INSLAW in any way in determining what type of documentation and methodology was needed and acceptable to the DOJ. Jack Rugh, Acting Assistant Director, OMISS, EOUSA, suggested to Videnieks the adoption of three options:

(a) flat out denial of INSLAW's proposed methodology and a government decision that INSLAW had failed to substantiate its claims;
(b) a response that INSLAW's method is not acceptable and suggest an acceptable method; or
(c) a response that INSLAW has not substantiated it claim and ask INSLAW to resubstantiate without agreeing to a methodology.(Bason 1988, Finding 252)

There was unanimous agreement at the DOJ that they should not get involved with providing any advice to INSLAW on an acceptable methodology that would satisfy the DOJ's request for substantiation of its enhancement. DOJ believed that since the claim was coming from INSLAW "proof (should be) readily available." Rugh's analysis of INSLAW's submitted methodology was never made available to INSLAW. Rugh told the House Committee, "While he saw no reason why he would withhold this information from INSLAW, he could see no reason for including it." Rugh added that INSLAW's documentation of enhancements were excellent, which would show the source of the funding and the type of enhancements. (U.S. Congress, House 1992, 29)

The bankruptcy judge concluded that: "…DOJ was required to negotiate then, in 1983, as Videnieks specifically had proposed under Modification 12, but instead it wrongfully and cynically failed either to negotiate in good faith or even to reveal to INSLAW any purported concerns of Messrs. Rugh and Videnieks at the time with INSLAW's proposed method of proof"(30).

The Bua Report also criticized the DOJ for not responding to INSLAW's request for an approved methodology. They took issue with the DOJ's "thumbs down" approach and in fact the DOJ should have articulated its reasons for rejecting INSLAW's methodology. However, the Bua Report does not believe that evidence exists that Videnieks and Rugh acted with the intent to cheat INSLAW. They [Bua investigators] believed that their actions stemmed from their desire to protect the interests of the Government.

In rejecting all of INSLAW's methodologies and claims Videnieks and Brewer concluded that they had the same right to the Enhanced Promis as they did with the public domain version. In fact they testified to this under oath before the House Committee Investigators.

Videnieks wrote, a letter dated July 18, 1983, which he copied to Jensen, and informed INSLAW that it had suspended payment of $250,000 thousand in INSLAW's time-sharing costs. Elliot Richardson, former Attorney General under President Richard Nixon, and attorney for INSLAW proposed that attempted to resolve the issues. In a series of letters and meetings with high-ranking DOJ officials, Richardson continued to seek a mutually beneficial resolution. Richardson was met with resistance and stall tactics, all of which ultimately culminated in the

cancellation of the word processing portion of the contract, denial of $2.9 million for licensing fees and ultimately the cancellation of the Contract. DOJ Procurement Counsel William Snider, in a written legal opinion stated that the DOJ did not have sufficient and legal justification to terminate the INSLAW contract due to 'default.'

On April 1985 INSLAW was forced to file for Chapter 11 Bankruptcy protection. INSLAW alleges that after being forced into bankruptcy, DOJ officials tried to force the bankruptcy from Chapter 11 reorganization to Chapter 7 liquidation. This forced changed would result in the sale of Promis to Hardon, Inc., a rival computer company, which according to the Hamiltons' attempted a hostile buyout of INSLAW. The ultimate goal of this conspiracy was to position Hardon and Dr. Brian to take advantage of the nearly $3 billion worth of government contract upgrades in the area of data automation. (U.S. Congress, House 1992, 15) During the initial stages of the contract dispute, Hamilton received a called from Dominic Laiti, CEO of Hardon. Laiti wanted to purchase INSLAW and Hamilton refused. Hamilton stated during trial that Laiti threatened and warned him that Hardon had "friends"[x] in the government and that if INSLAW did not want to sell, it would be forced to sell. (Fricker 1993, 5)

Court Trials, Congressional and DOJ Investigations

Bankruptcy Court Ruling

On January 1988, Bankruptcy Court Judge Bason awarded INSLAW $6.8 million in damages plus counsel fees. Judge Bason said that the DOJ's actions: "Were done in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons to drive INSLAW out of business and to convert by trickery, fraud and deceit, INSLAW's Promis software" (Bason 1988, Finding 399).

