V

PLAINTIFFS' MOTIONS TO COMPEL DEFENDANTS TO RETAIN SEPARATE COUNSEL AND TO SEEK ARBITRATION DURING THE CONSTRUCTIVE TRUST.

As noted previously by Plaintiffs , it is almost ludicrous that Post, Kirby, Noonan and Sweat are supposedly representing all of the Defendants they claim to be. In fact, they are only representing Karl Samuelian and Frank Clark and Parker, Milliken, Clark, O Hara and Samuelian, because of their political involvements with both George Bush and Governor Deukmejian.

Any other lawyer representing Defendants Myrna Jaro, Monson Hayes, or Sean Maloy would have already stipulated that whatever claimed wrongful acts occurred, occurred due to the "legal advice" and compulsion upon such Defendants by Karl Samuelian, controlling Maxwell's Board of Directors and all the Officers and employees of Maxwell. These Defendants' letters and phone calls to Attorney Al O Rourke are replete with references such as "You were told by Karl,... Karl said...Parker, Milliken informed you...Company Counsel told you, etc."

Plaintiffs do not want to be vindictive against these Defendants in any manner. Monson or "Monty" Hayes is simply a "Good time Charlie" or the person who "wines and dines" Maxwell's customers. Sean Maloy is extremely young and naive, and "Dragon Lady" Myrna Jaro simply has a personality clash with Attorney Al O'R ourke. These individuals haven't the foggiestidea that their actions (taken along with Karl at his insistence) are illegal to them as well. However, the Law makes no distinction between principals and agents in a corrupt scheme of Securities Frauds.

Attorney Al O Rourke has even told these Defendants to

get other counsel to protect them from Karl's acts and compulsions upon them.

Moreover, any objective or independent lawyer would have already made the recommendation to Maxwell and to such Defendants to get new legal counsel, because of Karl's and Frank Clark's and Parker, Milliken, Clark, O'Hara and Samuelian's attorney/client relationship with the O'Rourkes and each and every Plaintiff.

Any objective lawyer or Court in California would certainly be familiar with Rule 2-111 of the Rules of Professional conduct.

Karl and Frank Clark and their law firm Parker, Milliken, Clark, O'Hara and Samuelian have repeatedly claimed RORACK and Dr. Raymond C. O'Rourke and Albert O'Rourke and the Plaintiff businesses are "no longer Clients....We owe you nothing...Al's your lawyer now, etc." while all the while getting promissory notes and $5,000. payments secretly from Alan Kolb! (Plaintiffs' Exhibit ___).

Moreover, Rule 2-111 (herein enclosed as Plaintiffs' Exhibit W) quite clearly states that an attorney must take "reasonable steps to avoid forseeable prejudice to the rights of his client" when withdrawing.

In the Instant Case, Karl's actions have been ludicrously prejudicial in the extreme! In short, Karl has always injured Plaintiffs to protect his interests politically with George Bush and Governor George Deukmejian and his business interests with Goldman Sachs and Peter Sacerdote, Security Pacific National Bank and Gray, Cary, Ames and Frye. In fact, Karl is constantly at work "behind the scenes" to get rid of the "troublemaking" O'Rourkes, who are his own Clients.

Furthermore, Maxwell shareholders (and not simply the Officers and Directors) are Karl's Clients as well. Which one of them ever authorized Karl to swindle them out of their shareholder dissenter rights, their stockholder's equity in Maxwell, their share price of Maxwell, etc.?

Yet Karl claims to have "withdrawn" from such properly leaving the "day to day legal chores" to either junior members of Parker, Milliken, Clark, O'Hara, and Samuelian or other San Diego Law Firms, while he merrily raises millions of dollars for Governor Deukmejian and George Bush, some of it even raised by manipulation of Maxwell's stock price.

Such is also in violation of Rule 5-101, i.e., "Avoiding adverse interest" (Plaintiffs' Exhibit U).

Having created a "nightmarish" legal maze of businesses for Dr. Raymond C. O'Rourke (i.e., the Plaintiffs' businesses) Karl simply "walks away" without giving a full and proper Disclosure to Plaintiffs of those adverse steps he is going to take against them through Dr. O'Rourke's own business partner, Dr. Kolb. Further, he even tells Dr. Kolb to "have nothing to do" with Plaintiffs, seeks out (through Post, Kirby, Noonan and Sweat) Declarations from Dr. Kolb which can only subject Dr. Kolb and supposedly removed Client RORACK and Raymond O'Rourke, to numerous litigations, sanctions, legal fees, etc. Further, he instructs the Board of Directors of Maxwell to have no contact with Plaintiff, hides Plaintiffs' business records at Maxwell (perhaps even shredding some), conspires to destroy Plaintiffs continually, etc.

Further, Karl is in flagrant violation of numerous Federal Laws by such attorney misconduct. Not only is he in viola-

tion of U.S. Securities Laws, i.e., Section 10 B 5, 1934 Securities Act, but also 42 U.S.C. 1983 in soliciting and corrupting members of the Los Angeles Securities and Exchange Commission from stopping Maxwell's stock manipulations, threatening Plaintiffs for raising what is their own Federal Right, etc.

Further, Karl is also in violation of 31 U.S. C. 3729, i.e., the "False Claims Act" for "puffing" Maxwell up to be something that it never was, spending millions of dollars on bogus S.D.I. related programs at Maxwell while telling the Government that such were necessary for "National Security", etc.

Attorney Al O'Rourke is not a raving "nut" as claimed by Karl and the other Defendants. It is a sad comment about George Bush and Gov. George Deukmejian that they have ignored the "pie in the sky" and "Emperor's new clothes" aspects of Maxwell based upon Karl's assertions (especially when receiving campaign contributions through Karl). In fact, these Defense Fraud Cases and Securities Fraud Cases are just now "coming out of the woodwork" so to speak.

In fact, other lawyers as Karl well knows have started to File similar Actions. Such attorneys include John R. Phillips of Los Angeles, Co-director of the Center for Law in the Public Interest (Los Angeles), Attorney Herbert Hafif of Claremont, Robert S. Kilborne of Claremont, etc. in regard to such other "Hoaxes" as the "Stealth Bomber" (which Alan Kolb and Ray both either worked on or were aware of in the "Skunk Works" at Lockheed in the 1960's. Such were hoaxes then in the 60's and remain so in the 1980's. Furthermore, Karl cannot claim to be "duped" by "Rascal scientists". Maxwell's own Officer and Director in years past, Mr.

N. "Fred" Wikner, friend of Ray's and Alan Kolb's, told Karl and Frank Clark years ago about these "Defense Hoaxes".

Neither Karl, Frank Clark, or any member of Parker, Milliken, Clark, O'Hara and Samuelian has any intention of telling the Government the truth about what is occurring constantly at Maxwell, i.e. absolutely nothing of any Defense importance. It is simply too easy to "Wrap themselves in the flag", claim "of course you can't see anything at Maxwell...it's National Security ...Top Secret...It's guarded night and day in Building X...Oh! You mean Building X was torn down ten years ago?...Then it must be in Building Y ...or wherever it is and whatever it is." etc.

Such obvious "Emperor's new clothes games" are going to be the final testament of these Republican Administrations, i.e. Deukmejian's and Bush's.

Just wait until the American Public sees the "Stealth Bomber" and then says "But I thought that such came out in 1949? ...It's a flying wing....and wasn't it even in "War of the Worlds" that science fiction movie".

The point of all this is that there does exist a distinct method for the Courts to stop all this foolishness, Government fraud, Tax Payor "rip offs", etc. Such method is the Constructive Trust, which Plaintiffs have asked for in regard to Maxwell. Further, any Court Arbitrator or Referee could simply report to the Court that the O'Rourkes' Allegations are not simply "nuts" but entirely correct and valid. Hence, Mandatory Arbitration would be the remedy imposed by State Court, while protecting Maxwell's assets and its shareholders, until such Report was made, by prohibiting Maxwell's Officers, and Directors and Parker,

Milliken, Clark, O'Hara, and Samuelian from transferring millions of Maxwell's dollars and the shareholders' property, to companies such as IRT which are bankrupt for all intents and purposes, and where the bought-up property is itself worthless.

Hence, in conclusion, the Court should demand that Defendants obtain separate counsel, that Arbitration and a Constructive Trust be issued against Maxwell during any litigation whether in State or Federal Court or in any Administrative Review.period, i.e. S.E.C., Department of Defense, U.S. Attorney's Office, etc., and /or remand this Case back to State Court (San Diego Superior Court).

DECLARATION

I, Attorney Al O'Rourke do hereby declare that the foregoing is true and correct to the best of my knowledge and belief and is sworn to be such under penalty of perjury at La Jolla, California 92037, this 12th day of October, 1988.

Exhibit "A"

RORACK CO.

PARTNERSHIP AGREEMENT

AGREEMENT made as of January 1, 1967, between Raymond C. O'Rourke, of Belmont, Massachusetts ("O'Rourke") and Alan C. Kolb, of Landover, Maryland ("Kolb"), hereinafter sometimes referred to as "Partner" or "Partners."

W I T N E S S E T H :

WHEREAS, O'Rourke and Kolb desire to invest certain of their assets and properties jointly and to share in the income therefrom, and

WHEREAS, O'Rourke and Kolb desire to establish a partnership and to become partners thereof for the purpose of handling certain of their investments,

NOW, THEREFORE, O'Rourke and Kolb hereby agree to establish the partnership hereinafter described, which shall be governed and operated pursuant to the terms and provisions hereinafter set forth.

1. Name and Business

The Partners do hereby form a partnership under the name and style of "Rorack Co." for the purpose of investing and trading, on margin or otherwise, in capital stock, bonds, notes, debentures, trust receipts and other obligations, choses in action, instruments or other evidences of indebtedness, rights and obligations, commodities and commodity contracts and all other similar type instruments which are commonly referred to as securities (all such items being

hereinafter collectively called "Securities").

2. Powers

In addition to the powers required to invest in Securities as described in paragraph 1 hereof, the partnership shall also have the power to possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Securities held or owned by the partnership; to borrow or raise moneys and, from time to time without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, bonds and other negotiable or non-negotiable instruments or other evidences of indebtedness and to secure the payment thereof by mortgage, pledge or otherwise; to lend any of its properties or funds, either with or without security; to have and maintain one or more offices within or without the Commonwealth of Massachusetts and in connection therewith to acquire office space, engage personnel and to do such other acts and things as the Partners may deem necessary in connection therewith; and to enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable incident to the carrying out of the foregoing objects and purposes.

3. Term

The partnership shall begin as of the date set forth herein and shall terminate 20 years from said date,

unless otherwise terminated sooner as provided herein.

4. Fiscal Year

The fiscal year of the partnership shall be the calendar year.

5. Capital

(a) Each Partner has, prior to or on the date hereof, paid, assigned and/or conveyed by way of contribution to the partnership cash and/or Securities having a value equal to the aggregate amount set forth opposite such Partner's name in Schedule I hereto annexed, and the other Partner hereby acknowledges receipt by the partnership of such contribution. The aggregate of all such contributions shall be, and hereby is agreed to be, available to the partnership to carry out the objects and purposes of the partnership.

(b) Each Partner who has contributed or may hereafter contribute Securities to the partnership has furnished, or will shortly after the date of any such contribution furnish, to the partnership evidence as to his dates of acquisition of such Securities, his ownership thereof and his adjusted basis thereof for Federal income tax purposes.

(c) There shall be established for each Partner on the books of the partnership a separate capital account which shall include the initial capital contribution to the partnership, any subsequent capital contributions and any and all additions to or reductions of such account. All capital

contributions shall be credited to the capital account of the Partners at the respective values thereof agreed upon in writing between the partnership and the contributing Partners. Neither Partner shall withdraw any part of his capital account without the consent of all the Partners. If the capital account of a Partner becomes impaired, his share of subsequent partnership proceeds shall be first credited to his capital account until that capital account has been restored before such proceeds are credited to his income account. Upon the demand of either Partner, the capital accounts of the Partners shall be maintained at all times in the proportions in which the Partners share in the profits and losses of the partnership. For the purposes only of partnership accounting and any accounting among the Partners (expressly excluding any accounting of liabilities for Federal or State income tax purposes covered by subparagraph (d)), any gain or loss realized during any fiscal year by the partnership from the sale of any Securities contributed by the Partners shall be credited or charged to the account of each of the Partners in the proportion in which they share profits and losses hereunder.

