

## **When a Tree Falls in the Forest**

As the saying goes, just when you think you are in the clear, you get hit over the head by a falling tree branch. We had been busily monitoring the verification of our orders in Washington and everything was getting submitted as planned. All of the bases were emailing or faxing their orders directly to Barnes. I even got General Dynamics to have their Director of Systems Engineering, Dr. Robert Lentz, to contact Army Colonel Chris Cardine, the Project Manager of the Abrams Tank Systems, with a request that he write a letter to the Office of the Under Secretary of Defense for Acquisition and Technology, to the attention of Ann Barnes, asking for our 300 copies of Audre's NT software. The letter took a little effort to get written because GD's Mr. Claysmith had just retired and I had to get his replacement, Dr. Lentz up to speed. It certainly helped to have General Dynamics Gordon England on our side. Gordon was then GD's Corporate Executive Vice President, reporting to their CEO and in charge of the Land Systems, Submarines and the F-16s among other things. He was a very, very powerful person and as you would expect, extremely intelligent. GD's Sea Wolf submarine had been one of the first complex weapon systems to be entirely designed on CAD and Gordon was an engineer by background and completely able to understand how Audre could dramatically boost their productivity.

Gordon would normally have been the type of executive that I would never have gotten to speak to. Unbeknownst to anyone in the government and in one of those special coincidences, George Nassos, PhD., one of our long-standing major shareholders and the former Chairman of the Audre Credit Committee before joining our Board of Directors to help reorganize the company, knew an associate of Gordon's. George was the Director of the University of Illinois, Stuart School of Graduate Studies Environmental Institute. A chemical engineer by training and a former Vice President of Waste Management when it was growing quickly under Wayne Huizenga's management, George had returned to academia and as was typical of people with his experience, he was serving on the boards of a couple of companies.

George is a smart man from an exceptional family. His older brother, Tassos Nassos, MD (one of my all-time favorite names), was an exceptional surgeon in Chicago and they both must have blitzed through organic chemistry, because George got his doctorate in it and came to specialize in recycling.

A lot of his expertise is in renewable resources like methanol retrieved from waste or wind power, but he also knew a lot about petroleum and automobile tires. It turned out that George was a Director of a company that recycled oil and tires that was run by an executive who had previously been the General Manager of GD's Land Systems Division. Not only had he been the General Manager, his chief engineer at that time was none other than Gordon England. A lot had changed over the years, but some things remained the same, including his former secretary, who now worked directly for Mr. England.

The short story was that I was given the chance to speak with Gordon and not only did we get along well, he immediately grasped the significance of Audre's technology and welcomed the chance to deploy it at General Dynamics. Gordon asked Claysmith to coordinate with me and after his retirement, he made the same request of Dr. Lentz. The one thing that gets an immediate response in a large organization is a communication from the guy in the executive suite. As a result, Dr. Lentz was quickly on-board and by June 2<sup>nd</sup>, Colonel Cardine's letter was on Barnes' desk. We were certainly doing our part, but not much was being heard from Adams or Barnes. I decided to hop on a jet and pay them a visit in person to move things along. My timing was, as they say, inauspicious. Having made arrangements to meet with Adams, I was more than a little surprised to find a new guy, Louis Kratz sitting at his desk. To add drama to the mystery, Kratz was all in lather and speaking to me in hushed tones. Well, he relays to me, it turns out the golden boy Adams had tarnished his reputation in some unspeakable fashion. Kratz then tells me he was personally ordered to fire Adams and immediately escort him out of the building under guard. Kratz was in fact in the process of boxing up Adams' personal possessions so they could be sent to him, when I arrived.

Now I had been around the military and Pentagon by this time for fifteen years, and I knew that they did not casually fire and then escort someone out of the building under armed guard unless it was something very, very serious. Their typical style was to transfer someone to a place similar to Siberia, where they would park their career until it became so obvious that they would end up seeking a job outside of government. That was such a frequently used tactic that it often seemed that the majority of personnel at remote bases were spending most of their time looking for jobs. It was also common and completely unethical for government employees to solicit jobs

from the companies they work with; an approach that often included the trading of benefits for favorable terms when they entered their workforce.