District Court Ruling

In 1989, Senior U.S District Court Judge Bryant upheld the Bankruptcy Court's damages and ruled that the uncontested evidence virtually compelled the findings of the lower court "under any standard review." Judge Bryant stated that,

> The Government accuses the bankruptcy court of looking beyond the bankruptcy proceedings to fund culpability by the government. What is strikingly apparent from the testimony and depositions of key witnesses and my documents is that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility of supervising its work. While the focus of the review must be on the action taken by the Justice Department once INSLAW filed its petition for bankruptcy, the context of those actions cannot be fully appreciated without thorough understanding of the underlying events and facts leading up to bankruptcy (Bryant 1989, 18).

Court of Appeals Ruling

The DOJ appealed the decision to the Federal Court of Appeals and in 1991 the court reversed the lower court's decision based on jurisdictional technicality. Their findings stated the

Bankruptcy Court had no jurisdiction to hear the damages claim. A subsequent appeal to the U.S. Supreme Court was denied a review on October 1991.

House Judiciary Findings

The Committee on the Judiciary of the United States House of Representatives concluded a three-year investigation, which began on September 10, 1992. They concurred with the two lower court's ruling that the DOJ's actions hurt INSLAW and its owners. Furthermore, they stated that actions by the DOJ were taken with the knowledge and support of high-ranking DOJ officials. The House Report also criticized former Attorney General Richard Thornburgh for continuing to perpetuate the harm to INSLAW by refusing to cooperate with the Committee's investigation and his failure to "objectively investigate the serious allegations" raised by INSLAW attorney Elliot Richardson.

Nicholas J. Bua's Reports.

Retired Federal Judge, Nicholas J. Bua was appointed by Attorney General Barr to investigate the allegations made by INSLAW. The appointment was made on November 7, 1991. The first report was completed on March 1993. Subsequently, the new appointed Attorney General, Janet Reno, asked that a follow up investigation be conducted in response to INSLAWS's rebuttal of the first Bua Report. The first report stated that there is no evidence to conclude that (1) DOJ conspired with Earl Brian to obtain and distribute Promis software and (2) the DOJ obtained Enhanced Promis through fraud and deceit and (3) DOJ tried to influence the U.S. Trustee to convert the bankruptcy case from restructuring to solvency.

The second Report affirmed the first Report's conclusions and recommended that the two reports be adopted in its entirety and Attorney General Reno should consider the INSLAW matter closed. Furthermore, they stated that appointing an Independent Counsel was not necessary.

As to the appointment of retired Judge Nicholas Bua by Attorney General William Barr, the Committee stated: "…as long as the investigation of wrongdoing by former and current high level Justice officials remains under the ultimate control of the Department itself, there will always be serious doubt about the objectivity and thoroughness of the inquiry" (U.S. Congress, House 1992, 16).

International Sale of Promis

Spy vs Spy

During the bankruptcy trials and the subsequent appeals INSLAW was not aware that Promis was on the international market. More specifically it did not have the slightest idea that Promis had been modified to include a Trojan horse subroutine and was being sold to other intelligence agencies, governments, banks, and terrorist groups. According to Hamilton they discovered such activity, especially the DOJ-Israeli intelligence initiative, by following "leads" in the September 1992 House Report.

In February 1983, Brewer told INSLAW that Dr. Benn Orr from the Israeli Minister of Justice was interested in a demonstration of Promis. Brewer stated that the Israeli visitor was the head

of that country's project to computerize the prosecutors' offices. The version that was demonstrated for Dr. Orr was the version for the DEC VAX computers that INSLAW handed over to the DOJ pursuant to Modification 12. Following up on the House Report and in hopes of evaluating the version of Promis that Dr. Orr was given by the DOJ, INSLAW contacted the Israeli Ministry of Justice. Once Dr. Orr surfaced and spoke to a Jerusalem reporter he was literally not the same man that visited INSLAW in 1983. Hamilton states that he was informed that "Dr. Orr" was often times used as an alias by Rafi Eitan, the legendary Israeli espionage official.