(d) Any gain or loss realized during any fiscal year by the partnership from the sale of any Securities contributed to the partnership by the Partners shall, for Federal or State income tax purposes, be allocated between

the contributing Partner and all of the Partners (including such contributing Partner), as follows:

(i) any such gain or loss attributable to the difference between the contributing Partner's adjusted basis for such Securities and the value thereof at the time of their contribution (as set forth in Schedule I or in any amendments or supplements to said schedule) shall be allocated to such contributing Partner; and

(ii) any such gain or loss attributable to the difference between the value of such Securities at the time of their contribution (determined as provided in clause (i) above) and the proceeds realized by the partnership from the sale thereof shall be allocated among all the Partners (including such contributing Partner) in the proportion in which the Partners share profits and losses of the partnership.

6. Profits and Losses

The net profits of the partnership shall be divided equally between the Partners and the net losses shall be borne equally by them. A separate income account shall be maintained for each Partner, and the partnership profits and losses shall be credited or charged to the separate income account of each Partner. If a Partner has no credit balance in his income account, losses shall be charged to his capital account. Profits and losses shall be determined in accordance with generally accepted accounting

practices and procedures.

7. Distributions and Salaries

Each Partner may from time to time withdraw the credit balance in his income account or any portion thereof. No additional share of proceeds shall inure to either Partner by reason of his capital or income account being in excess of the capital or income account of the other. Neither Partner shall receive any salary for services rendered to the partnership.

8. Interest

No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent capital contributions.

9. Management, Duties and Restrictions

The Partners shall have equal rights in the management of the partnership business. Neither Partner shall, without the consent of the other Partner, endorse any note, or act as an accommodation party, or otherwise become surety for any person. Without the consent of the other Partner, neither Partner shall on behalf of the partnership borrow or lend money, or make, deliver or accept any commercial paper, or execute any mortgage, bond or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business. Neither Partner shall, except with the consent of the other Partner, assign, mortgage or sell his share in the partnership or in

its capital assets or property, or enter into any agreement as a result of which any person shall become interested with him in the partnership, or do any act detrimental to the best interests of the partnership or which would make it impossible to carry on the ordinary business of the partnership.

10. Accounts

All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the Partners. All withdrawals therefrom are to be made upon checks signed by either Partner. Either Partner may conduct accounts, including margin accounts, with brokers.

11. Books

The partnership books shall be maintained at the principal office of the partnership, which shall be located at 9300 Ardmore Road, Landover, Maryland, and each Partner shall at all times have access thereto. The books shall be closed and balanced at the end of each fiscal year. An audit shall be made as of the closing date.

12. Termination

The partnership shall be terminated on the date herein set forth for such termination and may be dissolved and terminated at any time prior thereto by agreement of the Partners. In the event of a voluntary dissolution of the partnership or upon termination at the expiration date hereof, the Partners shall proceed with reasonable promptness and due diligence to liquidate and wind up the affairs and business

of the partnership. The partnership name shall be sold or transferred with the other assets of the business, unless the Partners otherwise agree. The assets and properties of the partnership business shall be used and distributed in the following manner and order:

(a) to pay or provide for the payment of all partnership liabilities to creditors of the partnership who are not Partners and all liquidating expenses and obligations;

(b) to pay or provide for the payment of all partnership liabilities to creditors of the partnership who are Partners;

(c) to equalize the income accounts of the Partners;

(d) to distribute the balance of the income accounts of the Partners;

(e) to equalize the capital accounts of the Partners;

(f) to distribute the balance of the capital accounts to the Partners.

13. Death, Retirement or Insanity

Either Partner shall have the right to retire from the partnership at the end of any fiscal year. Written notice of intention to retire shall be served upon the other Partner at his address as shown in the records of the

partnership at least three months before the end of the fiscal year. The death, retirement or insanity of either Partner shall dissolve the partnership, and as soon as practicable thereafter the partnership business shall be liquidated and wound up and the assets and properties of the partnership shall be distributed in the same manner and order as stated in paragraph 12 with reference to termination. Notwithstanding anything in this paragraph 13 to the contrary, in the event of the death of a Partner, the surviving Partner may at his option, exercised by written notice to the executor or administrator of the decedent within three months after the death of the decedent, elect to continue the partnership with the estate or designated beneficiary of the decedent to succeed the decedent as a partner hereof, and if the executor or such designated beneficiary consents to such continuance, this partnership shall not be dissolved but shall continue in accordance with the terms and provisions hereof and said estate or designated beneficiary shall succeed to all the rights and shall bear all of the obligations of the decedent hereunder.

14. Reliance by Third Parties

Third parties dealing with the partnership are entitled to rely conclusively on the power and authority of each Partner as herein set forth.

15. Arbitration

Any controversy, dispute or claim arising out

of or relating to this agreement, or the breach thereof, shall be submitted to and settled by arbitrators in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction.

16. Miscellaneous

(a) Each Partner shall be entitled to reimbursement from the partnership for any expenditures properly made or incurred in connection with the partnership business and will be exonerated and indemnified by the partnership for any obligations properly incurred by him in connection with the partnership business.

(b) Title to the assets and properties of the partnership may be held in the name of the partnership or any nominee of the partnership.

(c) Each Partner shall have an equal vote in any decision requiring partnership authority or action, and no amendment, modification or supplement to this agreement may be made without the approval of all Partners.

(d) Nothing herein shall prohibit any of the Partners from carrying on or participating in any other business of such Partner's choice, whether similar hereto or not.

(e) Any assignment by any Partner of his interest or any portion thereof in the partnership, or any rights hereunder, without the consent of the other Partner, shall be deemed to be a voluntary termination of

the partnership, and the partnership shall thereupon be liquidated and the assets thereof distributed in the manner and order provided in paragraph 12 with reference to termination.

(f) No Partner shall mortgage, pledge or encumber his interest in the partnership or any of the assets or properties of the partnership without the written consent of the other Partner.

(g) The attachment of the interest of any Partner in this partnership or the property thereof by a judgment, creditor or by any person claiming a lien thereon, or the filing of an involuntary petition in bankruptcy against a Partner or the appointment of any receiver in any bankruptcy proceedings against a Partner, unless within 30 days after the date of such attachment, filing or appointment, as the case may be, such attachment shall have been discharged or such other proceeding shall have been dismissed, or the filing of a petition in bankruptcy by a Partner or the use of any insolvency acts by a Partner which affect his interest herein shall ipso facto be deemed for all purposes to be and shall be a voluntary termination of the partnership, and the partnership shall thereupon be liquidated and the assets thereof distributed in the manner and order provided in paragraph 12 with reference to termination.

(h) Upon the distribution of the assets of the partnership in liquidation thereof, the value of any assets

distributed to the Partners shall be the fair value thereof, determined in the case of Securities from the then current market values thereof if a market exists for such Securities, and if and to the extent that any dispute or controversy shall arise as to the fair value, such dispute or controversy shall be settled by arbitration in accordance with the provisions of paragraph 15 above. If any assets are distributed in kind to the Partners on liquidation, they shall be distributed to the Partners insofar as practicable in the relative proportions in which the Partners share in the profits and losses of the partnership.

(i) The mutual rights and obligations of the Partners shall be subject to the provisions of the Uniform Partnership Act as in force from time to time in the State of Maryland, except where inconsistent with or otherwise governed by the provisions of this agreement.

(j) Each Partner acknowledges and agrees that he is obligated to make his proportionate contribution to the partnership to the extent necessary for the payment of all liabilities and obligations of the partnership, including those to any other Partner.

(k) Any notice required hereunder to be given to any Partner may be either served personally upon him or sent by registered mail to his last known post office address as shown on the records of the partnership.

(l) Except as otherwise provided herein, the

rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the parties hereto and the respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

Raymond C. O'Rourke [L.S.]

Raymond C. O'Rourke
Address: 51 Spring Valley Road
Belmont, Massachusetts

Alan C. Kolb [L.S.]

Alan C. Kolb
Address: 9300 Ardmore Road
Landover, Maryland

SCHEDULE I
TO
PARTNERSHIP AGREEMENT

RORACK CO.

1. Contribution of Raymond C. O'Rourke - $50,000

   1,000 shares of Common Stock of EG&G, Inc.

2. Contribution of Alan C. Kolb - $50,000

   13,250 shares of Common Stock of Maxwell Laboratories, Inc.*

* The shares contributed by Kolb are held in escrow pursuant to the regulations of the Commissioner of Corporations of the State of California. Kolb has irrevocably assigned all of his rights therein to Rorack Co.

6/6/67

All clue N.G. (Frank Clark)

Exhibit B

Dear Frank,

I expect to be back from Italy in late June and would hope we could get on my next trip to San Diego in July.

In the meantime I wanted to write and perhaps clear the air on the Wilkins thing.

When I introduced Fred to you there was no plans that he would join either Maxwell or any other company you might set up - like Technical S³. He was a smart one with ideas and I felt you two would interact.

Anyhow, as time went by and I gained respect for the man, I grew wanted him on our loop. At first I talked to him about Maxwell as a very remote possibility, and we mainly discussed the consequences of a successful Computed. He was also interested in S³ and had many discussions with you, me and others on that score. As of last December, when he left

In Saigon he told me he had not decided definitely to do anything except leave the government and "get into the commercial world" in the summer.

On his last trip I told him we wanted him at Maxwell. I also told him that I wanted no information on the S^3 offer and there would be no bidding of one company against the other. I also told him I hoped he would go to San Diego in any case, and if he chose S^3 we would still interact strongly whenever that was proper and our friendship would remain intact.

I didn't directly involve you in recruiting him for MLI because of your S^3 responsibility - However, I never left any mystery or misled anyone in making it clear that I hoped he would join us at Maxwell.

Finally, you must believe me when I say I never argued against his joining S^3 or made negative comments to discourage him.

Best regards,

Alan Kolk

MAXWELL
MAXWELL LABORATORIES, INC. 8835 Balboa Avenue • San Diego, California 92123 • Phone 619/279-5100 TWX 910-335-2063

July 8, 1983

Mr. Karl M. Samuelian
Parker, Milliken, Clark & O'Hara
Two Century Plaza, Suite 2600
2049 Century Park East
Los Angeles, California 90067

Dear Karl:

Enclosed is my check #3171 in the amount of $5,000.00 in payment of the Rorack note which you transmitted to me in your letter of July 5, 1983.

Sincerely,

Alan

Alan C. Kolb

ACK:mj

Enclosure (check)

cc: Dr. Raymond C. O'Rourke

Gina Gee
P.O. Box 8502?
S.D. 92131

DR. ALAN C. KOLB
8835 BALBOA AVENUE 279-5100
SAN DIEGO, CALIF. 92123

3171

July 8, 1983 16-351/1220

PAY TO THE ORDER OF PARKER, MILLIKEN, CLARK & O'HARA $ 5,000.00

FIVE THOUSAND AND NO/100---------- DOLLARS

SAN DIEGO CORPORATE OFFICE
LLOYDS BANK CALIFORNIA
401 A STREET, SAN DIEGO, CALIFORNIA 92101

MEMO RORACK Note

Alan C. Kolb

⑈122003516⑆0975⑈00509⑈ 3171⑈

Upgrade
271-8561

Exhibit BB

July 10, 1967

COPY

Mr. Paul P. Brountas
Hale and Dorr
60 State Street
Boston, Massachusetts 02109

Dear Mr. Brountas:

In connection with the recent correspondence and discussions regarding the Computrad matter, it now appears to us that the simplest manner of handling the situation would be to organize a limited partnership in which Computrad would be the general partner and the investors, of which there will only be three or four, would be the limited partners. Under this arrangement Computrad could receive a nominal interest in the profits and losses of, say, 1% or 2%, and the balance could be allocated to the investors under an arrangement wherein in the event the investors have any losses, they receive profits in an amount equal to the losses prior to the time that Computrad participates in the profits. We see no legal problems of any kind involved in this suggestion and the only technical formality would be that Computrad, if it has not already done so and I assume it has, should qualify to do business in California.

I would appreciate hearing from you as to your thoughts with regard to this suggestion as it seems to us to constitute a very simple manner of accomplishing what all of us have in mind.

By a copy of this letter I am asking Alan to give me a telephone call to bring me up-to-date as to the status of the Computrad work with respect to Xerox.

With kind regards, I am,

Sincerely yours,

FWC:ik
Air Mail

Frank W. Clark, Jr.

cc. Dr. Alan C. Kolb
Dr. Vernon H. Blackman

Exhibit C

8835 Balboa Avenue
San Diego, CA 92123

January 5, 1983

Dr. Raymond C. O'Rourke
7949 Lowry Terrace
La Jolla, California 92037

Dear Ray:

I have your letter of December 29. As you know well, I too am anxious to wind up Rorack's affairs. Both I and Roger Lustberg, on my behalf, have conveyed my position to you and Al on numerous occasions; and I reiterate that I would like nothing better than to dissolve Rorack as quickly as this can be accomplished.