I certainly informed Lou of the purpose of my visit and the urgency of our getting our orders filled, but he seemed deaf and distracted. I also let him know that I could more than fill his ear with my opinion of the Program Manager he had inherited, but that could wait for the proper circumstances. At this time, nothing was more important than his fulfilling the requests that were piled up for our product. Kratz then launched into a short speech about how he was selected to replace Adams because of his integrity and close working relationship with the Under Secretary, and that I could count on his diligence in doing the right thing. At best it was disconcerting, and at worst it could be a disaster. The odds seemed to favor it was a disaster. Adams showed up the very next week working from the Alexandria office of his new employer, Brent Wilkes. When I heard that, I was instantly on the phone with Kratz, demanding to know when exactly was he going to place our orders. The news went from bad to worse. Kratz whispered that yes, indeed Adams and Wilkes had been suspected of some illicit interaction and that he was not surprised to find Adams working for ADCS, Inc. He also confirmed that Barnes was also viewed with suspicion and the office was so compromised that he had decided to call in the Inspector General to investigate.

Inspector General Clouseau once again on the case. Not only would that bring everything to a halt, it would invariably result in nothing to hang your hat on, so to speak. I immediately informed Duncan's office of the fiasco, and once again he saddled up and rose to the occasion. This time Duncan, empowered by Adams' letter to him and the confirmation of General Dynamics' interest, placed a call directly to Dr. Jacques Gansler, the Under Secretary of Defense. The conversation was brief and to the point, a reiteration that all valid orders should be filled as was agreed during our engagement to be tested and again in Adams' letter of commitment. That was reassuring, but with Kratz seemingly suffering paralysis by analysis of the programs obviously deeply entrenched problems, this was not going to be easy. This program, Duncan's Chief of Staff informed me as I packed my briefcase to leave, was a real problem and it was in her opinion beginning to look like more trouble than it was worth. I left Washington completely dejected. I had every reason to expect that I would be returning home with a large purchase order. Instead, once again, defeat had been snatched from the jaws of victory.

My next unpleasant assignment was to report all of this to the bankruptcy court. Of course, they had time to hear all about it before the Fourth of July and the date in court was set. It was short, but far from sweet. Chris Celentino was calm, cool and collected in presenting to the court that the documentation was overwhelmingly positive and that the company had done its job and the Pentagon's problems would get resolved on a timely basis. The judge seemed willing to give us the benefit of the doubt, as did both the Credit Committees. Just when it seemed the gavel would strike and we could all go home, the US Trustee asked to make a motion. Representing no one, but supposedly the interests of the government in insuring that the creditors get their due, she then proceeds to place the court on notice that they would be immediately filing to force the company into Chapter 7 proceedings so it can be liquidated. Have a nice holiday.

There is no other feeling that compares to the one you get when you have your own government as your worst enemy. Just like the SEC and the IRS before them, the Trustee seemed to delight at jumping on any chance to destroy all of our efforts. One would think that if the United States Department of Defense had just the month prior written a letter stating they intended to buy millions of dollars of our software, they would show the company some respect. With all the creditors willing to hang in there, and of course given that the US Trustee had never emitted a peep when everyone was trying to take over the company or after their schemes were revealed, it was strange timing at best. I could not get over it, and both Chris and Russ promised to look into it as they were just as perplexed as anyone.

Exactly like the IRS's efforts to force my entire personal liquidation through a "Jeopardy Assessment" as soon as I informed them that I had just entered into escrow to sell my nursery and would be paying them in full within thirty days, because their pay was tied to a performance incentive if they did so, so it went with the Trustee's office. Apparently, word had come down from Washington to commence clearing their case dockets, and the Trustee was just blindly following their orders in proceeding to process Audre's liquidation. Despite their acknowledgement that they would be destroying any chance of the creditor's recovery, and more importantly all the lawyers chances to get paid, they stubbornly went forward and filed a motion to compel the company into liquidation.