There is no dispute between the DOJ and INSLAW that someone visited the INSLAW offices in February 1983. However, the version that ultimately was given to Dr. Orr was disputed. The DOJ claimed that they provided Dr. Orr with the LEAA version of Promis while former Isreali intelligence officer Ari Ben-Menashe and others claim that it was the 32-bit Version. INSLAW demonstrated the VAX version of Promis.

Former INSLAW Vice President Merill, not knowing what Hamilton had uncovered, was able to pick out "Dr. Orr" from a mock, video taped police line up, which Hamilton had set up. Hamilton's secretary also picked out the same picture. (Fricker 1993, 1)

Dr. Brian was working on the "Iranian Medicare Initiative" when he and Eitan first met in Iran. Eitan was fascinated by the fast pace lifestyle in California. Eitan and Dr. Brian kept in touch over the years and Brian kept Eitan informed about Promis.(Thomas 1990, 185-187) During several meetings between Eitan and Brian, Eitan explained the rising violence between the Israelis and the Palestinians. In turn, Brian explained the workings of Promis. Although the Israeli/Palestinian conflict is no doubt not the focus of this case, however, one can conclude that the rising situations and tensions during the start of the '80s perhaps played a key role in Israel's decision to obtain Promis. Promis made it possible to know exactly when and where a person would strike. Promis could track a terrorist's every step. .(Thomas 1990, 188-190)

Ben-Menashe was asked about their [Israeli's] interest in Promis. He said, "Promis was a very big thing for us guys, a very, very big thing…it was probably the most important issue of the '80s because it just changed the whole intelligence outlook. The whole form of intelligence collection changed. Promis was perfect for tracking Palestinians and other political dissidents"(Fricker 1993, 9).

Eitan was an intelligence officer not a computer expert; therefore, he summoned the help of Ben-Menashe. (Ben-Menashe 1992, 131) In a 1991 affidavit, Ben-Menashe stated: "I attended a meeting at my Department's headquarters in Tel Aviv in 1987 during which Dr. Brian of the United States made a presentation intended to facilitate the use of the Promis computer software" (Fricker 1993, 8). Ben-Menashe went on to say the Dr. Brian stated that numerous U.S. Intelligence Agencies were using Promis. Dr. Brian specifically named the Defence Intelligence Agency, Central Intelligence Agency, DOJ, and the National Security Agency.

According to Ben-Menashe he paid an old friend $5000 to create a "trap door." Once the trap door was incorporated into Promis it would be sold to other governments and intelligence

agencies. Dr. Brian made the sale of "TrapDoor Promis" through Hardon. Eitan selected Jordan as the test site due to its high population of Palestinian refugees. With the help of Hardon computer experts, "TrapDoor Promis" was installed on the Jordanian military intelligence offices.

Jordan served as the pilot project for "TrapDoor Promis" and turned out to be very successful. Ben-Menashe said that what the Israel and the Americans learned was that the system was workable.(Ben-Menashe 1992, 133) Ben-Menashe claimed that the idea to sell this "valuable program" to other governments was put forth by the Americans.

The next step required an American version of Promis with the trap door. A Florida-based computer consulting firm, Wackenhut, was given a copy of Promis. These operations were so secret that the Israeli's did not even inform the NSA of the trap door nor did they give them a copy of their version. As Ben-Menashe put it, "interagency competitions were fierce." The modification took place on the Cabazon Indian Reservation[xi] by Michael Riconoscuito.

Riconscuito and Brian were hired to work at Wachenhut, according to Hamilton. (Bua 1993, 43) Riconscuito states that he was given a copy of Promis by Brian and made the modification in a trailer behind the Reservation's casino. According to Riconscuito, he and Dr. Brian traveled to Iran in 1980 and payed $40 million as bribe to keep the hostages from being released prior to November of 1980 elections. (Bua 1993, 43) In a affidavit, dated March 21, 1991, Riconscuito stated that Videnieks made frequent trips to the Reservation and was a close associate of Dr. Brian. He stated: " …I engaged in some software development and modification work in 1983 and 1984 on the proprietary Promis computer software product… The purpose of the Promis software modification that I made in 1983 and 1984 was to support a plan for the implementation of Promis in law enforcement and intelligence agencies worldwide" (Bua 1993, 45),

Although Dr. Brian denies knowing Riconscuito or being involved with the INSLAW scandal, according to Indio city police officers, Dr. Brian, who was identified as being with the CIA, and Riconscuito gathered at the Reservation on September 10, 1981. The gathering included arm dealers, buyers and various intelligence officers that were there to observe demonstration of various night vision equipment.