You also know from my previous communications that I am not interested in selling my proportionate interest in Rorack's holding of Maxwell stock and that I will not consent to any such sale. At the same time, I don't wish to be an obstacle preventing you from selling your portion of Rorack's Maxwell stock and, with this in mind, I have previously suggested a solution which I honestly believe will accommodate both of our positions and which I will repeat here. I propose that we agree that Rorack's Maxwell stock be distributed to each of us on a fifty-fifty basis pending the final dissolution of Rorack and distribution of its remaining assets. As soon as Rorack's Maxwell stock is transferred, each of us would be free to sell or hold our individual shares as we might wish.

I have enclosed copies of the documentation that Maxwell's transfer agent would require to transfer one-half of Rorack's stock to each of us. We both need to sign both the stock power and the certificate of partnership status and have our signatures guaranteed on each by our respective bank or stockbroker. We should then send these forms to Mr. Dudley Higby, Assistant Vice President, Union Bank, 3810 Wilshire Blvd., 20th floor, Suite 2001, Los Angeles, California 90010, so that the transfer can be completed as quickly as possible.

I sincerely believe that my proposal is fair to both of us and hope that you will give it careful consideration.

With best regards,

Alan

Alan C. Kolb

ACK:mj

P

MAXWELL LABORATORIES, INC.

8835 Balboa Avenue
San Diego, California 92123

Notice of Special Meeting of Shareholders To be Held on December 28, 1983

To the Shareholders of Maxwell Laboratories, Inc.:

A Special Meeting of Shareholders of Maxwell Laboratories, Inc., a California corporation ("Maxwell"), will be held on December 28, 1983 at the Kona Kai Club, 1551 Shelter Island, San Diego, California at 2:00 p.m., local time. The purpose of the special meeting will be to consider and vote upon the principal terms of the proposed merger of S-CUBED, a California corporation, with and into Maxwell pursuant to the provisions of a Plan and Agreement of Merger and related Agreement of Merger, all as more particularly described in the enclosed Joint Proxy Statement.

A description of certain provisions of Chapter 13 of the California General Corporation Law, pertaining to possible rights of dissenting shareholders if the proposed merger is approved and consummated, is included in the accompanying Joint Proxy Statement. See "Proposed Merger—Rights of Dissenting Shareholders". The accompanying Joint Proxy Statement is incorporated by reference in this Notice.

Only shareholders of record at the close of business on November 23, 1983 are entitled to notice of and to vote at the special meeting and any adjournment or adjournments thereof.

By Order of the Board of Directors

Karl M. Samuelian
Secretary

November 30, 1983

YOU ARE CORDIALLY INVITED TO ATTEND THE SPECIAL MEETING. IF YOU DO NOT EXPECT TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, SIGN AND DATE THE ENCLOSED PROXY AND RETURN IT AS SOON AS POSSIBLE IN THE ENCLOSED ENVELOPE, WHICH REQUIRES NO POSTAGE IF MAILED IN THE UNITED STATES.

EXHIBIT D

Exhibit D

MANAGEMENT OF MAXWELL

Directors and Executive Officers

The following table sets forth certain information regarding the individuals who have been nominated for election to the Maxwell Board of Directors at the 1983 Annual Meeting of Shareholders of Maxwell (currently scheduled to be held on December 15, 1983) and the current executive officers of Maxwell.

Name	Age	Position	Director Since	Shares of Maxwell Common Stock Beneficially Owned on October 1, 1983(1)(2)	Percent of Class (Prior to Merger)(3)	Percent of Class (Following Merger)(4)
Alan C. Kolb	54	Chairman of the Board, Chief Executive Officer, Director	1970	40,490(5)(6)	2.1%	1.7%
Monson H. Hayes, Jr.	59	President, Chief Operating Officer, Director	1980	40,200(6)	2.1	1.7
Karl M. Samuelian	51	Secretary, Director	1967	16,663(6)	0.9	0.7
Eugene V. Gottlieb	48	Vice President—Finance and Administration, Treasurer		5,900(6)	0.3	0.2
Douglas H. Tanimoto	43	Senior Vice President		4,500(6)	0.2	0.2
Peter Korn	39	Vice President		6,900	0.4	0.3
Floyd R. Graham	49	Vice President		4,800(6)	0.2	0.2
Joseph A. Sevigny	55	Vice President		5,900(6)	0.3	0.2
Adolphe G. Gueymard	70	Director	1979	7,700(7)	0.4	0.3
Marshall N. Rosenbluth	56	Director	1972	3,450	0.2	0.1
Peter M. Sacerdote	45	Director	1972	13,965	0.7	0.6
W. Hardie Shepard	76	Director	1970	17,786(8)	0.9	0.7
Louis Siegel	80	Director	1968	2,500	0.1	0.1
John W. Weil	55	Director	1981	—	—	—
Lewis J. Colby, Jr.	49	Nominee for Director(9)		250,000(10)	12.9	10.3
		Total		420,754	21.2%	17.0%

(1) Information with respect to beneficial ownership is based on information furnished to Maxwell by each person included in this table. Except as indicated in the notes to the table, each shareholder included in the table has sole voting and dispositive power with respect to the shares shown to be beneficially owned by him.

(2) Some of the shareholders included in this table reside in states having community property laws under which the spouse of a shareholder in whose name securities are registered may be entitled to share in the management of their community property which may include the right to vote or dispose of the shares.

(3) Calculated on a diluted basis assuming, as to each individual holding stock options which were exercisable on or within sixty days after October 1, 1983, as shown in the notes to the table, that such person exercised such options.

(4) Calculated on the basis of all currently outstanding shares of S-Cubed Common Stock, assuming that no currently outstanding S-Cubed stock options are exercised.

(5) Includes 13,500 shares held of record by Rorack, a partnership in which Dr. Kolb has a 50% interest. Dr. Kolb has shared voting and dispositive power with respect to the 13,500 shares held by Rorack.

(6) Includes the following numbers of shares acquirable under options which were exercisable on or within sixty days after October 1, 1983: Alan C. Kolb, 3,000; Monson, H. Hayes, Jr., 20,910; Karl M. Samuelian, 16,500; Eugene V. Gottlieb, 900; Douglas H. Tanimoto, 4,500; Floyd R. Graham, 1,800; Joseph A. Sevigny, 900.

(7) Does not include 1,000 shares held of record by Mr. Gueymard's wife. Mr. Gueymard disclaims beneficial ownership of such shares.

(Footnotes continued on following page)

Exhibit E

Nov. 2, 1983

Mr. Bryant Edwards,
Atty. at Law
Latham & Watkins
701 B St., Suite 2100
San Diego, Cal. 92101

Dear Mr. Edwards:

I tried to reach you by phone today, as I was informed that you were the attorney handling the legal affairs of Systems, Sciences, & Software (S-Cubed). If someone else in the office is, in fact, handling this account, please so inform me or him. I

I am enclosing, herewithin, a copy of a mail-o-gram I sent to Mr. Donald Grine of S Cubed.t To date, I have not heard any response from either him or anyone else representing S Cubed. Naturally, I am wondering whether or not such a response will be given to me before the Maxwell Laboratory's annual shareholders' meeting, concerning the merger-acquisition of S-Cubed by Maxwell. I reiterate again, that there is an investigation by the Securities Exchange Commission going on at the present time in regard to the business transactions undertaken and consummated by joint directors, officers, and attorneys (in particular, Frank Clark) of both Maxwell and S-Cubed. If you wish to contact the SEC directly, please contact John Shad, Commissioner, who is personally supervising the investigation in Washington, D. C. One of the many matters being reviewed is made manifest in the illegal (loop letter) from Dr. Alan Kolb of Maxwell to Frank Clark, director of both Maxwell and S-Cubed. I intend to have this unlawful conspiracy of inter-locking directors and shareholders of both Maxwell and S-Cubed fully revealed to the shareholders of Maxwell and S-Cubed. This activity was described by Dr. Kolb himself ass being a loop, hence the title "loop letter".

It is Rorack's contention (Rorack is Dr. Alan Kolb and Dr. Raymond C. O'Rourke) that there has been no significant technical progress in either the directed energy, laser optics, pulse power fields, ever since Frank Clark resigned from Maxwell, so that his conflict with S-Cubed and Maxwell would not be made known to the other shareholders of either S-Cubed

LAW OFFICES
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2049 CENTURY PARK EAST
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TELEPHONE (213) 203-0080

FRANK W. CLARK, JR.
JOHN F. O'HARA
W. DICKERSON MILLIKEN
MARK TOWNSEND
N. MATTHEW GROSSMAN
KARL M. SAMUELIAN
ANTHONY T. OLIVER, JR.
FLOYD M. LEWIS
RICHARD L. FRANCK*
EVERETT F. MEINERS
RICHARD A. CLARK
CLAIRE D. JOHNSON
FRANK ALBINO
R. KENT WARNER
NOWLAND C. HONG
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DONALD M. ROBERTS
CARLO SINA
STEPHEN T. HOLZER
ALAN M. BRUNSWICK
LINDA S. KLIBANOW
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CHRISTINE W. BENDER
MARGUERITE S. ROSENFELD
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ANNA JEANS
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ALBERT G. HANDELMAN
LESLIE W. MULLINS
W. ERNEST MOONEY
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CATHERINE B. FRINK
BRUCE D. MAY
GARY A. MEYER
KURT B. HUEBNER
LAWRENCE E. TRENT
WILLIAM W. REID
JILL H. MATICHAK
EDWARD R. MCGAH, JR.
SHERRI K. SAGET
DAVID L. ARNHEIM
DEBRA J. ROTH
DAVID B. SIMPSON
PAUL H. LUSBY
SUSAN L. HARRISON

OF COUNSEL
ROBERT H. FORWARD, JR.

*A PROFESSIONAL CORPORATION

CLAUDE I. PARKER (1871-1952)
JOHN B. MILLIKEN (1893-1981)
RALPH KOHLMEIER (1900-1976)

TELEX: 67-4617
CODE: "PARKERMILL LSA"
TELECOPIER (213) 556-8480

DOWNTOWN OFFICE:
27TH FLOOR SECURITY PACIFIC PLAZA
333 SOUTH HOPE STREET
LOS ANGELES, CALIF. 90071-1486
TELEPHONE (213) 683-8500

April 26, 1983

Exhibit F

Albert O. O'Rourke, Esq.
7949 Lowry Terrace
La Jolla, California 92037

Dear Mr. O'Rourke:

Karl Samuelian has asked me to respond to your mailgram to him of April 19, 1983 concerning the reference to Dr. Kolb's beneficial interest in Rorack Co. that appears in the prospectus for Maxwell's recent public offering.

In your mailgram you make reference to the following statement, which appears on page 16 of the prospectus as a footnote to the table of beneficial ownership of Maxwell stock:

> "(4) Includes 13,500 shares held of record by Rorack, a partnership in which Dr. Kolb has a 50% interest. Dr. Kolb has shared voting and dispositive power with respect to the 13,500 shares held by Rorack."

As you may know, Item 403 of Securities and Exchange Commission Regulation S-K requires that a prospectus filed as part of a registration statement under the Securities Act of 1933 contain information regarding the "beneficial ownership" of securities by the subject company's management. Item 403 of Regulation S-K refers to Securities and Exchange Commission Rule 13d-3 for the definition of the term "beneficial ownership" as it is used in this context. Rule 13d-3 provides in relevent part that:

". . .a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or

(2) Investment power which includes the power to dispose, or to direct the disposition of, such security." (Emphasis added.)

Under Paragraph 9 of the Rorack Co. Partnership Agreement dated January 1, 1967, each partner has equal rights in the management and conduct of the partnership business, and would, accordingly, have shared voting and dispositive power with respect to shares of stock owned by the partnership. The right of a partner to vote shares of stock owned by the partnership is recognized in California Corporations Code Section 704, which provides, in pertinent part, that:

"(1) If only one [partner] votes, such act binds all;

(2) If more than one vote, the act of the majority so voting binds all;

(3) If more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately."

Section 2-508 of the Corporations and Associations Article of the Maryland Code contains analogous provisions.

In view of the foregoing, it is apparent that Regulation S-K and Rule 13d-3 required that the 13,500 Maxwell shares held by Rorack Co. be included among the Maxwell shares shown to be "beneficially owned" by Dr. Kolb in the table contained in the Maxwell prospectus. The footnote to which you refer in your mailgram, and which is set out in full above, explains the basis for the inclusion of the Rorack shares in the table, and does not in any way state or imply that Dr. Kolb has any direct

ownership interest in these shares. To the contrary, the footnote clearly indicates that these shares are held by Rorack Co. (Incidentally, if Dr. O'Rourke had been required to be included in the table, under the SEC rules he too would have been shown as a "beneficial owner" of the Rorack shares by virtue of the shared voting and dispositive power he possesses as a partner.)

I trust the foregoing discussion has explained the fact that the disclosure concerning Rorack Co. in the prospectus was required by, and in complete compliance with, the applicable regulations of the Securities and Exchange Commission.

