

A High-Tech Watergate

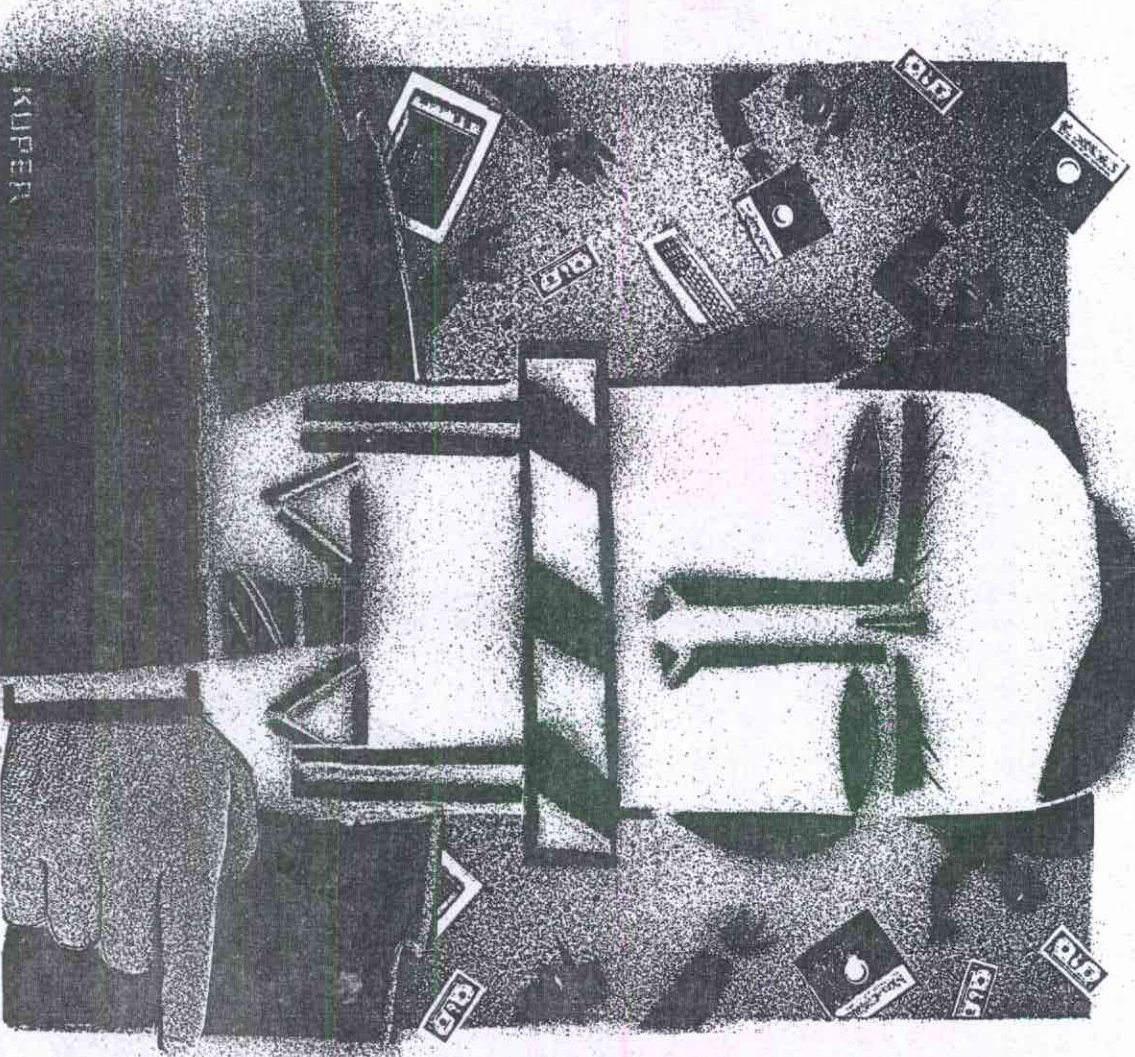
By Elliot L. Richardson

A WASHINGTON former Federal prosecutor, Massachusetts attorney general and U.S. Attorney General, I don't have to be told that the appointment of a special prosecutor is justified only in exceptional circumstances. Why, then, do I believe it should be done in the case of Inslaw Inc., a small Washington-based software company? Let me explain.

Inslaw's principal asset is a highly efficient computer program that keeps track of large numbers of legal cases. In 1982, the company contracted with the Justice Department to install this system, called Promis, in U.S. Attorneys' offices. A year later, however, the department began to raise sham disputes about Inslaw's costs and performance and then started to withhold payments. The company was forced into bankruptcy after it had installed the system in 19 U.S. Attorneys' offices. Meanwhile, the Justice Department copied the software and put it in other offices.

As one of Inslaw's lawyers, I advised its owners, William and Nancy Hamilton, to sue the department in Federal bankruptcy court. In September 1987, the judge, George Bason, found that the Justice Department used "trickery, fraud and deceit" to take Inslaw's property. He awarded Inslaw more than \$7 million in damages for the stolen copies of Promis. Soon thereafter, a panel headed by a former department official recommended that Judge Bason not be reappointed. He was replaced by a Justice Department lawyer involved in the Inslaw case.

An intermediate court later affirmed Judge Bason's opinion. Though the U.S. Court of Appeals set that ruling aside in May of this year on the ground that bankruptcy courts



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have no power to try a case like Inslaw's, it did not disturb the conclusion that "the Government acted willfully and fraudulently to obtain property that it was not entitled to under the contract." Inslaw, which reorganized under Chapter 11, has asked the Supreme Court to review the Court of Appeals decision.