The Israeli Government used publishing tycoon Robert Maxwell' various companies as fronts for selling their version of Promis[xii]. Ben-Menashe also stated in his book that through Maxwell companies, Israel and the Americans were able to tap into numerous intelligence networks around the world, "including Britain, Canada, Australia, and many others, and set into motion the arrest, torture, and murder of thousands of innocent people in the name of 'antiterrorism'"(Ben-Menashe 1992, 130).

Danny Casolaro

An investigative reporter, Danny Casolaro, for nearly a year, was investigating the INSLAW Affair. He was almost ready to publish his findings, which he called "The Octopus," when he was found dead in the bathtub of a Martinsburg, West Virginia hotel room. He had multiple slash wounds on his wrist. Prior to his death he told his brother that if an accident were to happen to him "don't believe it."

Casolaro was in Martinsburg to speak to someone that he called a key source. The name of that source still remains a mystery. Hamilton stated that he spoke to Casolaro for nearly a year and he did not think that Casolaro was on the brink of suicide.

Immediately after his death, Casolaro's hotel room was cleaned and his autopsy performed without even notifying his family. Furthermore, his body was embalmed and the hotel employees were told not to speak to reporters. (Fricker 1993, 14-15) Witnesses reported that he was seen entering the hotel room carrying files and documents. Furthermore, his family attested to the fact the Casolaro would always take with him the documents. Casolaro's documents and files were not in the hotel room at the time of his death.

The circumstances surrounding Casolaro's death were so bizarre and filled with so many questions that the House Report suggested further investigation. One of the six areas in need of further ivestigation by the House Report was: "the lingering doubts over suspicious circumstances surrounding the death of Daniel Casolaro"(Bua 1993, 110). However, the Bua Report stated that their investigation led them to believe that evidence was lacking to warrant an "exhaustive" investigation into the possibility that any of several "sources" were responsible for the death of Casolaro.

Promis at other Government Agencies

Federal Bureau of Investigation

Three months before the September 11 attacks on June 14, 2002 the Washington Times reported that Robert Hanson admitted that he stole Promis, gave it to the Russians and then for $2 million it was sold to Osama Bin Laden. (Suddeutsche 2003, 1) The FBI did not initially confirm or deny the story of having Promis. Hanson, a former FBI analyst, was arrested in February 2001 and convicted of spying for the Soviet Union. The Government agreed not to seek the death penalty in exchange for his cooperation.

Carl Cameron, a FOX News Reporter contacted INSLAW. "He wanted know if our office had heard about the Hanson story and whether or not we knew that the software had ended up all the way in the hands of Al Qaeda," Hamilton said during an April 15, 2003 phone interview.

Hamilton stated that Cameron was asked, "If the FBI had confirmed knowledge of having Promis" and Cameron replied, "that is their problem." This was a clearly indication that that he [Cameron] was going to air the story. (Hamilton 2003)

It was not until November 2001 that the FBI admitted to having any association with Promis. According to Hamilton when the Hanson story appeared in *The Washington Times*, FBI Director [Muller] admitted that the FBI's current system is based on Promis. Hamilton stated this in the same interview as well as in a January 6, 2003 *Washington Times* article. Muller admitted this to INSLAW's lawyer C. Boyton Gray. (Hamilton 2003)

"The FBI's Public Affairs Office in October 16, 2001 admitted having Promis. This is interesting because Washington Times and FOX NEWS are perceived as being Republican supporters and having some connection with Republicans, which is even true about our own lawyer Gray who was the White House Council for the first President Bush," Hamilton said. (Hamilton 2003)

Prior to Hanson admitting to the theft of Promis, the FBI had adamantly denied (1) ever using Promis and (2) having based their case management software, FOIMS, on Promis.