Very truly yours,

Roger H. Lustberg

RHL:bh

cc: Dr. Alan C. Kolb
Mr. Francis Radford

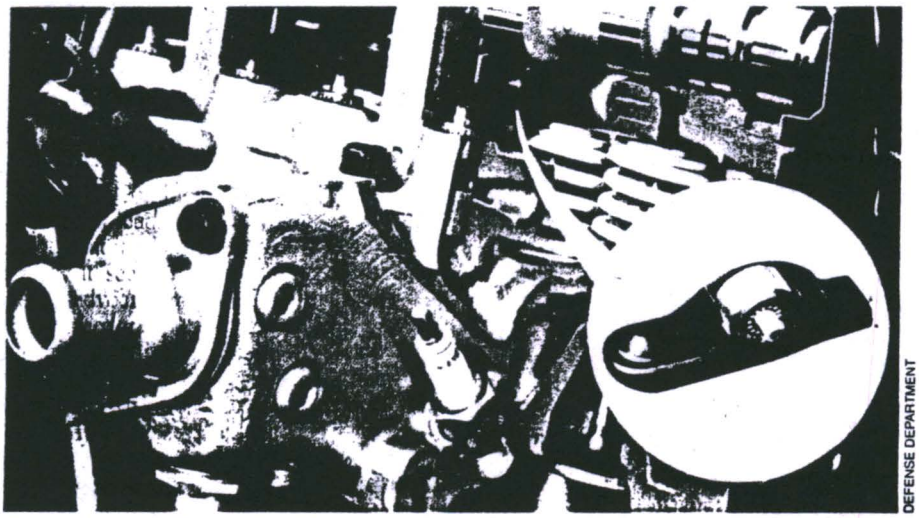

Insight
on the news
Tomorrow's Antiques
1988 – $2.00
S.D.I:
S.O.S.
Exhibit "FF"
0 74470 19145 40

COVER STORY

PART 4

Fruitful Fallout of 'Star Wars'

SUMMARY: What have civilians got to show for the multibillion-dollar strategic defense research effort? A laser with medical uses, ceramic auto engine parts and advances in energy storage are several of the spin-offs. Still, critics question the means of developing such fruits.



DEFENSE DEPARTMENT

Ceramic cam follower (inset) for automotive engine has roots in defense research.

There's no way you can spend $4 billion a year without coming up with little odds and ends that other people will find useful."

So avows John E. Pike of the Federation of American Scientists. The money he refers to is the Strategic Defense Initiative annual budget; the little odds and ends are known in Pentagonese as "commercial spin-offs" — products and technologies that have made their way into the civilian economy. To date, spin-offs have included items with a variety of medical and industrial uses. And they have become one of the more emotionally charged aspects of the SDI debate.

"I think it's repulsive the way they use a $14 million [medical] laser to justify the whole program," says Charles Monfort, Washington director of the Union of Concerned Scientists.

Counters Air Force Maj. Alan Freitag at the Pentagon headquarters of the Strategic Defense Initiative Organization: "Nobody's using it to justify anything. All we're doing is complying with a congressionally mandated program."

Adds a senior physicist at Los Alamos National Laboratory: "If you're getting cancer therapy or getting a blood transfusion and you know that the blood has no AIDS virus, you're not going to give a damn where the technology came from."

James A. Abrahamson, the SDI director, established within his organization an Office of Technology Applications. As he told a congressional hearing in March, he took the action in response to the provisions of the Technology Innovations Act of 1986, which requires government agencies engaged in research to make results publicly available for commercial use whenever possible. Since then, a number of promising technologies and items have found their way into the civilian sector; not surprisingly, the folks at SDI are happy to talk about it.

Air Force Col. James A. Ball, who directs the technology applications program, explains that the key is a computer, "available by modem to any qualified American." To gain access to the data base, one need only certify U.S. citizenship and professional interest and promise not to disclose the technology to foreigners. The Technology Applications Information System, as it is called, is entirely unclassified.

Ball says that the system is still under development. But he points to a number of areas in which SDI-developed technologies have had civilian impact. Scientists in Gainesville, Fla., working on silicon gels for space-based laser mirrors discovered that the materials had uses in orthopedic surgery and dental reconstruction. The gel is now marketed under the name Bioglass and may, according to unsubstantiated rumor, also be useful for breast enlargements. Strategic Defense Initiative laser research has generated a program with its own funding, the Medical Free Electron Laser. Other advances have come in areas as diverse as computer miniaturization, food irradiation and power storage.

A small item with large potential may have been developed by Tom Sullivan, a San Diego-based inventor. "I had an SDI contract to develop fiber-reinforced ceramics," he says. "I came up with a material that can be useful in industry. Chrysler is currently testing it to make cam followers for car engines." Sullivan explains that these are the engine parts most susceptible to wear when improperly lubricated. His new parts show no apparent wear after 100,000 miles — good news for drivers who do not like to wait while their cars warm up.

Other applications have included new devices and techniques to detect hidden explosives, handle nuclear waste and treat cancer. One procedure promises to cleanse blood banks of the virus that causes AIDS.

The ultimate significance of the commercial spin-offs is impossible to predict, given the program's uncertain future. That it may come to rival the contributions of the space program seems unlikely; Corning Ware and Tang are, after all, tough acts to follow. According to a study released by the Heritage Foundation, the total market value of SDI spin-offs could total $5 trillion to $20 trillion — an estimate that, in its way, seems as uncertain as the postulate that the program itself will cost more than $1 trillion. Sometimes it seems that among the most common spin-offs are imaginary numbers.

But the spin-off issue does touch on a larger, doubtless more important concern. SDI opponents such as the Union of Concerned Scientists and the Council on Economic Priorities claim that military research and development already consume far too much money and occupy far too many talented people, that these tandem drains hurt scientific progress at home and economic competitiveness abroad. Some even call military research "junk science," driven by narrow considerations and forced to concentrate only on what the military deems interesting.

Others find the problem less a matter of money and skill than of spirit. Says a senior scientist who works on SDI: "I was amazed, when reading the classified version of a report [on the program's feasibility], to find a little notation that said, basically, the authors were appalled at how conservative and negative the American scientific community had become."

— Philip Gol

Services Committee, had said that the House bill would "take the stars out of star wars," he decided to veto the bill.

A further attempt to take the stars out of star wars may be a proposal backed by Sam Nunn, a Georgia Democrat and chairman of the Senate Armed Services Committee, to deploy a small, ground-based system allowable under the 1972 Anti-Ballistic Missile Treaty, to provide limited protection against small or accidental missile launches. Codevilla, author of "While Others Build: A Commonsense Approach to the Strategic Defense Initiative" and for nearly 10 years a staff member of the Senate Intelligence Committee, says: "It makes sense only if it leads to something larger." He doubts that it will.

In fact, it seems highly unlikely that even the advocates of the Accidental Launch Protection System intend it to lead anywhere. Says Monfort: "I think we'll be seeing enormous pressure to deploy something, just to prove we got something for all the money."

SDI as a specific program may well be moribund, but if the history of missile defense shows little save abortive efforts, it also shows that the idea never really goes away. It further demonstrates that the problem of missile defense is actually three problems, constantly interacting, and that it matters not only to understand them separately but also to see how they relate.

The first problem is ballistic missile defense. It is a matter of physics and engineering. Critics claim it can never be done; some supporters argue that it could have been achieved long ago. Whatever the technical issues, ballistic missile defense also has a profound strategic and moral component: the possibility of moving the world away from purely offensive deterrence — from hostage-taking on a planetary scale — to a less potentially apocalyptic stance. Advocates such as retired Lt. Gen. Daniel O. Graham, founder of High Frontier, a private pro-missile-defense lobby, urge early deployment, with or without Soviet concurrence or participation. Other advocates, such as physicist Freeman Dyson, prefer a missile defense coupled with active arms control of offensive systems. These tethered matters of feasibility and morality predated the Reagan years and will remain long after January 1989.

The second problem is as much political as technical. Why do missile defense programs develop as they do? Specifically, how has SDI evolved since 1983, and what does this say about the possibility of a sustained effort to achieve defense?

JON A. REMBOLD / INSIGHT

Laser platform simulator; research on defense plan is mired in debate.

The third matter is both political and cultural: why popular debates over ballistic missile defense and nuclear matters in general inevitably take on an Alice in Wonderland quality. Words mean whatever one wants them to mean; assumptions both scientific and political quickly become conclusions held with religious fervor, and facts consistently prove less important than images and raw emotions. One possible answer lies in the extreme technical complexity of the subject; few have either the necessary expertise to render informed judgment or the time to do so. Emotions connected with nuclear problems, analysts such as psychiatrist Robert Jay Lifton point out, can be extremely volatile and deep-rooted. All of which raises a fundamental question: Is it in fact possible to conduct a rational public debate on any nuclear issue?

"To quote a light opera, hardly ever," says Edward Teller, the physicist who helped develop the atom bomb and hydrogen bomb and favors strategic defense.

The fate of the Strategic Defense Initiative as a specific program will probably be determined over the next few weeks, as the Pentagon and Congress make their respective decisions. Congress must deal with the defense budget; the Pentagon's Defense Acquisition Board is scheduled to meet on the subject in October. President Reagan may or may not take unilateral action, depending on (among other things) George Bush's progress against Michael S. Dukakis. But, whatever happens, one thing is certain. The fundamental issues — the morality of deterrence, the possibility of defense, the difficulty of rational discussion about nuclear weapons — are not about to go away.

— Philip Gold

Biggest SDI Fight Is Still on Ground

SUMMARY: In March 1983 President Reagan proposed the Strategic Defense Initiative, which consolidated several defense programs that dated back to Eisenhower and Nixon. Understandably, liberal critics find the plan abhorrent. But, for different reasons, so do the defense and foreign policy bureaucracies. "Star wars" has had to take it on the chin, and its fate is in the hands of the Pentagon and Congress.

Five and a half years and $13 billion ago, Ronald Reagan decided that it might be a useful and a moral thing to render one of mankind's nastier weapons — the nuclear-tipped ballistic missile — "impotent and obsolete." He made a speech to that effect, and everyone agreed.

Everyone, that is, but the Pentagon, the Congress, the arms controllers, the media, the Democrats, the antinuclear left, inveterate Reagan-haters, the Soviet Union and most of the rest of the world.

The people of the United States agreed. Surveys show that the electorate favors missile defense, at least as a concept, by a margin of roughly 3-to-1. Yet, somehow, this proclivity never translated into sustainable popular support. Says one engineer who works on missile defense, sighing: "Reagan might have done better if he'd tried to pay for it by asking people to recycle their cans."

To be sure, missile defense was no new idea. Presidents from Eisenhower to Nixon had supported work on various systems; even after the United States abandoned active deployment in 1975, research continued in odd corners of the defense establishment. Reagan's March 1983 speech consolidated and refocused these programs as the Strategic Defense Initiative — or to its detractors, "star wars."

Nor was the moral premise behind Reagan's vision — that it is better to save lives than to avenge them — a revolutionary concept. It lies at the base of Western notions of just war; indeed, any state's first duty is to protect the lives of its members. But, judging from the vitriol of the opposition, one might have thought that the president had proposed cannibalism on the White House steps. Liberal critics who had found nuclear deterrence unstable and abhorrent now labeled defense the same. Even the National Conference of Catholic Bishops, no great friend of deterrence, has decreed missile defense morally questionable.

At the strategic level, those who had emphasized the innate military superiority of the United States and benevolent Soviet intent now found the Soviet Union suddenly technologically capable of instantly countering any U.S. innovation and deadly serious about doing so, regardless of cost. The Soviet Union, predictably, has threatened such limitless response. And r Soviet scientists, in a show of ec concern, have warned that U.S. experiments could litter space much debris that it could block the lower planetary temperatures. (T this phenomenon "space winter.")

