

February 5, 2004

The Honorable Thomas H. Kean, Chair
The Honorable Lee H. Hamilton, Vice Chair
National Commission on Terrorist Attacks
Upon the United States
301 7th Street, S.W.
Room 5125
Washington, D.C. 20407

Dear Chairman Kean and Vice Chairman Hamilton:

When Congress created the National Commission on Terrorist Attacks Upon the United States in November 2002, it ordered the Commission “*to ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks*” by Osama bin Laden on September 11, 2001. Furthermore, Congress specified a number of areas where the Commission is to focus its investigation, including intelligence and law enforcement agencies, and the flow of assets to terrorist organizations. Our letter concerns this aspect of the Commission’s mandate.

Evidence developed by the government in debriefings and damage assessments of former FBI Agent Robert Hanssen, following the FBI’s February 2001 arrest of Hanssen for espionage, bears directly on the pre-September 11th failure of U.S. intelligence and law enforcement agencies to detect and monitor bin Laden’s plans and to prevent bin Laden from moving his assets through the banking system. The evidence, although highly classified, should be available to the 9-11 Commission. The evidence has been the subject of several press reports. Copies of these reports, which are attributed to unnamed federal law enforcement and intelligence officials, are enclosed.

On June 14, 2001, months before the September 11th attacks, the *Washington Times* published a front page article stating that Osama bin Laden was able “*to monitor U.S. efforts to track him down*” and to monitor “*banking transactions, easing money-laundering operations for himself or others*” by using stolen U.S. intelligence software to access sensitive U.S. database systems. The newspaper further reported that the government had adopted the software in question within the FBI and various U.S. intelligence agencies to track classified information, and adopted the same software

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within banks to track the flow of assets of terrorist organizations for the benefit of U.S. intelligence.

The Washington Times stated that bin Laden purchased the U.S. Government's software on the Russian black market after FBI Agent Robert Hanssen made copies and gave them to the Russians. The article noted that the FBI complaint filed against Hanssen at the time of his arrest stated that Hanssen had made "extensive use" of the FBI's computerized case management system in his espionage for the Russians and had given the Russians a technical manual on U.S. intelligence database systems.

The June 14, 2001 article revealed that Hanssen had gone much further by giving the Russians actual copies of the software source codes for these U.S. intelligence systems. The article appeared the same day the Justice Department made a sealed court submission of its plea agreement with Hanssen, and cited unnamed "federal law enforcement officials" as its source. In the plea agreement, the Department dropped its demand for the death penalty in exchange for Hanssen's disclosure of the full scope of his espionage.

The article further reported that all of the software Hanssen stole for the Russians is believed to be based on the PROMIS legal case management software, which INSLAW, Inc., our computer software company, developed and licensed to the U.S. Justice Department. INSLAW licensed PROMIS for use in the largest U.S. Attorneys' Offices in tracking criminal prosecutions, civil litigation, and legal process debt collections, and in one of the legal divisions at the Department's headquarters in tracking land condemnation proceedings and environmental litigation.

Citing its own government sources, Fox News broadcast a similar report on October 16, 2001 in the immediate aftermath of the September 11th attacks. Fox News reported that unnamed "government officials" told it that "to avoid the death penalty," Hanssen "confessed to giving Russia vast amounts of information", including "a software program developed by the INSLAW company in Washington." Fox News stated:

The concern is that bin Laden or Al Qaeda could get on-line and use it to monitor the worldwide criminal investigation and hide themselves, to monitor the worldwide financial investigation and hide their money, or monitor government operations of the governments that use the software.

Fox News also reported that Hanssen had helped "allies like Germany and England with the installation and use of their versions of the PROMIS program," which may explain how he had access to the software source codes. Finally, regarding government actions to plug the holes in U.S. security caused by this sensitive software being in the wrong hands, Fox News reported:

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all we can get from the U.S. Government is that they are no longer using PROMIS software. But they won't say exactly when they stopped it, though it's presumed, right after the Hanssen case.