According to Hamilton the FBI enterprise case management, which is their main system was based on the 1985 version of Promis. According to the *Washington Times* Government sources said that FOIMS and COINS (Community On-Line Intelligence Systems) are believed to be upgraded versions of Promis. (Seper 2001) Hamilton points out that in 1995 the system was replaced by different package that resembled old Promis, both of them were character based. This is significant since in the early '90s Graphical User Interface was starting to take shape, but FBI's case management system; the 1995 version was not graphical. In 1995 the name was changed from Promis to FOIMS and modifications were made based on Promis.

<u>FOIMS vs. Promis</u>
The first code comparison was perfomed by Dr. Dorothy Denning, a computer science professor at Georgetown University. Webster Hubbel who was appointed by President Clinto to the DOJ appointed Dr. Denning to perform the code comparison. Hubbell was in charge of the on-going INSLAW saga. Denning, however, said a code comparison "would be a waste of her time and government's money" (Grabbe 1997, 3) former.

Dr. Denning said in a response to several e-mail questions that looking back at the INSLAW matter, she should have done a detailed and complete code comparison. She does, however, still maintain that FOIMS was not derived from Promise simple because Promis was a very "limited" software package.

Dr. Henning stated that if FOIMS was derived from Promis then there would be similarities in the following areas: application domain, the kind of information (data managed) organization of the information in the database, inquiry and report capabilities, look and feel (screens, menus commands, etc), networking capabilities among different offices, the amount of data integrated across all offices, and the internal programming language. (Denning 1993, 1)

The only item that lends itself to code comparison could be the last issue. Dr. Denning noted that the two were derived from separate packages. The FOIMS version was written in the NATURAL/ADABASE language and Promis was written in COBOL. She mentioned that only the original version of FOIMS (1978) was written in COBOL.

Dr. Denning concluded, in three pages, that,

> The difference between FOIMS and Promis are sufficiently great as to demonstrate that FOIMS was not derived from Promis. The Promis software could not support or provide a basis for the FOIMS application domain and its functional capabilities. (Denning 1993, 3)

In 1996, a panel of three experts was created. INSLAW and the DOJ would each select their own experts and those two experts would select the rest. INSLAW chose Tom Bragg, adjunct professor at George Washington University. The DOJ selected, Dr. Randall Davis of MIT's Artificial Intelligence Laboratory. Dr. Plauger, one of the developers of the C programming language, became the third expert.

The panel ordered the FBI to provide the code for the mid-80s FOIMS version. Six months after the initial request was made, the FBI responded and stated that, it only had the 1996 version. The FBI's 1996 version was the only version that was provided and it was far from the 1985 version.

This is bizarre Hamilton added. "The FBI does not throw away anything. I mean they still have the cocktail napkin belonging to Sinatra."

The most interesting finding came from the Governments expert, Davis. Davis concluded that the 1978 version of FOIMS was not derived from a 1985 version of Promis. (Grabbe 1997, 3)

"I assume that you have to have some intellect, after all you are an MIT professor. He stated that there were structural similarities but they could not find proof. He said the 1978 version is not based on the 1985 version of PROMIS. Well I could have told him that." Hamilton said.

Comparing programming code is not an easy task and the closer the alleged duplicated version to the source the easier it is to compare the source. "The foot prints in the sand get less and less the farther you move away from the original version," Hamilton said.

CIA, Navy, NSA, Wold Bank and other Institutions

INSLAW alleged that numerous agencies, within the US and outside the US were given copies of the VAX version, which was the one shown to "Dr. Orr" and later turned over to the Israeli Government by the DOJ.

INSLAW obtained a published report from Undersea Systems Center in 1987. The report reveals two locations that Promis was operational (1) land-base facility in Newport, Rhode Island and (2) onboard attack class and bomb class submarines. INSLAW also cited a report in the Navy Times in which the Navy confirms having and using the version of Promis that operates on a VAX machine supporting nuclear submarines.