After the first court's judgment, a

number of present and former Justice Department employees gave the Hamiltons new information. Until then, the Hamiltons thought their problems were the result of a vendetta by a department official, C. Madison Brewer, whom Mr. Hamilton had dismissed from Inslaw several years before. How else to explain why a simple contract dispute turned into a vicious campaign to ruin a small company and take its prize possession?

The new claims alleged that Earl Brian, California health secretary under Gov. Ronald Reagan and a friend of Attorney General Edwin Meese 3d, was linked to a scheme to take Inslaw's stolen software and use it to gain the inside track on a \$250 million contract to automate Justice Department litigation divisions.

(In Mr. Meese's confirmation fight, it was revealed that Ursula Meese, his wife, had borrowed money to buy stock in Biotech Capital Corporation, of which Dr. Brian was the controlling shareholder. Biotech controlled Hadron Inc., a computer company that aggressively tried to buy Inslaw.)

Evidence to support the more serious accusations came from 30 people, including Justice Department sources. I long ago gave the names of most of the 30 to Mr. Meese's successor as Attorney General, Dick Thornburgh. But the department contacted only one of them, a New York judge.

Meanwhile, the department has resisted Congressional investigations. The Senate Permanent Subcommittee

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on Investigations staff reported that its inquiry into Inslaw's charges had been "hampered by the department's lack of cooperation" and that it had found employees "who desired to speak to the subcommittee, but who chose not to out of fear for their jobs."

The department also hindered the interrogation of employees and resisted requests for documents by the House Judiciary Committee and its chairman, Representative Jack Brooks. Under subpoena, Mr. Thornburgh produced many files but the department said that a volume containing key documents was missing.

In letters to Mr. Thornburgh in 1988 and 1989, I argued for the appointment of an independent counsel. When it became obvious that Mr. Thornburgh did not intend to reply or act, Inslaw went to court to order him to act. A year ago, the U.S. District Court ruled, incorrectly I think, that a prosecutor's decision not to investigate, no matter how indefensible, cannot be corrected by any court.

In May 1988, Ronald LeGrand, chief investigator for the Senate Judiciary Committee, told the Hamiltons, and confirmed to their lawyers, that he had a trusted Justice Department source who, as Mr. LeGrand quoted him, said that the Inslaw case was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth." Mr. LeGrand now says he and his friend were only discussing rumors.

Then, in 1990, the Hamiltons received a phone call from Michael Riconosciuto, an out-of-fiction character believed by many knowledgeable sources to have C.I.A. connections. Mr. Riconosciuto claimed that the Justice Department stole the Promis software as part of a payoff to Dr. Brian for helping to get some Iranian leaders to collude in the so-called October surprise, the alleged plot by the Reagan campaign in 1980 to conspire with Iranian agents to hold up release of the American Embassy hostages until after the election. Mr. Riconosciuto is now in jail in Tacoma, Wash., awaiting trial on drug charges, which

The Attorney General should name a special prosecutor in the Inslaw case.

he claims are trumped up.

Since that first Riconosciuto phone call, he and other informants from the world of covert operations have talked to the Hamiltons, the Judiciary Committee staff, several reporters and Inslaw's lawyers, including me. These informants, in addition to confirming and supplementing Mr. Riconosciuto's statements, claim that scores of foreign governments now have Promis. Dr. Brian, these informants say, was given the chance to sell the software as a reward for his services in the October surprise. Dr. Brian denies all of this.

The reported sales allegedly had two aims. One was to generate revenue for covert operations not authorized by Congress. The second was to supply foreign intelligence agencies with a software system that would make it easier for U.S. eavesdroppers to read intercepted signals.

These informants are not what a lawyer might consider ideal witnesses, but the picture that emerges from the individual statements is remarkably detailed and consistent, all the more so because these people are not close associates of one another. It seems unlikely that so complex a story could have been made up, memorized all at once and closely coordinated.

It is plausible, moreover, that preventing revelations about the theft and secret sale of Inslaw's property to foreign intelligence agencies was the reason for Mr. Thornburgh's otherwise inexplicable reluctance to order a thorough investigation.

Although prepared not to believe a

lot they told him, Danny Casolaro, a freelance journalist, got many leads from the same informants. The circumstances of his death in August in a Martinsburg, W.Va., hotel room increase the importance of finding out how much of what they have said to him and others is true. Mr. Casolaro told friends that he had evidence linking Inslaw, the Iran-contra affair and the October surprise, and was going to West Virginia to meet a source to receive the final piece of proof.

He was found dead with his wrists and arms slashed 12 times. The Martinsburg police ruled it a suicide, and allowed his body to be embalmed before his family was notified of his death. His briefcase was missing. I believe he was murdered, but even if that is no more than a possibility, it is a possibility with such sinister implications as to demand a serious effort to discover the truth.

This is not the first occasion I have had to think about the need for an independent investigator. I had been a member of the Nixon Administration from the beginning when I was nominated as Attorney General in 1973. Public confidence in the integrity of the Watergate investigation could best be insured, I thought, by entrusting it to someone who had no such prior connection to the White House. In the Inslaw case the charges against the Justice Department make the same course even more imperative.

When the Watergate special prosecutor began his inquiry, indications of the President's involvement were not as strong as those that now point to a widespread conspiracy implicating lesser Government officials in the theft of Inslaw's technology.

The newly designated Attorney General, William P. Barr, has assured me that he will address my concerns regarding the Inslaw case. That is a welcome departure. But the question of whether the department should appoint a special prosecutor is not one it alone should decide. Views from others in the executive branch, as well as from Congress and the public, should also be heard. □