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# The failure of an early episode in the open government data movement: A historical case study

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## ABSTRACT

The open government data (OGD) movement that focuses on government transparency and data reuse did not appear out of thin air. Some early episodes of this social movement can be traced to the early 1990s. This paper presents a historical case study of such an OGD episode, a campaign targeted at a government database called JURIS, initiated by OGD advocates in the early 1990s. JURIS was a legal information retrieval system created by the Department of Justice and used by government employees, which contained federal court decisions (or case law), among many other primary legal materials. Public interest groups and small publishers intended to open up the database for public access and data reuse, but their effort failed and eventually led to the shutdown of the JURIS system. This paper provides a detailed account of the history, analyzes the reasons of the failure, and discusses outcomes of the campaign. Drawing from social movement theories, especially the political opportunity structure, the paper illustrates the complexity of the social political environment surrounding the OGD movement, especially with regard to an important type of government data, primary legal information, in the United States.

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## 1. Introduction

Open government data (OGD), an international phenomenon aimed at making government data (“data produced or commissioned by government of government controlled entities”) publicly and freely available in digital formats for use, reuse, and redistribution, has been gaining momentum in the past ten years ([Open Government Data, n.d.](#)). OGD may seem to be one of the many “openness” social trends or movements inspired by “open source”, including open access, open knowledge, open science, open education, open innovation, and free culture ([Davies & Bawa, 2012](#); [Willinsky, 2005](#); [Yu & Robinson, 2012](#)). In these movements, the notion of openness is utilized to challenge the closed system established in various areas and emphasizes a new norm of access, sharing, and collaboration enabled by technological advancement ([Davies & Bawa, 2012](#)). Yet OGD probably has a closer connection to the long existing concept of public access to government information. In the U.S., for example, public access to government information has always been considered “essential to the realization of a civil society, democratization, and a rule of law” ([Perritt, 1997](#)), and the emphasis on public’s right to know and right to information access was demonstrated through the establishment of the federal depository library program and the passage of the Freedom of Information Act (FOIA) ([Shattuck, 1988](#)). The OGD trend highlights public access to

data, but is more technology driven, aiming at both government transparency and data reuse.

What is the nature of OGD? In the EBSCO Business Thesaurus, the official term for open data is “open data movement,” defined as “the movement that advocates for open data that is free and equally accessible to everyone to use as they please without restriction.” In the literature, many researchers have also used “movement” to label OGD (e.g., [Attard, Orlandi, Scerri, & Auer, 2015](#); [Davies & Bawa, 2012](#); [Dawes, Vidiasova, & Parkhimovich, 2016](#); [Janssen, 2011](#); [Lourenço, 2015](#); [Ohemeng & Ofosu-Adarkwa, 2015](#)). However, they often do so in a casual manner without further specifying why OGD should be considered as a social movement, and how, as a social movement, OGD has originated in recent history, attracted participants, gained support from the public, and developed over time. Most of these authors discuss OGD from legal and policy perspectives, treating OGD as government initiatives/programs/projects/plans, largely overlooking the “movement” aspects. Similarly, many seem to consider OGD, within the U.S. context, as a political phenomenon that formed in the late 2000s, signified by the establishment of the eight principles for OGD and the Obama administration’s Open Government Initiative (e.g., [Dawes, 2010](#); [Fretwell, 2014](#); [Veljković, Bogdanović-Dinić, & Stoimenov, 2014](#)).

OGD did not appear out of thin air in the U.S. It is a social movement that presents “a collective, organized, sustained, and non-institutional challenge to authorities, powerholders, or cultural beliefs and practices” ([Goodwin & Jasper, 2015, p.4](#)). In fact, as early as the 1990s, activists already started the OGD social movement in its modern

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form, requesting free or low-cost access to government data/information with the purposes of more government transparency and data reuse. Several early episodes of the OGD movement are worth noting: one was the successful opening up of EDGAR, a database that contains financial information critical for investors and traders; the other was a failed attempt to open up JURIS, a legal information retrieval system containing federal case law developed by the U.S. Department of Justice (DOJ) and used for in-house searching by government employees. This paper studies the latter as this failed challenge has received much less coverage in media and in the literature than the successful EDGAR case.

Although quantitative data is emphasized in today's OGD movement (Bates, 2012), in this paper, primary legal information is considered as a particular type of government "data" because in the JURIS case, the legal information is not only considered as government information, but also data that can be reused and redistributed for different purposes such as information retrieval research and raw material for innovative, value-added information services. In the JURIS campaign, activists' goals were very similar to those in today's OGD: making public data open to the public, technology innovation, government transparency, and data reuse. It is also worth noting that, in the U.S., primary legal information is a particular type of government information, and it is of utmost importance for citizens to have convenient access to laws, statutes, codes, case reports, and other legal data in order to be informed and empowered (Jaeger & Bertot, 2011). However, while practicing legal professionals, legal scholars, and law students are relatively well served by commercial legal information providers, public access to legal information in digital formats has always been challenging (Arewa, 2006). Digital legal information is often financially unfeasible to obtain, especially for the low-income population, and therefore the general public has only limited free access to reliable digital legal information (Jaeger & Bertot, 2011). Over the last twenty years, the idea of public access and free access to legal information has undergone a transformation as an increasing number of online legal resources have appeared in different parts of the world (Greenleaf, Mowbray, & Chung, 2013). Today a great number of legal resources are free over the Internet for public access, but a close look at the recent history shows that even with legal information, a strong case for public access, the OGD movement did not come to success easily.