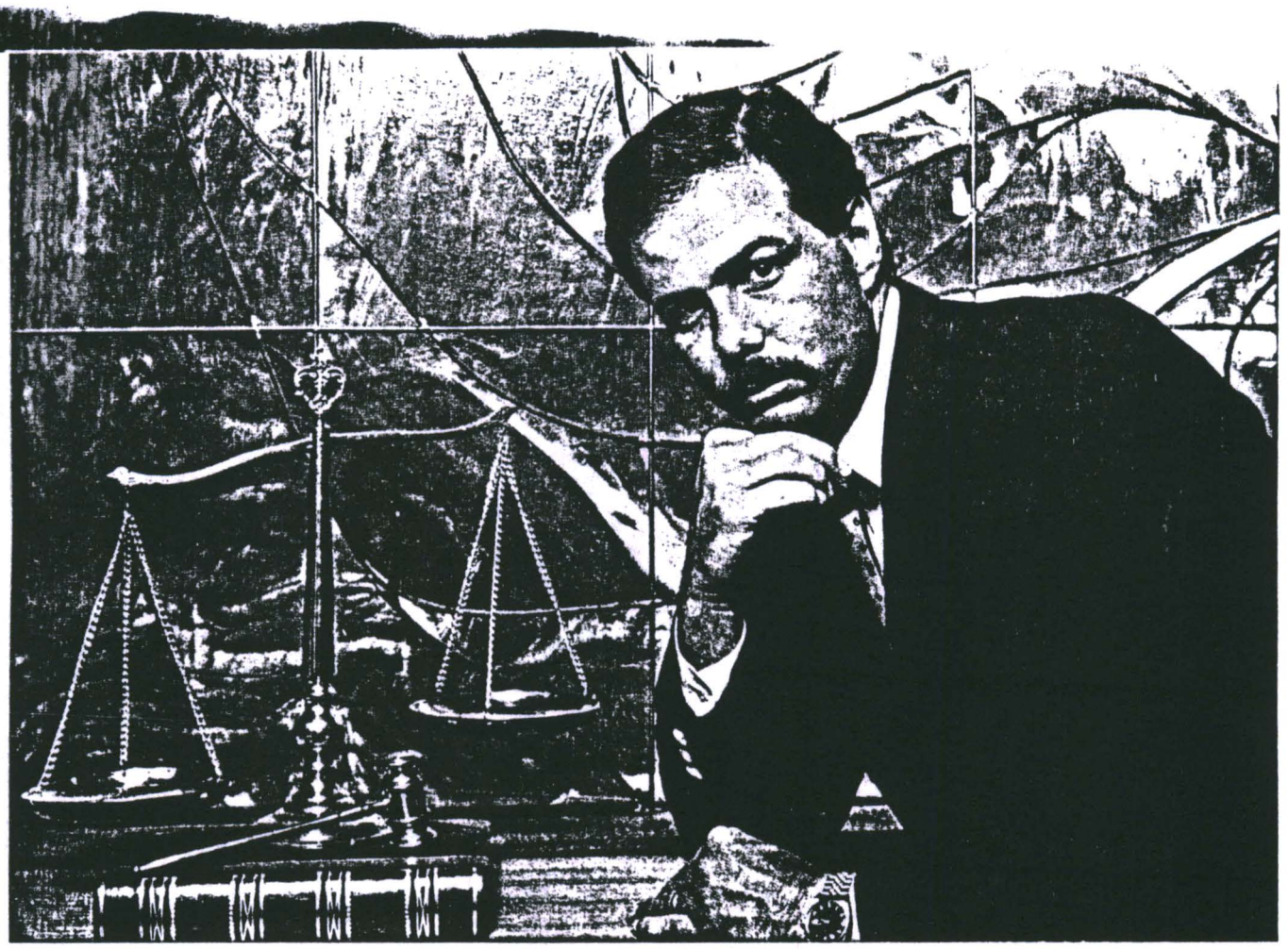
STEPHEN CROWLEY · INSIGHT

Reagan speaking on SDI last winter

Within the defense and foreig bureaucracies, many have found ident's vision an unacceptable t business as usual and their inst spending preferences. None of t military services has the exclusive of defense against nuclear attac Soviet Union, a separate branch of tary handles it.) SDI also compli arms control analysis and negotia cesses — trades in which thousa made careers. And in missile defe gress found a partisan issue of plasticity and usefulness.

Today, many claim that Reaga will not outlive his administration won," says Charles Monfort, Wa director of the liberal Union of C Scientists, an opponent of the i "It's deader than a dead duck," say Codevilla, a senior research fell Hoover Institution and an ardent su Monfort attributes the opposition to effective lobbying and comm Codevilla sees failure stemming fr gan's insufficient commitment t proposal to force it upon a recalcit tary.

Whoever is right, it seems cle Strategic Defense Initiative has hard times. Recent Pentagon stu proposed major changes in the p ostensible purpose: from erecting prehensive defense based in spac Earth to a light defense that few be improved as the decades go by. has not only slashed funding but how the money can be spent — m former Assistant Secretary of Richard N. Perle says influenced R veto the fiscal 1989 defense auth bill. According to Perle, when t ident heard that Democrat Les Wisconsin, chairman of the Hous



Whether or not Hafif had good reason to draw attention to his case while it was still under seal, he says the U.S. district judge who is handling the Stealth case has now given him the go-ahead to deal with the press however he pleases. In July, the judge declined Northrop's motion to dismiss the case because of Hafif's grandstanding. Hafif says the judge declared that there are no restrictions on the way the case should be pursued in the press.

Bonner says the judge was far less supportive of Hafif's conduct, although he declined to say exactly what the judge ruled—or even who the judge was, since the case is still under seal. Hafif maintains that he has been completely absolved of the grandstanding charge. "We won our motion," he says. "They spent a bundle of bucks to suppress our right to talk. We hit 'em right back between the eyes."

Claremont lawyer Robert S. Kilborne arrived at the courthouse with boxes of MX missile parts in an armored car.

HAFIF'S COLLEAGUES in the tiny false claims bar are divided in their opinions of him. In an interview, Phillips declined to comment about Hafif or the cases he has filed. But he does say emphatically that publicizing cases while they are still under seal is at odds with the law's intent to allow the government to investigate the charges in secret. In a profile of Hafif in *The Wall Street Journal* in May, Phillips questioned Hafif's competence. Referring to the dismissal of the Hyatt case, Phillips noted that a "thorough attorney" couldn't have missed a front-page story in the *Los Angeles Times* a few days before Hafif filed his case, which reported the just-enacted amendments to the False Claims Act and the date they would take effect.

On the other hand, Ramsey, who is now representing Hyatt in an appeal from the dismissal of the MX missile suit, is willing to forgive Hafif that mistake. Ramsey also isn't as quick to dismiss Hafif's suspicions about the government's motives.

"I really have nothing against Herb Hafif," Ramsey says. "And I can certainly appreciate his problems. In half of these cases the government is guilty of malfeasance. Many times it's outright fraud that purchasing officers are knowingly involved in. In most cases, purchasing officers at least went to great pains not to find out about irregularities in billing."

Ramsey, who has had to struggle against stonewalling in his suit against McDonnell Douglas, says Northrop and the Pentagon have given Hafif a much tougher time. But through Hafif's efforts, Congress eventually held hearings on the MX missile program, and Northrop's chairman ended up on CBS's *60 Minutes* admitting there had been discrepancies in the testing of MX missile guidance systems.

Meanwhile, the criminal investigation of Northrop appears to be moving ahead. The latest reported search of Northrop's electronics division in Hawthorne was carried out by FBI agents in late August.

"If they have the information and won't give it to you, you have to develop methods to put some pressure on the government," Ramsey says. "That's what [Hafif] was doing, trying to put some pressure. . . . And the feedback I was getting was that it was working. I think if he'd been quiet and followed the direction of the government, none of this would have come to light."

Exhibit G

ASSIGNMENT

I, Alan C. Kolb, of 9300 Ardmore Road, Landover, Maryland, do hereby irrevocably sign, transfer and set over to Rorack Co., a partnership of which the undersigned and Raymond C. O'Rourke are equal partners, all of my right, title and interest in and to 13,250 shares of common stock of Maxwell Laboratories, Inc.

The above described shares of Maxwell Laboratories, Inc. are presently held in escrow, pursuant to the regulations of the Commissioner of Corporations of the State of California, and I hereby covenant and agree to transfer said shares to Rorack Co. immediately upon the release of said shares from escrow, it being agreed and intended hereby that Rorack Co. has and shall have all of the ownership rights in and to said shares as of the date hereof, subject only to the escrow arrangements made with the Commissioner of Corporations of the State of California.

This assignment is irrevocable on the part of the undersigned and is coupled with an interest.

The undersigned further agrees to execute and deliver such other agreements or assignments as shall be necessary or desirable to effect this assignment and transfer said shares to Rorack Co., and to take such other action as Rorack Co. shall require for the purposes hereof.

EXECUTED as a sealed instrument as of the first day of January, 1967.

Alan C. Kolb [L.S.]
Alan C. Kolb

Exhibit H

8835 Balboa Avenue
San Diego, CA 92123

March 9, 1984

Dr. Raymond C. O'Rourke
7949 Lowry Terrace
La Jolla, California 92037

Re: Rorack

Dear Ray:

This letter confirms our agreement to distribute to each of us one-half (6,750 shares) of the 13,500 shares of Maxwell stock held by Rorack and represented by Maxwell stock certificate Nos. 238 and 789. As we have agreed, the exercise of "dissenters rights" on behalf of Rorack under the California Corporations Code with respect to the merger of Maxwell and S-Cubed was made as to one-half or 6,750 of the 13,500 shares of Maxwell stock held of record by Rorack. In accordance with our agreement, the 6,750 "dissenting shares" will be distributed to you and none of the 6,750 shares to be distributed to me will be "dissenting shares." The gain realized as a result of the distribution of the "dissenting shares" to you and payment by Maxwell for the "dissenting shares" distributed to you will be recognized and reported solely by you for Federal and State income tax purposes.

The distribution of Rorack's Maxwell shares to you and me pursuant to this letter agreement will not prevent either of us from continuing to pursue any other matters or issues relating to our involvement in the Rorack partnership, except for the income tax allocation described above.

By signing this letter agreement, we each agree to sign on behalf of Rorack appropriate stock assignments separate from certificate to effect the distribution of Maxwell shares to you and me. Please sign both copies of this letter, retain one for your records, and give one to Dave Evans for my records.

Very truly yours,

Alan C. Kolb

Alan C. Kolb

AGREED TO AND ACCEPTED:

_____

Raymond C. O'Rourke

Date: April 5, 1984

Exhibit H 2

8835 Balboa Avenue
San Diego, CA 92123

March 9, 1984

Dr. Raymond C. O'Rourke
7949 Lowry Terrace
La Jolla, California 92037

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Very truly yours,

Alan C. Kolb

Alan C. Kolb

AGREED TO AND ACCEPTED:

Raymond C. O'Rourke

Raymond C. O'Rourke

Date: March 9, 1984

EXHIBIT E

Albert O. O'Rourke

Attorney at Law

7949 Lowry Ter., La Jolla, Calif. 92037

(619) 459-7510

Exhibit I

5/9/84

Dave Evans
c/o Bateman, Eichler
La Jolla, Ca. 92037

Dear Dave:

DE

Please use the following as the escrow terms for the distribution of Rorack's 13,500 shares of Maxwell stock.

1. Please hold all documents signed by Dr. Raymond O'Rourke in your possession at Bateman, Eichler as an escrow until you receive from Maxwell a ~~Certified~~ Cashier's check for $143,437.50, the cost of 6,750 Maxwell Dissenter shares at $21.25. When you have such check in your possession, you may give Alan Kolb, all the papers to be signed and which have been signed by Dr. Raymond O'Rourke and Alan.

2. Alan must assure Ray that Maxwell has no forthcoming legal action against Raymond O'Rourke for any reason in regard to protecting Rorack, Rorack's Maxwell's shares, and Rorack's shareholder rights in Maxwell. Alan must make such statement as Maxwell's Chairman of the Board and a partner in Rorack. Furthermore, Alan must assure Raymond that Parker, Milliken, Clark, O'Hara & Samuelian is not intending to do such either. In particular, as Alan knows, such law firm either was or remains Rorack's legal counsel of record.

3. Alan must tell Ray if he knows of any third party who is either presently or prospectively interfering with Ray's plans for Directed Energy Work in Albuquerque or La Jolla. It is to be understood that Mrs. O'Rourke does not want to incur the expenses associated with such work, if such is already a futile possibility because of the actions of any third party. Alan may simply say, "Yes, there are some problems that way" or any other general remark which would protect Ray and Mary O'Rourke from spending money on futile projects, ie., because of negative U.S. Government interests.

4. It is to be understood that Ray and Dick Ayres may undertake any number of competitive projects with Maxwell on Directed Energy or Magneform projects, so that if Alan has any complaints about such or does not want Ray or Ayres involved in certain areas, Alan must express this, i.e., in a general way, "Yes, there could be some problems...I would prefer ... why don't you do this?"

5. When Dave Evans receives the ~~certified~~ cashiers check referred to above (or better a cashier's check), he is to purchase up to 13,500 new Maxwell shares, it being understood that roughly ten to twelve thousand of such shares will be paid for out of the cashier's check and the balance put on a margin account with Bateman, Eichler.

EXHIBIT H

Dave Evans 5/9/84

6. Dave Evans is to put a check mark (red-pencil, or blue pencil, or pen) by every paragraph listed above in order to prove that such statements were read to and understood by the two partners in Rorack, Dr. Ray O'Rourke and Dr. Alan Kolb.

