

The Washington Post

AN INDEPENDENT NEWSPAPER

The Inslaw Case

THE JUDGE didn't mince words. The defendant, he said, "took, converted, stole" the plaintiff's property "by trickery, fraud and deceit." The defendant made "an institutional decision . . . at the highest level simply to ignore serious questions of ethical impropriety, made repeatedly by persons of unquestioned probity and integrity, and this failure constitutes bad faith, vexatiousness, wantonness and oppressiveness." The defendant also engaged "in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing." And who do you suppose this defendant is—a corporation set up by the mob to swindle widows? A brokerage house stealing from clients and trading on insider information? Not at all. The culprit is the United States Department of Justice.

U.S. Bankruptcy Judge George Bason used these terms in a recent ruling against the department. The plaintiff was Inslaw, a corporation that had developed software that is widely used by prosecutors to track the progress of cases and compile information about caseloads, dispositions, characteristics of offenders and other material. Inslaw is now in the process of reorganizing in bankruptcy because of problems involving a contract with the

Justice Department. The contract, which accounts for 70 percent of the corporation's business, called for Inslaw to install its software system in the offices of each of the 94 U.S. attorneys. Judge Bason found that the company was the victim of bias on the part of C. Madison Brewer, who had been fired by Inslaw and then hired by the Department of Justice to supervise the software contract. Over the course of several years, department officials had been challenged about the apparent bias of Mr. Brewer—the judge found that he "was consumed by hatred for and intense desire for revenge against" the president of the company—but undertook no real investigation. Moreover, the department continued to use Inslaw's property without compensation.

These are not simply charges; they are a judicial finding. While the department will undoubtedly appeal the judgment and the order to pay substantial damages, a more immediate public accounting is in order. Why was Mr. Brewer hired for this particular job in the first place? Why did no one at the department take seriously the charges of conflict of interest? What steps are being taken to provide a permanent mechanism within the department for reviewing charges of this kind?

The Washington Post

SUNDAY, DECEMBER 24, 1989

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A Big Win for INSLAW

THE DAVID and Goliath tale of one small company's fight with the federal government has been resolved by a federal court in Washington. INSLAW, a local computer software company with young owners and not much in assets, was vindicated in a dispute with the Justice Department. Charges against the government were so appalling as to be suspect. But first a bankruptcy judge and now U.S. District Court Judge William Bryant have found them to be true. Persistence and a refusal to cave in to great pressure—not to say intimidation—have resulted in a multi-million-dollar verdict for the company.

INSLAW developed software that is widely used by federal prosecutors to track the progress of cases and compile information about caseloads, dispositions and the characteristics of offenders. The company entered into a contract with the Department of Justice to install its system in prosecutors' offices around the country, but within months the rights of the parties were in dispute and the government began to withhold payments. The contract represented 70 percent of INSLAW's business, and as a result of the continuing conflict, the company was soon forced to reorganize in bankruptcy. INSLAW's owners charged the Justice Department with extreme bias because C. Madison Brewer, the man desig-

nated to supervise the contract, had once been employed by INSLAW's predecessor company and was forced out. How Mr. Brewer came to be put in charge of the software contract is not known. But U.S. Bankruptcy Judge George Bason found that he was "consumed by hatred for and intense desire for revenge against" INSLAW's president.

Judge Bason did not mince words. He found that the department "took, converted, stole" INSLAW's property "by trickery, fraud and deceit." And he found that department officials at the highest level ignored charges of ethical impropriety, dealt with INSLAW in bad faith and demonstrated "contempt for both the law and any principle of fair dealing." After he made these findings, but before his opinion was published, Judge Bason was notified that he would not be appointed to another 14-year term on the bankruptcy bench. That dismissal was not subject to review. But Judge Bason's opinion was. He must be gratified that it was so soundly endorsed by Judge Bryant, who ordered the department to pay INSLAW \$6.1 million in damages—punitive damages may be added later—and all the legal fees the company has paid in its long struggle to obtain justice.

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AN INDEPENDENT NEWSPAPER

Justice and the INSLAW Case

INSLAW IS A small computer software company in this city that has been engaged in a long drawn-out battle with the Justice Department on a contract matter. The company developed software that was intended to be used in all 94 U.S. attorney's offices across the country for the purpose of enabling the department to computerize information on cases and defendants. A contract for this work was signed in March of 1982, but disputes arose almost immediately, and the agreement was terminated by the Justice Department in February of 1984. A year later, the company was compelled to file for reorganization in the U.S. Bankruptcy Court.