INSLAW stated that in 1983, a month after the DOJ handed over Promis to Israel; it also, in a secret partnership with the NSA, handed over a copy of Promis to the World Bank and the International Monetary Fund. INSLAW based these allegations on a series of published articles in the American Banker's International Banking Regulator. (Hamilton n.d., 8)

Hamilton stated that he spoke with Casolaro prior to his death. During that conversation Casolaro told Hamilton that Promis had reached the World Bank. Hamilton then spoke with two individuals at the World Bank that confirmed Casolaro's findings[xiii].

In 1994 Anthony Kimerly reporting for the Thomas Banking Regulator provided a detailed glimpse into financial uses of Promis. According to Kimery, not only can Promis monitor laundering, it can be used for money-laundering. The importance of Promis to the NSA is that it gave them the ability to monitor world wide financial transactions in real-time. (Unclassified 1996, 2)

According to INSLAW, in September 1993, then CIA Director James Woolsley told Elliot "the CIA is using a Promis software that it acquired from the NSA" (Hamilton 1993, 8). This is contrary to the statements made to the House Committee, during their investigation that they did not have any software that had the name Promis.

The NSA told the Bua investigators that they had purchased a software package called Promis, which was an off-the-shelf product. A report in the May 1986 issue of *Toronto Globe* and mail contradicted the NSA statement. According to that report NSA purchased Promis from a Toronto based company and Dr. Brian sold Promis to the same software company. (Hamilton 1993, 62)

Northern Exposure

When a modified version of the Promis containing the Trojan Horse was discovered in Canada's top intelligence organizations, the National Security Section of the Royal Canadian Mounted Police (RCMP) launched an eight month investigation. (O'Meara, 2001, 3) The investigation focused on whether Canada's national security had been compromised by U.S. intelligence agencies. The investigation was launched in February of 2000,

Cheri Seymore was a Southern California journalist and private detective. Seymore recovered thousands of pages of documents that were obtained from Riconosciuto's abandoned trailer. Seymore provided these documents to two Mounties, who covertly entered the country in early 2000, Sean McDade and Randy Buffman.

These documents revealed that the Canadian Government might have illegally purchased Promis from the Reagan/Bush administration. Furthermore, the RCMP investigators in the United States informed their supervisor that they had identified several banks around the world used for money-laundering by U.S. officials.

McDade obtained they keys to Riconoscuito's storage facility in Vallejo, California for the price of $1500 dollar. At the storage site McDade found six Rl02 Magnetic tapes that according to Riconoscuito were the Promis modification tapes.

According to *Insight Magazine* the spokesperson for the RCMP did confirm, in 2001, that there was an ongoing investigation focusing on the Promis software.

Conclusion

As much as the Bua Report attempted to categorically dismiss every single INSLAW allegation as being unwarranted or lacking proof, any reasonable person cannot be expected to reach the same conclusion. There are simply too many events and the testimonies of many people that indicate some wrongdoing did occur.

It is hard to believe and is naïve to expect the fact that a low-level project manager, Brewer, could have such high contacts with foreign governments in arranging a meeting between INSLAW and "Dr. Orr." Brewer never abandoned his position that at all times he kept high-ranking officials abreast about decisions regarding the INSLAW contract. Although the court decision was overturned on legal technicality, the appeals court and subsequent Government Contract Dispute Board stated that there were improprieties by the Government.

Bankruptcy Court Judge was not reappointed, rather, the lawyer representing the DOJ during the trial received the appointment.

A NSA employee was found murdered at an airport in 1991. An associate of Casolaro stated that Casolaro was in possession of NSA documents showing the sale of Promis to various named countries. The documents were allegedly obtained from the murdered NSA employee.

Ratiner believed that his involvement with INSLAW was the reason for being fired. Ben-Menashe stated in his book that he saw a memo, in Hebrew, which came to the Joint Committee from the United States asking for $600 thousand. The money was wired to Dr. Brian and subsequently to Garmets Law firm. The money was used as part of the severance package for Ratiner. Eitan did confirm that Ben-Menashe did have access to highly sensitive and classified materials.