If the U.S. intelligence community had been able to stop using PROMIS soon after the discovery in 2001 of the fact that Hanssen had fully compromised the software, the United States would not face the same level of risk following September 11th as it faced prior to September 11th. There are, however, at least two reasons to doubt the validity of the official government statement to Fox News on October 16, 2001.

First, the *Sun* newspapers in Canada reported on November 10, 2001 that Canadian police were actively pursuing numerous post-September 11th leads from the FBI about Al Qaeda suspects and that the FBI had informed Canada that the leads were coming from “*the use of a state-of-the-art computer software program called PROMIS*” that can “*provide information on credit card, banking, pension, tax, criminal, and immigration records.*” A copy of the Canadian article is enclosed.

Secondly, the FBI has been trying without success, since before September 2001, to replace its case management software with a new generation of case management software that would enable FBI Agents simply to “point and click” the cursors on their PC's to “connect the dots” between any item of information in a case and any other piece of information in the FBI's computerized case management database which represents the institutional memory of the FBI. Despite several supplementary Congressional appropriations for the project, the FBI has missed every successive deadline for the new software, including the most recent deadline of December 13, 2003.

The Washington Post reporter who covered the FBI and the Justice Department in 2001 gave an interview to the washingtonpost.com on December 20, 2001. The interview, a two-page excerpt of which is enclosed, focused on a book the reporter had just published on Hanssen's espionage. The reporter stated that Hanssen “*sold the Russian government software that U.S. intelligence indicated ended up in bin Laden's hands and helped him evade U.S. monitoring efforts.*” The reporter further stated that Hanssen successfully accessed database systems of the “*FBI, CIA, NSA, Pentagon and White House*” to steal intelligence for the Russians.

As the authors of the 1980's generation of PROMIS on which these intelligence and security applications are said to be based, INSLAW knows more than anyone about the strengths and weaknesses of the 500,000 lines of software code in “Old PROMIS.” INSLAW could help the government evaluate evidence about possible hostile penetrations, as well as to devise approaches to increase the security of database systems built on Old PROMIS. We have, however, never been contacted by the government for assistance.

Moreover, INSLAW has developed an entirely new generation of PROMIS, “New PROMIS”, that includes an easy to use point-and-click graphical user interface and a

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vastly more powerful search engine that would enable government agents and analysts to do instantaneous on-line searches of every piece of information in the database or any combinations of such data. We have fully tested and debugged New PROMIS, which consists of approximately 2,000,000 lines of software code, in large enterprises in both the public sector and the private sector. We have also proven that we can rapidly upgrade customers from Old PROMIS to New PROMIS. We have converted as many as 20 years worth of customer data from Old PROMIS to New PROMIS in just a few months time.

INSLAW Counsel C. Boyden Gray wrote to Deputy Attorney General Larry Thompson on January 8, 2002 describing the new “point-and-click” generation of PROMIS and requesting a meeting to discuss upgrading U.S. security and intelligence agencies from Old PROMIS to New PROMIS. Gray enclosed these same press reports on the government’s use of PROMIS for such applications. Thompson never answered the letter, nor did he grant INSLAW’s request for a meeting.

Congress charged the 9-11 Commission with making “*recommendations for corrective measures that can be taken to prevent acts of terrorism.*” We expect that the 9-11 Commission would be concerned about the government’s indifference, for over two years, to a unique opportunity to jump start improvements in its ability to “connect the dots” in the war on terrorism. Moreover, the government could quickly upgrade to New PROMIS without requiring agencies to abandon options for more costly and much slower custom-software development projects.

Sincerely,

William A. Hamilton
President

Nancy Burke Hamilton
Vice President

Enclosures

cc: The Honorable Richard Ben-Veniste
The Honorable Fred F. Fielding
The Honorable Jamie S. Gorelick
The Honorable Slade Gorton
The Honorable Bob Kerry
The Honorable John F. Lehman
The Honorable Timothy J. Roemer
The Honorable James R. Thompson
C. Boyden Gray, Esquire