The company has lodged a number of serious charges against department officials that boil down to an allegation that they conspired to drive INSLAW out of business in order to award the lucrative contract to insiders, including friends of former attorney general Edwin Meese. Both the bankruptcy court and the U.S. District Court have found evidence of bias and serious misconduct by government lawyers, and have ruled that INSLAW is entitled to \$8 million in damages and attorneys' fees.

These rulings—now on appeal to the U.S. Court of Appeals—concern the civil aspects of the case, but no criminal charges have been brought relating to any of the findings made by the courts. Investigations have been conducted by the Office of Professional Responsibility in the

Justice Department and by the staff of the Senate permanent subcommittee on investigations. But INSLAW's owners believe a far more comprehensive inquiry by an unbiased source is needed. They have filed suit in federal court seeking to compel the Justice Department to launch a full-scale investigation, interview 29 witnesses they have produced who have so far been ignored and put the entire probe in the hands of someone who has never been involved in the case before.

Whether or not this suit is successful, these charges cannot be ignored. The House Judiciary Committee has begun an investigation, and a decision has been made not to tolerate the substantial delays, lack of cooperation and heavy-handed interference that undermined the Senate inquiry. In the face of two strong court decisions and this looming threat on the Hill, it is hard to understand why Attorney General Thornburgh is not more forthcoming. He should be leading the investigation of alleged internal wrongdoing, not stonewalling it.

The INSLAW case has been festering for six years, and the Justice Department, still trying to win its civil case in yet another appellate court, continues to reject all demands for a public accounting of how its own officials handled the contract. This continued resistance lends credence to the findings of two judges and compels a wide-open and thorough investigation on the Hill.

SATURDAY, APRIL 28, 1990

The Washington Post

AN INDEPENDENT NEWSPAPER

Mr. Thornburgh Cooperates

AFTER SIX years of stonewalling, the Justice Department has finally taken a conciliatory step toward getting to the bottom of a nasty contract dispute. The case involves INSLAW, a local computer software company that developed material to be used in keeping track of cases in all the U.S. attorneys' offices around the country. INSLAW alleges that in the early '80s, Justice Department officials—including some close associates of former attorney general Edwin Meese—terminated INSLAW's multi-million-dollar contract and conspired to drive the company out of business in order to award the contract to insiders. The government has consistently denied these charges but has yet to win a victory in court.

So far two federal courts have found evidence of bias and serious misconduct by government lawyers in connection with the INSLAW contract, and the company has been awarded \$8 million in damages and attorneys' fees. This civil case is on appeal. INSLAW is also trying, in court, to force a criminal prosecution, but that is very difficult to do. A better course would be to have the potentially criminal aspects of the case investigated by a neutral body that has not been involved in the drawn-out dispute. The Justice Department has conducted two internal investigations and, in spite of court findings of impropriety, has found no grounds for prosecution. The Senate permanent subcommittee on investiga-

tions undertook a probe in 1987, but the staff report that was produced criticized the department for lack of cooperation. The report specifically faulted the department's insistence that Justice lawyers represent any employee who was called to testify. In practical terms, this meant these witnesses were always interviewed in the presence of attorneys whose primary client was the department.

Last August the House Judiciary Committee began a new investigation determined not to agree to the conditions imposed on the Senate subcommittee. After months of negotiations, Attorney General Dick Thornburgh has now assured Judiciary Committee chairman Jack Brooks (D-Tex.) that his inquiry will have the full cooperation of the department. Committee investigators will have direct access to department personnel and documents, and employees will be assured that they can testify without fear of retribution. This is not only the right decision, it is a sensible one in the department's own interest. Doubts about the objectivity of the department's investigations, and questions about the failure to prosecute anyone in this matter, would have been bound to linger if the department had continued to obstruct an outside investigation. There may be no grounds for criminal prosecution in this case, but no matter what the outcome, cooperating in the House committee investigation is the best way for the attorney general to protect the integrity of the department.

The Washington Post

SATURDAY, DECEMBER 8, 1990

AN INDEPENDENT NEWSPAPER

Another INSLAW Inquiry

INSLAW, a small computer software company in this city, has been involved in a legal dispute with the Justice Department for more than six years. This week the matter was taken up in a new forum, the House Judiciary Committee, and the potential for a clash between the legislative and executive branches is escalating. The company developed software that enabled U.S. Attorneys' offices all across the country to keep track of cases and signed a contract with the government in March of 1982. There were problems from the beginning, and the agreement was terminated two years later. The company was forced to file for bankruptcy, and its officers charged that they were driven out of business by Justice Department lawyers who wanted, in effect, to steal their product and award the contract to friends with contacts inside the department. A bankruptcy judge ruled in favor of INSLAW, finding that the department "took, converted and stole" INSLAW's property "by trickery, fraud and deceit." The U.S. District Court here upheld that finding and ordered the government to pay millions in damages. That case is now on appeal.

