

William Hamilton to Lars Schall May 2016:

Software Features That May Explain the Attraction of PROMIS to U.S. Intelligence

(1) PROMIS' On-Line Cross-Reference Searches.

A typical PROMIS end-user in a large urban public prosecution office, if asked to identify what he or she found most useful about PROMIS in the final decades of the 20th Century, might have offered the following answer: the extremely fast responses from online cross-reference searches of the PROMIS database.

As background, the first prosecution agency to install PROMIS found, from its PROMIS case-flow statistics, that a small proportion of repeat offenders (7%) accounted for a disproportionate volume of the cases (24%) over a five-year period because each of this subset of offenders had been arrested at least four times during the five-year period. These repeat offenders apparently made their livings from property crimes, such as burglary, larceny, and robbery. These offenders, who had acquired an understanding of the dysfunctions of overworked, mass-production-type urban court systems, exploited them to reduce the likelihood that their cases would receive the kind of effective trial preparation, that such cases deserved from a crime control perspective. Different assistant prosecutors, defense counsel, and judges were typically assigned randomly to each new case, with no one focusing on the obvious investment opportunity for prosecutors seeking to incapacitate through conviction and incarceration such prolific offenders.

PROMIS' online cross-reference inquiries made it possible for the first time for prosecution offices, at the point of intake of new arrests, to conduct extremely rapid searches of all of the pending cases in their jurisdictions to find every case against each new offender. This enabled repeat offenders' cases to be assigned to more experienced prosecutors with smaller caseloads who could attempt to incapacitate them through conviction and incarceration.

This rapid online PROMIS cross-reference search capability was also important to the U.S. intelligence community. A consistently reliable INSLAW source regarding the U.S. intelligence community's misappropriations of PROMIS claimed that the CIA found PROMIS' online crossreference search capability so important to the CIA's own unauthorized, copyright-infringing PROMIS applications that the CIA attempted, but without success, to find a way to preserve the extremely rapid INSLAW cross-reference search capability without continuing to infringe INSLAW's PROMIS copyright rights.

(2) The PROMIS ONLINE DESIGN Subsystem.

If a PROMIS computer systems engineer at a prosecution office had been asked what was important about PROMIS, he or she might have offered the following answer: the PROMIS subsystem, Online DESIGN, the PROMIS software subsystem that enables each customer organization to adapt the off-the-shelf version of PROMIS to each customer's unique database design and workflow requirements without the need for conventional, time-consuming, expensive, and error-prone manual changes to the PROMIS software source code. The interactive PROMIS Online DESIGN subsystem takes the customer's answers to a series of online questions and uses them to insert values into data tables that customize the PROMIS system.

The Reagan Administration evidenced in the fall of 1982 the fact that it was fully aware of the revolutionary potential of the PROMIS Online DESIGN subsystem for case control applications in federal government agencies. The General Services Administration (GSA), the sole authority for the federal government's procurement of computer software, confirmed the importance of the PROMIS

Online DESIGN subsystem in an October 14, 1982 letter to the director of the General Accounting Office (GAO) about its forthcoming report calling upon upon the GSA and the White House Office of Management and Budget (OMB) to provide more effective leadership to induce Executive Branch agencies to switch away from traditional custom-development projects for software for common federal government applications such as personnel, payroll, and case control, and toward the government's licensing of pre-packaged application software products such as PROMIS. The GSA letter cited INSLAW's success with the PROMIS software, and INSLAW's investment in making PROMIS a "framework-type" software product whose generic capabilities could be customized by users, and depicted this approach as an essential pre-requisite to success of prepackaged application software products in the federal government market. The GSA letter further stated as follows about PROMIS: "Although this system was designed for State and local government legal case tracking, it has been modified to track inmates in jail, parcels of land, tort cases in New York State, and is in use in all 94 U.S. Attorneys Offices and several other federal agencies. This system could be further modified to track welfare recipients or any function requiring tracking."

The Reagan Presidential appointee responsible for day-to-day management of GSA happened to have a correct insight into the vast federal marketplace for PROMIS as early as in 1982, the second year of the Reagan Administration. As seen, he also observed in his letter that PROMIS was so easily adaptable that it could be used to track anything that needed to be tracked in the federal government, including federal welfare recipients. It was reported by the New York Times ("Reagan proposal seeks data bank on 25 million welfare recipients", April 10, 1981), that President Reagan proposed to House Speaker Tip O'Neill early in the Reagan Administration the development of a new computer system to track the 25 million Americans on federal welfare. Reagan later withdrew his proposal for unknown reasons.

(3) Quantitative Analysis of PROMIS' Empirical Data on Effectiveness of Resource Utilization.

In a June 1978 cover story in the Saturday Review, the New York City Deputy Mayor for Criminal Justice, who had earlier served as both a local and a federal prosecutor in New York City, explained that one of the most important uses of PROMIS for someone like himself, whose responsibilities include oversight of the city's use of its resources, has been finding out what happens after arrest and what policies and programs appear to be working. He cited INSLAW's published empirical analyses of PROMIS case flow statistical data as an important source of insight into what happens in the court system.

Examples of these INSLAW publications included Who Gains and Who Loses in Plea Bargaining?, The Existence and Extent of Unwarranted Disparity in Sentencing, Re-Offending While on Bail, and an analysis of what those police officers whose arrests typically stick in court do differently from those police officers whose arrests are typically dismissed (such as arriving at the crime scene quickly, a circumstance correlated with an improved probability of finding additional witnesses and/or physical evidence, each of which factors independently increases the probability of prevailing in court).

It was a similar concern on the parts of the U.S. Senate and the White House Office of Management and Budget (OMB) over their need to do a better job evaluating how effectively U.S. Attorneys Offices and the litigating divisions at Justice Department Headquarters were using the resources given to them that led the Senate Judiciary Committee to pressure the Justice Department in the late 1970s to conduct pilot tests of PROMIS in large U.S. Attorneys Offices, in order to track both criminal and civil litigation and legal process debt collection cases, and in the Justice Department's Land and Natural Resources Division, one of the litigating divisions at Justice Department Headquarters, in order to track civil litigation of land claims. The Senate's oversight report also

documented the series of failed and expensive Justice Department projects to custom-develop case management software for U.S. Attorneys Offices.

INSLAW has no knowledge of whether the U.S. intelligence community, which allegedly installed unauthorized, copyright-infringing copies of PROMIS as the compatible database software for gathering and disseminating U.S. intelligence information, between the entities that “produce” such information and the entities that “consume” such information, has ever conducted comparable quantitative empirical analyses of the PROMIS case-flow data.

1 “Federal Agencies Could Save Time and Money with Better Computer Software Alternatives,” GAO/AFMD 83-29, May 20, 1983.

2 “Getting Away With Murder: Our Disastrous Court System,” Nicholas Scoppetta, Deputy Mayor of New York City for Criminal Justice, *The Saturday Review*, June 10, 1978.

3 Department of Justice authorization and oversight: hearings before the Committee on the Judiciary, United States Senate, Ninety-Sixth Congress, first session, U.S. Government Printing Office, 1979.