If one simply evaluates the INSLAW Affair as merely a contractual and intellectual properties dispute the following questions arise:

1) Did INSLAW have a right to modify Old Promis?
2) Were modifications (major or minor) made to Old Promis?
3) How were these modifications funded (private or public?)
4) Were these modifications part of the deliverables as stated in the contract between INSLAW and DOJ?
5) Should INSALW have extricated itself from the contract immediately after becoming aware that Brewer was the project manager for the DOJ?
6) Should INSLAW have provided the DOJ access to "time-share VAX" when the DOJ did not have the right computer equipment? Could not one blame INSLAW for proving access to a software version for nearly a year and then expect the DOJ to 'go back' to an inferior version?
7) Should INSLAW have refused to install the 32-bit VAX version on the Government's newly purchased PRIME computers? Didn't this create a false impression the 32-bit VAX version was the contract version, after all the DOJ had been using it for nearly a year and even purchased computers that supported the 32-bit version?
8) Was INSLAW trying to force the DOJ to accept the 32-Bit version and pay INSLAW the additional fees without question?
9) Did the DOJ negotiate Modification 12 under bad faith?

The dilemma one is faced with when answering these questions is that one cannot dismiss the blatant and obvious circumstances as well as the multiple witness accounts and emerging

evidence that the INSLAW Affair does point towards some level of misconduct on the part of the government. One is still left with the unanswered questions of 1) why there was such bias against INSLAW by Brewer, Jensen and other DOJ officials, 2) what prompted the attempts at getting Enhanced Promis and selling it for a profit without settling the dispute in a discrete manner, i.e. simply paying them, 3) what exact role did the Israeli intelligence officers play in the entire Affair. Is the INSLAW matter a part of a bigger international espionage scheme, which was witnessed in the '80s and even perhaps involves the "current" War On Terrorism? If the answer to the latter question is in any way positive then the INSLAW Affair goes to the heart of the justice and legal system of the United States. How much more tyranny does lie under the government's pretext of National Security?

The DOJ's motives behind creating the contractual disputes are part of the ethical and moral realm rather than of a simplistic legal nature. Governments have always been involved in covert actions, legal or illegal, and with less than honorable characters. And although David did slay Goliath; backed by the highest of DOJ officials this Goliath was evasive and elusive.

Bibiliography

Ben-Menashe, A. (1992). *Profits of War: Inside the U.S.-Israeli Arms Network*. Sheridan Square.

Brooks, J. (1992) *The INSLAW Affair: Investigation Report by the Committee on the Judiciary*. [report on-line] (Washington: U.S. Government Printing Office, accessed on April 14, 2003); available at www.eff.org/legal/cases/inslaw/inslaw)_hr.report.

Bua, N.J. (1993) *Report of Special Counsel Nicholas J. Bua To The Attorney General Of The United States Regarding The Allegations Of Inslaw, Inc.* U.S. Department of Justice Library. March.

Bua, N.J. (1994) On the *Report of Special Counsel Nicholas J. Bua's Report on the Allegations Of Inslaw, Inc.* U.S. Department of Justice Library. September 27.

Denning D.E. (2003) FOIMS vs PROMIS. Electronic Transmission by author. April 14.

Denning. D.E. (1993). Analysis of FOIMS and PROMIS. Fax Transmission. April 15.

Fricker, R.L. (1993) "The INSLAW Octopus." *Wired Magazine.* March..

Grabbe, J.O. (1997). "Webb Hubbell and Big Brother (WHODB)" [article on-line] (accessed April 14, 2003); available at www.aci.net/kalliste/agsoft.htm; Internet.

Hamilton (1992). *Executive Summary.* [report on-line] (accessed April 14, 2003); available at www.eff.org/legal/cases/inslaw/inslaw.hr.summary.

Hamilton, R. (2003). *Major Sticking Point*. Electronic Mail Transmission by author. April 30.

Hamilton, R. (2003). Phone interview with author. April 15.

Hamilton, R. (2003). *RE: small clarification needed*. Electronic Mail Transmission by author. April 30.