Sincerely,

A. O'Rourke

Raymond O'Rourke

AO:j

Exhibit I 2

April 5, 1984

Albert O. O'Rourke, Esq.
7949 Lowry Terrace
La Jolla, California 92037

Dear Mr. O'Rourke:

In connection with that certain letter agreement dated March 9, 1984 between Dr. Raymond C. O'Rourke and me relating to the 13,500 shares of Maxwell stock held by Rorack, I would like to acknowledge to you that you endeavored to perfect "dissenter's rights" on behalf of Rorack with respect to all of said shares with the view of protecting my interests, as well as the interests of Dr. O'Rourke, and you have advised me that the rights which you endeavored to exercise may be effective with respect to all of said shares and not just the 6,750 shares which have been allocated to Dr. O'Rourke pursuant to said letter agreement. Notwithstanding your efforts and your opinion, I have on my own volition determined not to proceed with the perfection of dissenter's rights with respect to my one-half of the 13,500 shares. I further acknowledge that the 6,750 shares allocable to me may have been entitled to be sold to Maxwell at $21.25 per share had I chosen to proceed with the perfection of dissenter's rights with respect to the shares allocable to me.

Very truly yours,

Alan C. Kolb

Alan C. Kolb

EXHIBIT G

7949 LOWRY TERRACE
LAJOLLA CA 92037 03AM

Western Union Mailgram

4-003005S034 02/03/85 ICS IPMBNGZ CSP SDGB
6194597510 MGMB TDBN LAJOLLA CA 460 02-03 1145A EST

Telecopy to
Karl Samuelian
1 Page

DR ALAN KOLB, CHAIRMAN OF THE BOARD
MAXWELL LABORATORIES, 8888 BALBOA AVE
SAN DIEGO CA 92123

Exhibit J

DEAR ALAN,

I WILL BE OUT OF TOWN FOR A FEW DAYS BUT THERE ARE A FEW ITEMS WHICH YOU SHOULD BE CONCERNED ABOUT AS FOLLOWS.
1. YOU AND AMALIA SHOULD BE CONCERNED ABOUT THOSE SHAREHOLDERS DISSENTER RIGHTS FOR THE $143,000 BECAUSE IT SEEMS TO ME THAT THE STATUTORY TIME FOR FILING AN ACTION ABOUT SUCH WILL SHORTLY EXPIRE IE LATE FEBRUARY. I WOULD RECOMMEND THAT YOU AT LEAST FILE AN ACTION FOR THESE RIGHTS EVEN IF YOU DO NOT WANT TO SERVE AND PROCEED ON THE CASE FOR SEVERAL YEARS. THAT IS TO SAY THAT AMALIA, ALANA, KARLA, OR CHRISTOPHER MAY WANT THIS $143,000 AT A LATER TIME AND IT SEEMS SILLY JUST TO WASTE THE MONEY, ESPECIALLY AS IT WILL BE SEVERAL YEARS BEFORE YOU CAN SELL ANY OF YOUR MAXWELL SHARES. KARL SAMUELIAN WILL TELL YOU ABOUT A PROBLEM WITH "INSIDER TRANSACTIONS" BUT I DO NOT SEE THIS AS A PROBLEM WITH THE S.E.C AT THIS TIME. LET ME KNOW ONE WAY OR ANOTHER WHAT YOU WANT TO DO ABOUT THIS MATTER.
2. GOVERNOR DEUKMEJIAN HAS AN ASSEMBLY BILL ON HIS DESK THIS MONDAY MORNING ABOUT THESE NURSING HOMES AND THE DEPARTMENT OF SOCIAL SERVICES. I HAVE SENT A LETTER TO KARL ABOUT SUCH TO GET HIM TO DELAY THE GOVERNORS ACTION UPON THE BILL UNTIL A FULL INVESTIGATION IS MADE ABOUT THE DEPARTMENT OF SOCIAL SERVICES, WHICH WOULD BE GIVEN BROAD "POLICE POWERS" UNDER THIS BILL. I WOULD ALSO INFORM YOU THAT AT THE PRESENT DEPARTMENT OF SOCIAL SERVICES HEARING WITH THE OROURKES, WE HAVE INTRODUCED UPON THE RECORD FALSE AFFIDAVITS, PERJURIOUS AND CONFLICTING STATEMENTS OF THE DEPARTMENT OF SOCIAL SERVICES STAFF AND ATTORNEYS, THE MAINTENANCE IN AN ILLEGAL FASHION OF COVERT FILES ABOUT THE HOME OPERATORS, DOCTORS AND MEDICAL STAFFS, THE UNLAWFUL NEWS PUBLICITY INTENDED TO PREJUDICE THE RIGHTS OF THE AFORENAMED, THE CONSPIRACY TO CORRUPT THE ATTORNEY GENERALS OFFICE IN SACRAMENTO, ETC., TO SAY THAT THERE IS GOING TO BE ONE HELL OF AN EXPLOSION WITHIN THE NEXT FEW WEEKS AS THESE MATTERS BECOME KNOWN TO THE PUBLIC IS TO SAY THE LEAST ESPECIALLY SINCE THE DEPARTMENT OF JUSTICE AND HEALTH AND HUMAN SERVICES IN WASHINGTON HAS QUIETLY STEPPED INTO THE MATTER SINCE IT INVOLVES A JOINT FEDERAL STATE OF CALIFORNIA BUILDING PROJECT IN THE $100 MILLION CATEGORY.
3. RAY OROURKE WANTS TO GET TOGETHER WITH YOU ABOUT SOME ELSCINT WORK HE IS DOING IE THE ABILITY TO SCRAMBLE AND REVERSE CODED INSTRUCTIONS ELECTROMAGNETICALLY UNDER THIS PROGRAM IN WHICH YOU ARE PARTICIPATING AT MAXWELL AS YOU KNOW. YOUR QUICK ATTENTION TO THIS MATTER WILL BE APPRECIATED. SINCERELY,
ATTORNEY AL OROURKE

EXHIBIT J

Letters

X-ray laser hype confirmed

As a longtime staff member of the Lawrence Livermore National Laboratory, I was very pleased with Deborah Blum's detailed and accurate account (July/August 1988 *Bulletin*) of the controversy at Livermore over the promise of the nuclear-pumped X-ray laser as a space weapon for the Strategic Defense Initiative (SDI). I am also one of the scientists at Livermore who had a chance to read the classified letters that Edward Teller and Lowell Wood, starting in 1983, sent to various high government officials. It has long been known that Teller and Wood are extreme technological optimists and super salesmen for hypothetical new weapons systems. Roy Woodruff, the former manager of weapons research at Livermore, has done the country a great service by trying to expose the gross hype and exaggeration used by Teller and Wood in their efforts to convince Reagan administration officials that a marvelous new space weapon was imminent. Since the letters from Teller and Wood are classified, they are not yet available for scrutiny by scientists outside the weapons establishment. In fact, the contents of these letters are mostly claims and promises that could easily be declassified, and should be.

In December 1983, Teller stated in his letter to Jay Keyworth, then presidential science adviser, that the X-ray laser weapon work was ready for the "engineering phase." A statement like this, even from Edward Teller, means that the lab was ready to build a prototype weapon. This was not true in 1983, and it is not true now or in the foreseeable future. In December 1984 Teller made an even more incredible claim in letters to Paul Nitze and Robert McFarlane to the effect that one bomb could power many independently targetable X-ray beams. The General Accounting Office (GAO) report requested by Cong. George Brown ("Accuracy of Statements Concerning DOE's X-Ray Laser Research Program, June 1988") contains an important quote from Teller's letter to Nitze: "For instance, a single X-ray module the size of an executive desk which applied this technology could potentially shoot down the entire Soviet land-based missile force, if it were to be launched into the module's field of view."

This kind of statement is fantasy and science fiction. Yet this statement was in a classified letter on Livermore stationery from a powerful and influential scientist to the top U.S. arms negotiator. Only Edward Teller could hope to have such a wild claim be taken seriously.

Now that the X-ray laser controversy has been thoroughly aired in the press and in Congress, one hopes that this kind of disgraceful overselling of a hypothetical weapon will not happen again. There is nothing wrong with a careful, long-range research program on the eventual possibilities of a nuclear-pumped X-ray laser, but it should not be used as a means to sell SDI or to block nuclear arms control agreements.

Hugh E. DeWitt
Lawrence Livermore National Laboratory
Livermore, California

Teller's heavy hand

Deborah Blum's article brings back some not-so-pleasant memories of the early 1950s. I see Edward Teller is still the undauntable godfather who can and will bring about the elimination of those who dare to differ with him.

Robert Oppenheimer was a brilliant physicist, an able administrator, and a concerned human being. He was something of a national hero who was admired for his outstanding contribution to the Manhattan Project and respected for his humanistic concern for a sane nuclear policy. With the aid of Sen. Joe McCarthy, Teller successfully destroyed this great and noble man. Joe McCarthy has long since passed on to his rewards, but Teller's heavy hand is still with us to take care of the likes of Roy Woodruff.

Clarence M. Cunningham
Stillwater, Oklahoma

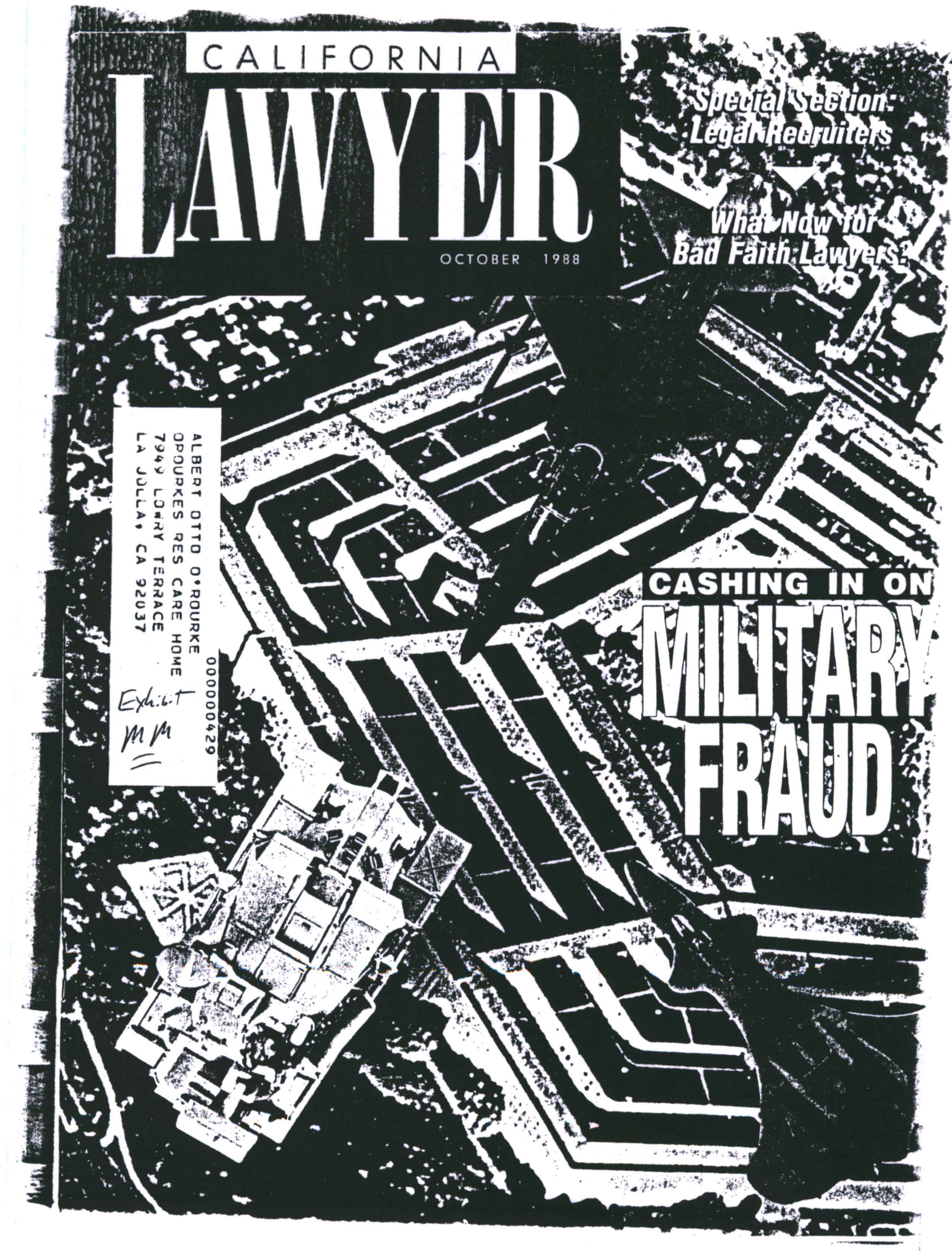
GITSM every time

The GITSM (government-industry-technologists-secrecy-media) phenomenon is a virulent variant of Eisenhower's military-industrial complex. In a GITSM, government (usually the military) and industry jointly propose a project that will enrich them. They pick a technology area where the money is good and pay technologists, think tanks, and so forth to assist and bless the project.