Not surprisingly, Congress became concerned about this apparent scandal. The Senate's permanent subcommittee on investigations conducted

an inquiry, but it was hamstrung by the refusal of Justice Department officials to cooperate. The House Judiciary Committee is proving to be a tougher adversary. While Attorney General Dick Thornburgh initially promised to assist the committee, he has now taken a position that hundreds of documents relevant to the investigation cannot be made available because the case is still in litigation. On Wednesday chairman Jack Brooks held a public hearing on the matter at which Steven Ross, the institutional lawyer for the House, cited numerous precedents against the department's reasoning. It's a good bet that when Congress reconvenes, the committee will subpoena the documents.

It's hard to understand why the attorney general is refusing to cooperate. No one has asked that the material sought be made public or shared with INSLAW's lawyers. The investigation is not about the conduct of private citizens but alleged wrongdoing by government lawyers, and the charges are extremely serious. The Judiciary Committee has not only the right but the responsibility to look into these allegations, and the department's stonewalling only undermines its own credibility, not just with the committee that oversees the department's operations but with the public as well.

The Washington Post

SATURDAY, APRIL 27, 1991

Progress on Inslaw?

EXACTLY A YEAR ago this week, we published an editorial praising Attorney General Dick Thornburgh for his decision to cooperate with the House Judiciary Committee's investigation of the Inslaw case. "After six years of stonewalling," the editorial said, "the Justice Department has finally taken a conciliatory step toward getting to the bottom of a nasty contract dispute."

We wrote too soon. The department continued to resist the committee's request for some documents, and the investigation has been hamstrung while lawyers argued over what should be shared and what should remain secret. This week agreement was finally achieved—or so we think—and after seven years of stonewalling the department has pledged full cooperation.

Inslaw is a small computer software company with headquarters in this city. The company signed a contract with the federal government in 1982 to supply all 94 U.S. attorney's offices with software it had developed to track the progress of cases and compile information about caseloads. The contract accounted for 70 percent of Inslaw's business. In early 1984, though, the government terminated the agreement, and the company slid into bankruptcy. From the government's perspective, matters went downhill from

there. Inslaw won an important victory in bankruptcy court, where a judge found that the department "took, converted and stole" the company's property "by trickery, fraud and deceit." He said the government's conduct demonstrated "bad faith, vexatiousness, wantonness and oppressiveness," and while that language may seem strong, U.S. District Court Judge William Bryant agreed completely. In 1989 he ordered the government to pay Inslaw \$8 million plus attorney's fees. That decision has been appealed.

Meanwhile, committees in both houses of Congress took a look at the case. More is at stake than money, for what Inslaw charges, in a nutshell, is that some officials in the Meese Justice Department and their friends deliberately drove the company out of business, stole the software and have been making a fortune selling it here and abroad. The probe on the Senate side was inconclusive because the department refused to comply with requests for documents. The House Judiciary Committee has been more insistent, and now Chairman Jack Brooks' (D-Tex.) persistence has paid off. The attorney general will let committee investigators see every document, though it is understood that some material sensitive to the litigation will be treated in confidence. This simple arrangement should not have taken nearly so long. The breakthrough is welcome. We hope it is for real this time.

The Washington Post

SATURDAY, MAY 11, 1991

Inslaw: Back to Square One

AFTER EIGHT years of battling the Justice Department both in and out of court, Inslaw, a local computer software company, finally suffered a major setback this week. A unanimous panel of the U.S. Court of Appeals reversed two lower court judges who had ruled in favor of the company and had awarded \$8 million in damages, attorneys' fees and costs. The appeals court did not rule on the merits of the company's fraud and contract claims against the government, but the ruling nevertheless puts the company back to square one in its effort to best the government and win damages.

Inslaw developed a software system that is used in U.S. attorneys' offices across the country. In the early '80s, it had a multimillion-dollar contract with the Department of Justice to provide and install this system, which accounted for most of its revenues. The company's officers believe that certain officials in the department conspired to force the company into bankruptcy in order to steal Inslaw software for their own profit. In 1988 a bankruptcy judge, in a strongly worded opinion, decided all these claims in favor of Inslaw. The following year, a U.S. District Court judge affirmed, again in the strongest terms.