Hamilton. R. (1993). *Inslaw' Analysis and Rebuttal of the Bua Report* [report on-line] (accessed April 14, 2003); available at www.webcom.com/~pinknoiz/covert/inslaw.rebuttal.html; Internet.

INSLAW, Inc v. United States of America, 83 B.R 89, 1988 Bankr.

Koch, E. R. (2003). Osama On Line Two. *Suddeutsche Zeitung*. April.

Kuijsten, M. (2002) *The INSLAW Affair.* MBA 744: IS Planning. University of Las Vegas, Nevada. 2002.

Mintz, H. (1992). "House Report Blast S.F. Judge; Federal court's Lowell Jensen accused of being a key player in conspiracy to drive INSLAW software firm out of business." *The Recorder.* September 11.

O'Meara, K.P. (2001). *PROMIS Trail Leads to Justice.* [article on-line] (accessed April 15, 2003); available at www.jillnicholson.com/trail.htm.

Sepper, J. (2003). "Firm says stolen software helped bin Laden plot 9/11; Commission asked to look for use of Promis Program." *The Washington Times*. January 6.

Thomas, A. (2000). "Mounties Debugged Spy Software in '94: Ex-Agent The 'Spy-Trap' Scandal." *The Toronto Star*. August 28.

Thomas, G. (2000). *Gideon's Spies: The Secret History of the Mossad*. St. Martin Press

Thomas, G. (2001). *Seeds of Fire: China and the Story Behind The Attack on America*. Dandelion Books

Unclassified. (1996). *Inslaw, the Continuing Caper.* [article online] (accessed April 15, 2003); No 37.

United States of America v. INSLAW, Inc., 113 B.R 802, 1989 U.S. Dist.

---

[i] On November 7, 1991 Attorney General William Barr assigned a Special Counsel for the purpose of investigating the INSLAW matter. Barr selected retired Federal Judge, Nicholas J. Bua, to head the investigation.

[ii] In September 1992, the House Judiciary Committee published a report of their investigation. Representative Jack Brooks of Texas chaired the investigation. The Committee voted to approve the findings along party lines.

[iii] The Computer Law Association held their 30th Anniversary meeting on May 3-4, 2001 in Washington D.C. Richard Hamilton was the speaker at their luncheon address, which was tilted, "The Largest Global Software Theft In History."

[iv]The October Surprise is referred to the events surrounding the release of the American Embassy Hostages held in Iran. According to reports the Reagan Presidential camp made arrangements not to have the hostages released untillafter the November 1980 elections.

[v] Enhanced Promise was modified to include a "trap door" that would allow the U.S. and Israeli intelligence access to any computer in which Promis was installed.

[vi] Garmet was retained by the Israeli Government to prevent indictment by the DOJ of other Israeli officials as it related to the Jonathan Pollard espionage case.

[vii] Dr. Brian was allegedly sent to Iran and proposed a Medicare system at the behest of then Governor Reagan. Reagan told Dr. Brian "Medicare would show Iran a positive side of America."

[viii] Schoolmeester, Videnieks former boss told the House Committee that it was "impossible" for the pair not know one another while Videnieks was at the Customs Service. Furthermore, Schoolmeester added that because of Brian's relationship to President Reagan Hardon was considered an "inside" company.

[ix] According to the Bua Report, Videnieks specifically asked INSLAW in his March 8, 1983, letter to identify any government personnel to whom notice was given prior to February 4, 1983, that INSLAW was using a proprietary version of Promis to perform the contract. INSLAW never identified anyone in response to this request.

[x] Videnieks was the "friend" to which Laiti referred. See footnote 7.

[xi] Numerous published report claim that that the Wackenhut/Cabazon joint venture was used as a front by Oliver North during his involvement with Iran-Contra. (Fricker 1993, 12)

[xii] Ben-Menashe explains the intricate details of the various fronts that were set up by Maxwell. Page 134. He also indicates the Maxell body was buried in Judaism's most revered burial grounds, the Mount of Olives, which overlooks Jerusalem's walled city.

[xiii] The names of the two employees were not revealed to me although they were requested in an e-mail to Hamilton. He has yet to reply to that specific request.