Poor Chris. He had just agreed to take our case, and now this tragedy had transpired. It all was looking so good with the letters and the orders, and

then shit happens. I was in a rage, and he was now in too deep to back out. We soon determined to fight this like hell. My assignment was to get Duncan into immediate action, while Chris again tried to reason with the Trustee and failing that, coordinate universal opposition to their motion within the creditors and the committee lawyers. Of course, Lundell, who capitulated on his own motion to liquidate the company after I had the company sue him within weeks of my returning to office for no less than twenty-six million dollars, for “breach of fiduciary duties, intentional interference with prospective economic advantage, and intentional interference with contractual relations” (the divorce settlement), was thrilled at the news. Not willing to face the music for his conduct in deliberately throwing Audre into bankruptcy, and for his conflict of concealing software assets while voting to sell the company, among other transgressions, he agreed to leave the playing field entirely by settling all his claims against the company for stock in Audre, and swearing that he had no further say to any company assets or obligations. It was one of those deals, like letting Holland go when he returned the software, which I came to regret. At the time of the settlement, it was considered a significant victory because it turned our number one adversary into a shareholder whose only chance for reconstitution would be as a result of the successful reorganization of the company. It also sent a signal to all the other problem petitioners that I would not hesitate to go for their jugular if they forced my hand.

The problem was that Lundell had been proven profoundly dishonest and completely caught up in his schemes. His huge ego made him delusional that he was smarter than his intended targets. The mad doctor delighted in coming up with not only plans “A” and “B”, but he would foist 3-dimensional strategies against his targets, hoping to overwhelm them into submission. I called him Dr. Hyde, and no one knew better than me his complex conspiracies, but once again he called upon my sympathies in setting the hook. After Russ and I filed what everyone deemed to be a shockingly aggressive lawsuit against him, with full knowledge that we could prove every assertion, he broke protocol and directly telephoned me. Sounding like a beaten man, he asked that I remember our better days and as everything had gone to shit for him, he was more than prepared to settle and resume the simple life of a country doctor. I stupidly bought it and said that I would convert the adversarial proceeding into a potential asset if we successfully reorganized, providing that he indeed packed up his bag of scalpels and disappeared back into the desert.

Well, within months of that settlement, rumors began circulating that he and Holland had formed a company named "Phoenix Systems" that had just introduced an Audre "look alike" NT software product. I had our lawyers check out the story and lo and behold, Lundell had incorporated the company in August of 1997, the same month Vector knew its takeover attempt was going bust and while they still retained access to Audre's source code. It was just a month later that I forced Holland to return our source code, but despite his claims not to have made copies, Phoenix Systems was already operational and preparing to sell our product. Lundell's takeover strategy was now onto plan "C" - the capital theft of all of the company's assets. After he could not get his brother to run it successfully, and failed to purchase it through Vector, he was now resorting to just plain stealing it. I am sure they had quite a laugh over naming the company Phoenix Systems, since it was truly attempting to rise out of the ashes of all his previously failed schemes. His only impediments appeared to be Holland's complete incompetence, the fact that he had once again teamed with Schreck, and in a new move; he placed his son in charge of sales.

Thinking back to their earlier chumminess with Intergraph, and Slate's immediate hostility to me when I regained control over Audre, it started to become clear that their most probable plan to market the Phoenix software would once again include the headhunters from Huntsville. Schreck, Lundell, and certainly his son Dan, held no clue as to how to market their contraband product to the military and its endorsement by Intergraph would go a long way towards clandestinely establishing its credibility, and their desires to kidnap Audre's opportunity. I asked Peter to place a flurry of calls to a couple of co-workers that were rumored to be working for Phoenix. Sure enough, three of them confirmed they had joined Phoenix after Lundell and Schreck approached them with a story about their receiving ownership in the source code in return for all the investments Dr. Hyde had made during the aborted takeover attempt. Peter and I knew Pat Knoll probably understood better, but for a couple of our former Russian colleagues, it was all a bit complicated, and we appreciated that they would be gullible to Lundell's lies.