Now the appellate court has ruled, however, that these actions were far outside the jurisdic-

tion of the bankruptcy court, which does not have the authority to settle them. "[T]he Department," the judges found, "has been hauled in front of the bankruptcy court simply because Inslaw filed for bankruptcy, and Inslaw has succeeded in convincing the bankruptcy court to adjudicate its contract, tort, . . . trade secret and administrative law . . . disputes with the Department, although the court had no basis under the Bankruptcy Code to do so."

Where does this leave Inslaw? Without a remedy and without the \$8 million, at least for the time being. The appellate court suggests that new suits can be filed in the correct forums, and the judges went out of their way to say that if Inslaw's allegations are true, the government's conduct is "inexcusable." Meanwhile, the House Judiciary Committee is proceeding with its investigation of the case, now with the full cooperation of the Justice Department.

This is an important dispute involving millions of dollars and the reputation of a number of government officials. It shouldn't drag on for another eight years. The Judiciary Committee can provide a service by conducting a thorough and unbiased review of the facts, which may help the parties to work out a settlement instead of returning to court.

Mr. Thornburgh's No-Show

ATTORNEY GENERAL Dick Thornburgh has gone to the Hill dozens of times to testify about pending legislation or the operations of the Justice Department. But this week he stiffed the House Judiciary Committee, which had "invited" him to come up and discuss some areas of disagreement between it and Justice. Specifically, Chairman Jack Brooks (D-Tex.) wanted to talk about the attorney general's refusal to give the committee access to certain documents and about his decision to contest the constitutionality of a federal statute in court. Mr. Thornburgh, however, who is expected to resign soon to run for the Senate from Pennsylvania, surmised that the hearing was a pretext for partisan harassment. He would have acted responsibly, looked stronger and even scored a few political points by appearing and facing down the challenge.

Chairman Brooks is furious about being stood up. But Mr. Thornburgh says he was warned by Republicans on the committee, including those with a reputation for bipartisan cooperation, that he would be foolish to appear. Rep. Hamilton Fish (R-N.Y.), for example, cited the committee's decision to require the attorney general to appear alone, instead of allowing him the courtesy

traditionally extended to Cabinet members of bringing along other policy-level officials. The attorney general was also reportedly offended by a committee press release accusing him of stonewalling, mismanagement and operating "a secret government . . . perhaps outside the law."

This is tough language, but it is surprising that a man with Dick Thornburgh's background in elective politics is so thin-skinned. Congressional committees have been known to be both partisan and overbearing, but they also have the authority and responsibility to oversee government departments and to raise questions about policy-making. Cabinet members have a duty to respond, and they should have the sense to know that failure to appear gives rise to questions about what is being hidden.

Sensitive legal disputes about access to documents—the essence of the disagreement here—can be settled in court. The attorney general still has a responsibility to answer his critics in a public forum. A dignified, cooperative presentation would have shown up any questioners whose motives were only political.

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The Inslaw Investigation

THIS WEEK, Attorney General Reno scheduled a meeting of the parties to the Inslaw dispute between a Washington-based computer software firm and the Department of Justice. It will be held next month. That's a good sign. The terrible suspicions raised in the Inslaw case cry out for resolution.

Inslaw maintains that during the Reagan years, certain Justice Department officials and their friends conspired to steal valuable software the firm had developed and supplied under contract to the government. The company won millions of dollars in damages, but the victory was reversed by an appellate court for reasons having to do with the authority of the bankruptcy court and not the merits of the dispute. A Senate committee investigation was inconclusive because the Justice Department refused to cooperate. The House Judiciary Committee looked into the case, issued a critical report and later called for the appointment of an independent counsel. Former attorney general William Barr, however, chose to name a special investigator of his own, Nicholas Bua, a retired federal judge in Chicago. Judge

Bua convened a grand jury, spent 16 months on an investigation and presented his report to the attorney general a few days after she took office.

What has happened since? A department spokesman says the material is still being studied and edited to remove information relating to national security. It will be sent to Inslaw's attorneys soon. It cannot be soon enough for William and Nancy Hamilton, who own the firm and who may be owed a fortune if their claims prove correct. Nor can it be too soon for those officials of the Meese Justice Department whose reputations have been under a cloud since these allegations surfaced in 1985.

This is more than a simple contract dispute, because the Hamiltons allege not just bad faith but criminal conduct on the part of high government officers. Partisan lines have been drawn as well, with the Democratic Congress challenging a Justice Department controlled by Republicans. Attorney General Reno's views of the Bua report and her conclusions about these serious charges are urgently needed.