If the project is unsound and public scrutiny gets tough, the military and industry invoke whatever secrecy is necessary to protect them from the legitimate scientific community. Then, while citing the endorsements of the project by their captive technologists, the two feed the media information—such as the cartoons showing the Strategic Defense Initiative (SDI) in "action"—that is designed to win public and congressional approval. The media become a crucial fleet of pawns that promote and help make the project appear legitimate.

To the extent that the perpetrators can execute a GITSM, the scheme is perfect for proposing military systems that could not possibly be built before the year 2050, and analyzing how well these would defend against weapons designed in 1975. Military and space systems are generally excellent candidates for GITSMs but combining the two into futuristic military space systems like SDI is fantastically ideal.

As military systems, such combina-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Special Section:
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Bad Faith Lawyers?
CASHING IN ON
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ALBERT OTTO O'ROURKE
OPOURKES RES CARE HOME
7949 LORRY TERRACE
LA JOLLA, CA 92037
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Exhibit
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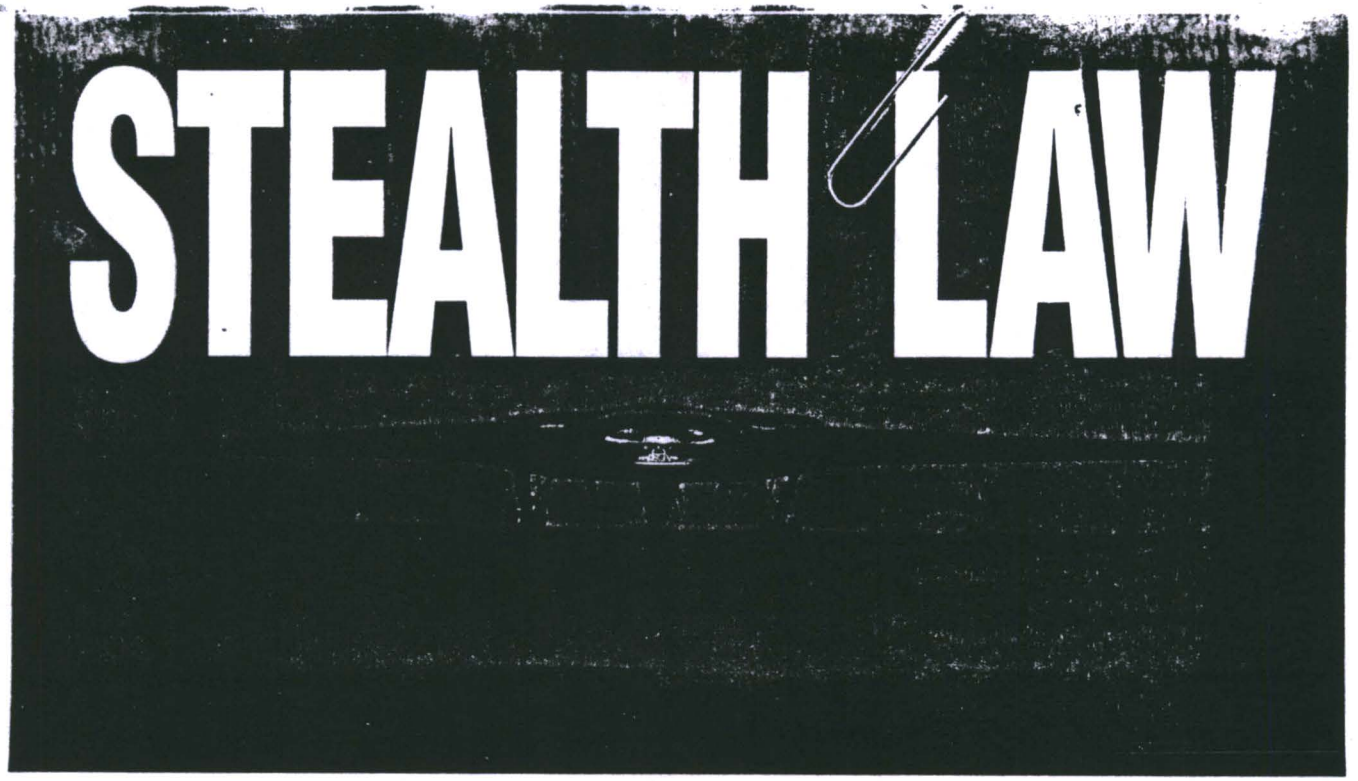
STEALTH LAW



Whistleblowers and their lawyers are maneuvering to cash in on military fraud

BY MARK THOMPSON

OPERATION ILL WIND, the massive and still unfolding Pentagon bribery investigation, isn't the only thing sending chills up the spines of military contractors. The False Claims Act presents another far more worrisome legal threat.

The act, 31 USC §3729 et seq, lures private plaintiffs and their lawyers into the crusade to root out fraud in the sprawling military procurement system. The incentive to litigate is mind-boggling enough to turn the head of every lawyer in the state. Billions—theoretically even trillions—of dollars are potentially up for grabs.

A major overhaul of the False Claims Act in 1986 opened the door for private suits involving fraud against the government. The amendments revived the moribund Lincoln Law, as the act was called after President Abraham Lincoln urged its passage during the Civil War when unscrupulous contractors were delivering bullets loaded with sawdust and other defective supplies to the Union army. The act was designed to lure whistleblowers out of the woodwork by offering them a sizable share of the loot restored to the government when their tips reveal previously undisclosed fraud.

Few people, however, stepped forward to take advantage of the law before 1986. It hardly would have been worth their time. Federal prosecutors had the option of taking over a case and kicking out the private plaintiff who disclosed the illegal activity. Whistleblowers faced a substantial risk of being left both unemployed and penniless.

Whistleblowers who file a claim these days aren't so easy to kick around. Under the 1986 amendments, even if the government decides to take over the case, the private, or qui tam, plaintiff can stay heavily involved—a change in the law that has made odd bedfellows of U.S. attorneys and their private sector co-counsel. Already there has been tension between the two sides.

The amendments also dramatically hiked the potential reward. In contrast with the stingy 10 percent maximum tip available to previous generations of whistleblowers, qui tam plaintiffs now can pocket up to 25 percent of the total penalty—30 percent if the government chooses not to join the case. The penalty can run as high as $10,000 plus three times the amount of the fraud.

As for the magnitude of fraud against the government, the Justice Department's own studies have concluded it could account for as much as 10 percent of the federal budget, which has been running at roughly $1 trillion a year. "So they're talking about a range of $100 billion of fraud a year—

PHOTOGRAPHS BY MAX RAMIREZ

Mark Thompson, a lawyer, is senior writer of CALIFORNIA LAWYER. *His most recent feature, "Is Apple out on a Limb?" appeared in August.*

GETTING IN ON THE ACT

DESPITE THE APPARENT magnitude of the problem, good cases under the False Claims Act are hard to come by, say the few lawyers representing private litigants who have blown the whistle on defense fraud.

The trouble begins with the would-be whistleblowers, says John R. Phillips, a Los Angeles attorney considered the leading expert in false claims litigation. "The kind of people you get coming through your door tend to be people who have a need to confess, to find enemies somewhere, who have strong streaks of paranoia, who are imbalanced human beings for one reason or another," he says. Most of the rational people who know about fraud genuinely fear retaliation by their employers and by the defense industry as a whole, Phillips adds.

A 1986 overhaul of the act, however, boosted the reward for disclosing fraud to as much as 30 percent of the ultimate penalty, spawning a whole new breed of whistleblower. "They're the ones who just do a clear, cold calculation of 'What's in it for me?' " Phillips says. "Those tend to be the most credible people because they know they will succeed only if their facts are good."

Phillips, who is co-director of the Center for Law in the Public Interest, an informal false claims clearinghouse in Los Angeles, says there are still a lot of false leads. Of the 500 cases he has received inquiries about, Phillips says, "99 percent turned out not to be good cases."

Even "good" cases can be hard to litigate. Issues pop up every step of the way that have not been litigated. Military contractors hire waves of lawyers to defend them. And in defense industry cases, crucial information invariably turns out to be classified or privileged.

William Ramsey, an Encino attorney handling a case against McDonnell Douglas that is probably at the most advanced stage of all cases involving the military aerospace industry, says he has logged 1,500 hours on behalf of his client, Rod Stillwell. In the false claims case, McDonnell Douglas has pitted against him lawyers from four firms in Los Angeles and one in Washington, D.C. For Ramsey, payday—if there ever is one—still could be a year or more away.

"Most lawyers aren't hungry for that kind of contingency work," says Guy Saperstein of Farnsworth, Saperstein & Seligman in Oakland. Saperstein is handling several false claim cases, including one announced in July alleging at least $15 million in fraud at Lockheed Missiles and Space Co. Saperstein says he sat in on a seminar about the False Claims Act at the recent American Bar Association meeting in Toronto, and Phillips was the only other lawyer in the room he recognized who had filed a false claims case.

Interest in false claims cases could change dramatically in the coming months. "Wait six months or a year after a few of these cases come down and you start seeing stories about so-and-so winning $5 million," says Ramsey.

That worries Phillips, who is credited with dreaming up the 1986 amendments that revived the long-forgotten False Claims Act and opened the door to private plaintiffs and their lawyers. He dreads the type of lawyers who might take up the offer.

"Hit-and-run artists—those who go in and think they are engaged in some type of litigation where you get the facts, file the case and get the hell out quickly—are in for a big surprise," warns Phillips. These "garbage" suits could discredit the law and provoke a backlash in Congress, he says.

Ramsey agrees that the temptation for disgruntled workers to make frivolous claims is strong and that good cases are hard to find. Since his suit against McDonnell Douglas has been under way Ramsey has received many calls from aerospace industry workers. "I have to separate a lot of chaff from the wheat," he says.

Despite the warnings about their troubles with false claims cases, those who have already filed one suit are busily preparing more. Saperstein, Phillips, Ramsey and Herbert Hafif, one of the most visible false claims litigators, all have at least half a dozen cases in the works, although they won't give an exact count since many are still under seal.

No one is busier than the attorneys at Phillips's 12-attorney public interest firm. The firm has as many as a dozen false claims cases in progress. Its toll-free whistleblower hotline (1-800-6-FRAUD-6 in California and 1-800-2-FRAUD-2 outside the state) and a steady stream of high-profile press coverage constantly attract new clients. With a roster of outside associate counsel ready to pitch in on cases, Phillips says his center has the capacity to take a "virtually unlimited" number of false claims cases.

—MARK THOMPSON

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some of Hafif's tactics. Notifying the press about his Stealth suit while it was still under seal was "totally irresponsible," says Bonner. "It's at odds with, if not the letter, then certainly the spirit of the statute. There's no question that kind of thing can jeopardize, among other things, the possibility of criminal prosecution."

Bonner responds to Hafif's suggestion that political pressures can derail cases against military contractors by saying, "I'm the U.S. attorney and I'm in charge of this office. It's ridiculous to say that any political pressure was brought on this office. It's an insult."

Indeed, Bonner wins wide praise for an impressive string of convictions involving defense fraud. But on the false claims cases with more than $200,000 at stake the False Claims Unit in the Justice Department calls the shots, and Bonner's superiors in Washington have not always seen eye to eye with him on how to handle defense fraud cases.

As one of his last acts as attorney general, Edwin Meese snubbed Bonner by offering his "profound apology" for a "wrongful indictment" to James Beggs, the former head of General Dynamics, who was charged by Bonner in a case later dropped. Bonner has no apologies for the way he handled the case. As for Meese's remark, he says, "I'm not troubled by it. . . . But I wasn't consulted about it, either."

Continued on page 121

Phillips, who has filed perhaps half a dozen false claims cases, some of which are still under seal. Their only shortcoming is the lack of time they can devote to any one case in their burgeoning case load, Phillips says, a problem that the Center for Law in the Public Interest helps overcome by working hard to present them with well-documented cases.

"Our approach is to be as totally cooperative as possible," Phillips says. He adds pointedly, "It is a serious mistake, a tactical error, to view the government as the enemy."

Other lawyers believe it is naive to assume that the government isn't peppered with enemies of false claims cases. Herbert Hafif, a Claremont attorney and former president of the California Trial Lawyers Association, is the chief proponent of the aggressive approach to litigating false claims cases. "It's not a field for the weak," says Hafif. "It's like fighting lions without a sword."