Lundell had portrayed himself as the noble savior of Audre's intellectual property in its confrontation with all the problems I had caused. It was a real sob story that he sang, and it succeeded in sanctifying him in the eyes of many of the company's subordinates who did not know better. Despite their still lingering loyalty to Lundell, we found them to be quite open and willing to share what they knew with Peter and me without any of the hesitation that

comes from someone with something to hide. I forgave their naiveté, and asked only that they think about the circumstances of their employment in light of what I told them had actually transpired. If they concluded that it was in fact an illicit enterprise, they we would stay in touch and possibly offer them the chance to return to working for Audre.

They did not know much, as they were told little and interacted with the other Phoenix personnel even less. Set up like a virtual corporation, each worked from their own house and only on the occasion of their delivering code to Holland would they have any cause for casual conversation. It did come about, however, that the jerk had briefly bragged about them becoming partners with Intergraph and that the company had been sent a copy of the software. That was enough for me, and I immediately contacted Ian. With his previous experience working for the US Attorney's office and knowledge of trademark enforcement, he offered to contact the local office of the FBI with what we had learned. Armed with our police report from the Holland stakeout, and a bundle of documentation regarding our Defense program and Intergraph's participation, the FBI agreed to take a close look into our accusations that Intergraph was in possession of contraband stolen from a company under the protection of a federal bankruptcy court. The agent appeared at our office, and although he was no Elliot Ness, being noticeably more the accounting type, he quickly understood the gravity of the situation. In short order, the US Attorney sought a subpoena from the standing Grand Jury and it was delivered with a bow on it to the offices of Mr. Jim Slate at Intergraph's Huntsville headquarters.

It came as no surprise to us when the FBI agent called Ian and I to inform us that indeed Slate had admitted to holding a copy of the Phoenix Systems software, and that it was turned over to them without incident. Intergraph professed no knowledge of the conflict to the rights of the ownership of the software, but they also did not ask any questions. Without any shadow of a doubt, they sure as hell knew to recognize it as Audre's technology, and as with their incessantly sending me their termination letter; they knew how to reach me to gain an insight should they have harbored any honest intentions. We knew where they stood and that they would do anything to co-opt Audre's opportunity. We were thrilled to have the FBI catch them red-handed and with their criminal prosecution of the matter, the whole cabal of conspirators would soon be on trial for bankruptcy fraud and the theft of intellectual property. The cumulative fines and penalties were significant; a fitting sendoff for the scumbags that had so caused so many problems. Our

celebration succumbed to shock after the agent finally returned our many calls asking to review the evidence, and inquiring about their timetable for prosecution.

In a conclusion only a government can conceive and convolute, the US Attorney's office decided that they had other priorities and that they would not only not prosecute the case, but they would also be withholding the evidence from us that we needed to file charges of our own. Oh yeah, they would also not admit that the entire episode had ever happened. By way of clarification, the agent explained they had acted under the authority of a Grand Jury, and since those proceedings were secret unless they led to a prosecution, not only was the evidence not going to be released, they would be in violation of the law should they even acknowledge its existence! To make this perfectly clear, yes, they had seized stolen property from the executive offices of a major defense contractor and no, they would not mention it, let us have our own property back or allow us to use the evidence to initiate a case against anyone. That included not acknowledging anything relating to this even if we took the matter before our case's presiding bankruptcy judge, a person federally appointed to be responsible for all assets under his jurisdiction. Period, end of subject. Have a nice day.

I do not know if Intergraph pulled out all the political stops to prevent their being embroiled in a possession of stolen property and theft of opportunity suit or not, as I sure as hell would have sued them for tens of millions had we been given the chance. Lundell and Schreck would have gotten a quick comeuppance and many of the conflicts that continued to arise from their catching a pass on this one could have been stopped from ever getting started. Even to this day, the US Attorney's office is a political football getting bounced back and forth by the big guys, despite their protestations to the contrary. San Diego's US Attorney, Carol Lam, got fired because she went after Cunningham, and was discovering compromising evidence of Lewis' complicity. So, what's new? As a result of this and despite their attempt to push responsibility for dropping the ball to the prosecutors, the FBI came to represent to us nothing but fumlbers, bunglers and incompetence. As such, they could join the ranks of other agencies like the IRS, SEC, DCIS, who proved useless in helping Audre or worse and whose initials could also be converted to more representatively derogatory descriptions. Gunshot from this abortion and with everything else that was going on at the time, I elected to resolve our issues with the DoD before again tracking Phoenix down, and taking them out once and for all.



The next bit of news was Richard faxing me a couple of days later an email from Barnes, wherein she claimed a complete lack of validation from the service reps for Audre's requirements. Not caring whether we continued to be a problem or not, I immediately sent Vickie Middleton a letter, with a copy to Duncan's District Chief of Staff, Wendell Cutting, dated June 19, 1998, explaining in detail that our then 447 orders had all been validated on a timely basis and we held the proof. I also reminded her that Barnes had attempted to skew the original NT test results and once her deviousness was discovered, the retest produced a diametrically opposing and positive outcome. Now her latest ploy was to not respond at all, and it was inflicting serious damage on us in our attempts to reorganize the company. With \$ 5.2 million of Wilkes' product having already been purchased with '97 funds, I concluded with "Demand continues to grow for our product as we have been in use by the Defense community for over ten years. In that time, Audre has won all competitive evaluations and has always professionally serviced our customers, including re-writing, at our expense, our entire software into three different versions as requested by the Department. I do not understand why after earning our position to be the ADCS software provider, Ms. Barnes continues to stifle our success, while in turn supporting what can best be called a third-rate foreign supplier. As always, your insight would be appreciated at this critical juncture."

While I waited for a response, a '98 procurement funds budget allocation from Barnes office was clandestinely faxed to us on June 27<sup>th</sup> by a sympathetic government worker. Low and behold, it had a line item specifically for "NTIS (ADCS, Inc. software), \$5 (M) CA8ZKV8MPPD348." It was outrageous for the Department of Defense to budget directly for a vendor's product, and not associate it with a corresponding military program. It was especially notable since all the other allocations made reference only to agencies like FEDSIM (which was our project), Marine Corps, NAVSEA, NAVAIR and the VA, which I did not know at the time turned out to be another \$5 million for Wilkes. It was also unusual to have the Pentagon allocate money to the VA, since they were the responsibility of the Housing and Urban Development Appropriation Subcommittee, a separately funded agency. I placed a call to Kratz, and let him have an ear full about Barnes. I told him the entire story from day one, the attempted stock option bribe, the interference with the testing, Wilkes and Foggo's taping of Karpovich, CACI's complicity, rumors of her and Karpovich getting options in Tomahawk, and now with the procurement fund allocation having been sent to us, I knew she

had plans to purchase over \$5 million of Wilkes' German product (it turned out to be \$10M) and was busy hustling millions of additional dollars to Tomahawk.

Rather than step up to the plate and take charge, he sounded dizzy, like one of the three-stooges after getting hit too much and his only concern appeared to be finding out who sent us the budget allocation. I screamed it was not the who that counted, it was the what that was important, and that with all due respect to him being new to the job, I was not going to sit by and continue to get screwed by Barnes and his office. It was now clear to me that Barnes was going to take it to the brink no matter what. She was believed, along with Karpovich, to have taken stock options from Tomahawk, and gotten extorted by Wilkes and as a result, she was steadily dumping our product orders into the garbage. With Kratz clearly paralyzed, and as much as no one could appreciate more than I his getting preoccupied looking under every rock for another scorpion, I was out of time and in dire need of taking our case directly up with Hunter and Gansler.