As Hafif sees it, the Justice Department is not necessarily the benign presence that Phillips makes it out to be. Powerful people in the Pentagon and their supporters in the military-minded Reagan administration have every interest in seeing whistleblower lawsuits fail, Hafif contends. They can pull strings that make strange things happen to false claims cases involving favored military projects, he says.

California, with $35 billion a year in defense contracts, is home to much of the false claims litigation.

HAFIF HAS FILED the most sensational false claims suits so far against the biggest targets in the military procurement system. He has initiated actions alleging fraud in the Northrop Corp.'s Stealth bomber and components for the MX and cruise missiles, which together suggest the company has incorrectly charged the government as much as $1 billion for weapons that do not work.

Those weapons systems, which are among the costliest in the Pentagon's arsenal, are latter-day equivalents of the Union army's sawdust-filled bullets, Hafif contends. The MX missile, for one, "is as likely to land in Chicago as in Moscow," Hafif says.

In early October 1986, Hafif filed a false claims complaint on behalf of former Northrop engineer Brian Hyatt, who claimed that Northrop had improperly handled parts for the MX's inertial measuring unit, a basketball-sized device that is the brain of the missile's guidance system. The false claims case was eventually dismissed because Hafif had filed it a few weeks before the 1986 amendments went into effect. Under the old law, Hyatt couldn't sue over fraud that the government already knew about, and the government was aware of the concerns about MX parts because Hyatt had already told officials shortly before he was fired by Northrop. Under the new law, Hyatt could have stayed in the case because he was the original source of the information.

The dismissal doesn't mean Northrop is free of Hafif. He has several other false claims suits in the works, including one alleging that Northrop employees destroyed internal audit documents disclosing $400 million in false labor charges on the top-secret Stealth bomber. The false costs may go as high as $1 billion, the plaintiffs allege.

Government officials and spokesmen for Northrop say action to root out much of the fraud at Northrop was well under way before Hafif came on the scene. But the pace of the investigations has certainly picked up recently. A series of other legal moves against Northrop has followed in the wake of the charges aired in Hafif's suits. In August 1987, the government filed its own civil false claims suit involving allegedly fictitious tests on the MX missile guidance system. A grand jury, meanwhile, has been overseeing a criminal investigation of Northrop involving its work on the missile guidance device.

Hafif and another lawyer in his firm, Robert S. Kilborne, have done what they can to keep the government's feet to the fire. For example, when the grand jury subpoenaed the MX missile parts that Kilborne said a client had recovered from a dumpster and turned over to him, Ki notified television reporters, who w hand to record his arrival at the cour for his grand jury appearance with th es of parts in an armored car. Haf called the media about his Stealt shortly after he filed it and while it w under seal.

Hafif says he has very good reas bringing the glare of publicity to bear cases, and for occasionally having t the government to act. The forces fighting would bury him and his com if he didn't play hardball, he says. F thing, the defendants in the action platoons of top-notch lawyers to ob the suit. "Tremendous deductible n can be thrown in against you," he "You're dealing with something that gantuan."

Moreover, Hafif adds, the governr filled with people out to sabotage claims suits. "You can't feed informa the wrong people," he says. If he publicized the Stealth suit, he say government would have clamped a lid crecy over a matter involving a radar ing bomber so secret that until rec wasn't even acknowledged to exis says the suit never would have been from again.

On the other hand, Hafif says h worked on some cases that progr smoothly enough that he hasn't nee draw attention to them. When one most recent false claims suits was p turely disclosed, Hafif says he wa tremely upset." The suit, which a General Dynamics Corp. of fraud in tract to produce the Navy's Phalan missile gun, was filed September briefly unsealed by a court clerk. could have been disastrous," Hafif "Leaks like that can destroy the op nity to seize documents. Along with puter, everyone has a shredding mac

Hafif insists he has a good workin tionship with the U.S. attorney's o Los Angeles now that the two side gotten over their initial wariness o other. Nonetheless, he's ever alert dications of government backslidin he regularly sees ominous signs. "Y suspicious," Hafif says, "when yo Reagan having dinner with [No Chairman] Thomas V. Jones and th day a motion is filed to dismiss you That's enough to create skepticism people of strong faith."

Bonner, the U.S. attorney in Los les, refused to comment directly Hafif. But he takes strong excepti

other in bringing a case to trial. The government can supply clout and access, while the private lawyer contributes undivided attention and entrepreneurial zeal.

For William R. Ramsey and his client, Rod Stillwell, the relationship between attorneys appears to be working according to that design. Stillwell could be the first to hit the jackpot under the False Claims Act. Ramsey, an Encino practitioner, began representing Stillwell in a wrongful discharge case filed against McDonnell Douglas in state court in 1984. In early 1987, Ramsey followed up the stalled state case with a federal suit under the False Claims Act claiming that McDonnell Douglas had defrauded the government on a contract for the Apache attack helicopter.

It took more than a year, but eventually the Justice Department joined the litigation. Since then the scandal has widened to involve more than the original allegations. The suit now contends that McDonnell Douglas cheated the Army out of $214 million, Ramsey says. The government was to file its latest amended complaint by the end of September, with the case headed for trial perhaps by early next year.

"It's not a field for the weak,' says Herbert Hafif of Claremont. 'It's like fighting lions without a sword.'

"My guy knew about the tip of the iceberg. We've uncovered more of the iceberg," says Ramsey, whose client is in line to take home a big chunk of the whole thing—a potential maximum share of $160.5 million, to be precise.

TO BE SURE, the litigation has not been an easy ride for Ramsey. And with every step also a push into new legal territory, Ramsey and his client have a long way to go before they pocket a dime. Ramsey has logged more than 1,000 hours so far on behalf of Stillwell's false claims case, and another 500 hours on a related wrongful discharge action. "I certainly have much more time than either of the government attorneys," he says, explaining that one federal prosecutor in Washington and another in Los Angeles have been assigned to the case.

Nonetheless, no matter who does most of the work, the statute says that when the government takes over a case, it has "primary responsibility for prosecuting the action." In the Stillwell case, the government has tended to interpret that to mean Ramsey should stay on the sidelines. But Judge William D. Keller, the U.S. district judge in Los Angeles who is handling the case, has seen it differently. He ruled August 1 that the Air Force had to show Ramsey all the materials McDonnell Douglas has turned over to the government. Attorneys for McDonnell Douglas, the Air Force and the Justice Department opposed letting Ramsey see the material. But by mid-August, he had taken possession of two drawers of files.

The private lawyers can find plenty of evidence in the law that they are supposed to play an aggressive role in the litigation. The legislative history notes that the purpose of the measure was to encourage private citizens to go after fraud that understaffed federal authorities have ignored. Even when federal prosecutors agree to join a case, the report pointed out that the private litigants have "full party status," enabling them "to keep pressure on the government to pursue the case in a diligent fashion."

There is a sharp split among lawyers who have filed false claims cases over just how much pressure should be applied. Phillips contends that a little pressure goes a long way. Los Angeles U.S. Attorney Robert C. Bonner and his in-house false claims specialist, Assistant U.S. Attorney Howard Daniels, are "excellent" partners, says

and this is a 10-year statute so it covers fraud going back 10 years," notes John R. Phillips, co-director of the Center for Law in the Public Interest in Los Angeles and the lawyer who conceived and helped draft the 1986 amendments. The law covers fraud against any branch of government. But looking at the defense industry in Los Angeles alone, Phillips observes, "you could have billions of dollars of claims."

Once the first large awards come down, Phillips predicts the public's interest "will explode like the appeal of the lottery."

THERE HAVE BEEN no blockbuster settlements yet. Only one case has been resolved so far. In April, a doctor who blew the whistle on Medicare fraud at a La Jolla medical clinic won $88,000, and his attorneys at the public interest law center were awarded $100,000. No one else has won a dime under the False Claims Act, and there has been no flood of litigation. Still, about 100 cases have been filed with the Justice Department section that has primary responsibility for screening qui tam claims. And, on average, two new cases a week are trickling in.

Not surprisingly, California, with its $35 billion a year in defense contracts, is home to a disproportionate share of false claims litigation. Perhaps a quarter of all the cases nationwide come from the federal judicial district encompassing Los Angeles, Phillips estimates. And two-thirds of all the cases, he adds, involve defense contracts.

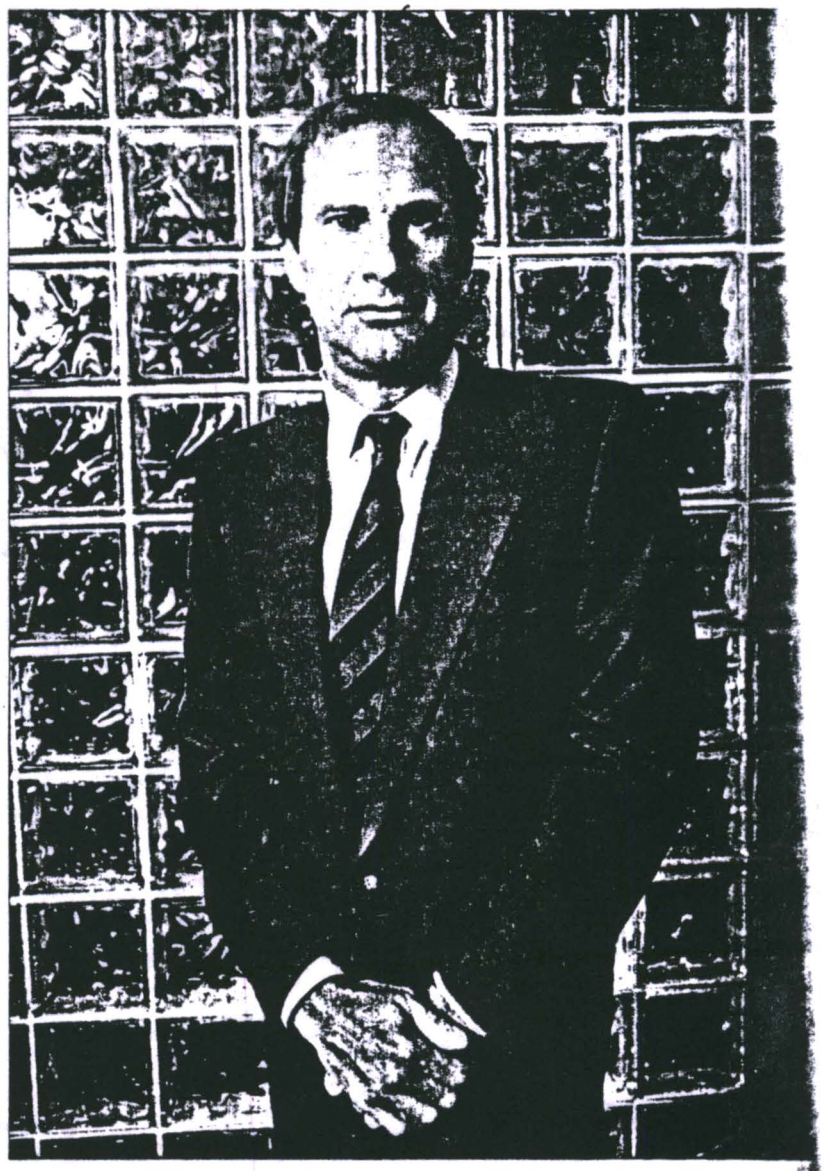
A whistleblower can launch a false claims case under 31 USC §3730 and Fed R Civ P 4(d)(4) by filing with the Justice Department a complaint and disclosure statement presenting evidence of the alleged fraud. The cases must be filed under seal, and the Justice Department has 60 days to investigate quietly and decide whether to join the litigation.

A Justice Department regulation promulgated under the law specifies that local U.S. attorneys' offices have full decision-making authority over cases in which the claim is less than $200,000. In practice, that low threshold bumps virtually all cases into the Justice Department, which has given some U.S. attorneys' offices more involvement in investigating and screening bigger cases.

The government can decide not to join a case for a variety of reasons. Occasionally, federal prosecutors may decide a claim has merit but that private lawyers can adequately handle the matter, says a Justice Department official involved in handling false claims cases. In several cases, the government has moved to dismiss a qui tam suit on the grounds that the fr rooted out by government inves without the help of the whistl Most often, the Justice Departme mines the case has no merit and t declines to join the suit. That w about three-quarters of the cases ernment has finished investigatin ficial says.

"A few are very good cases thought out and well investigated the Justice Department official, fused to be identified. "But with they've taken a disgruntled em say-so and filed the suit." Justice ment officials are frustrated that t torneys in the commercial litigati tion, which handles false claims have spent one-quarter of their ti tam suits and have recovered no m the fraud suits Justice Departme neys initiated, the government covered $130 million in recent mo

Ideally, the government prosec private attorney general comple



"You could have billions of dollars in claims," says John R. Phillips of Los Angeles, who helped open the door to private plaintiffs and their lawyers.