This study considers the JURIS case as an early episode of the OGD social movement, which challenged the legal information access norm in the early 1990s. This challenge might have led to public access and reuse of an important government dataset but eventually failed. This paper presents the findings of a historical investigation into the shutdown of the JURIS system and the consequences of this challenge. It focuses on two research questions:

RQ1: What are some of the factors that affected the outcomes of this early episode of OGD movement?

RQ2: What are the consequences of the JURIS campaign beyond the direct outcome—campaign failure and system shutdown?

Through investigating the case of JURIS as the failure of an early OGD episode, this paper revisits the notion and reality of public access to digital legal information from a historical perspective within the OGD context. Primary legal information is an important category of government data and is crucial to the public, especially pro se litigants. The significance of the case lies in its historical value—an instance in the historical moment when public access to digital government information became a theme in the social political arena. An investigation of the historical case contributes to the broader OGD research because it enhances our understanding of the historical development of this important social movement. Analyzing a failed case is especially interesting because social movement researchers are more likely to study successful cases, while failed cases may be more illuminating and can provide useful lessons to activists and policy makers. Drawing from social movement theories in the analysis, this paper may also contribute to the theoretical discourse on social movement outcomes.

## 2. Literature review

To situate the JURIS case in a research context, two areas of existing literature are relevant: conception and history of OGD and outcomes of social movement. This literature review summarizes relevant literature in these areas.

### 2.1. The historical origin of open government data

Katleen Janssen (2012) argues that the "links of OGD with other, pre-existing movements demanding for government information, openness or participation, have been underexposed." Indeed, among nearly forty articles published on *Government Information Quarterly* since 2009 that discuss open government and/or OGD intensely, most acknowledge the origin of OGD briefly from the perspective of recent policy agendas in different countries (e.g., Dawes et al., 2016; Gonzalez-Zapata & Heeks, 2015; Jetzek, 2016; Jung & Park, 2015; Sieber & Johnson, 2015). Within the US context in particular, researchers emphasize the efforts from the Obama Administration on promoting transparency and civic engagement and discussed the OGD initiatives/programs/efforts established after former U.S. President Barack Obama issued the Memorandum on Transparency and Open Government in 2009 (e.g., Kassen, 2013; Kimball, 2011; Lee & Kwak, 2012; McDermott, 2010; Veljković et al., 2014).

Researchers who track the historical origin and evolution of OGD typically consider the international OGD as starting from "the constitutional right to know" and growing into regulations or policies in different countries (Luna-Reyes, Bertot, & Mellouli, 2014). The relationship between OGD and right to information (RTI) have been explored in detail in the literature (Access Info Europe & Open Knowledge Foundation, 2011; Janssen, 2012; Yannoukakou & Araka, 2014). Connections with other movements or communities have also been identified. For example, researchers have provided in-depth accounts of the links between OGD and the reuse of public sector information (PSI) in Europe (especially Bates (2012), with a focus on OGD in the UK, also see Janssen (2011) and Davies (2010)). According to Bates (2012), the pursuit of OGD by civil society actors (including the business community) in the UK can be traced to at least the 1970s. In addition, the linked data/semantic web community is also considered to have connection with OGD (Tinati, Halford, Carr, & Pope, 2011).

Joshua Tauberer, an OGD advocate, software developer, and creator of GovTrack.us, traces the history of OGD more extensively, with a similar emphasis on its connection with the traditional concept of free access to government information. In his book *Open Government Data: The Book*, Tauberer (2014) clearly labels OGD as a "movement" and a "small part of the broader open government movement which encompasses classic open government (such as the Freedom of Information Act) as well as the newer fields of citizen participation and citizen experience" (p.1). Tauberer considers the ancient origin of OGD to be open access to law. He traced the history of law from ancient Athens and Visigothic Europe to ancient China and Kingdom of Sweden, and found connections between the dissemination of law and government records and today's OGD movement. Citing Putnam (1962), Tauberer maintained that the early codification of law is connected with the very idea of equal access to justice.

Tauberer (2014) then discusses the open government movement as a precursor of OGD in the middle of the 20th century and the enactment of the FOIA in the U.S. as a milestone of the movement, which echoes some others scholars, for instance Abu-Shanab (2015), Luna-Reyes et al. (2014), Ganapati and Reddick (2012), and Yu and Robinson (2012), who consider open government an old concept related to FOIA. According to Yu and Robinson (2012), initially connected to the notion of public accountability, open government originated from the 1950s and played a role in the passage of the FOIA in 1966 and was almost synonymous to public access to information in the next decades.

Tauberer (2014) argues that the modern, 21st century OGD began in the early 2000s when the open government movement had a major shift due to “the infusion of technologists into the movement” (section “The 21st Century: Data Policy”). Technologists saw the important role of government data in democracy and started the trend of civic hacking—“a creative and often technological approach to solving civic problems” which often involves “the use of government data to make governments more accountable” (section “Civic Hacking”). The formation of the Sunlight Foundation in 2006, the success of the Open House Project, and the creation of the “8 principles of Open Government Data” were important developments of this movement. According to Tauberer, President Obama’s Open Government Directive “re-framed the world-wide movement” because it established three principles of open government—transparency, participation, and collaboration (section “Modern open movement”). Meanwhile, the passage of a wide range of data policies in different countries (and different levels of government agencies in these countries) signified the changes of legal framework for the OGD movement (Tauberer, 2014).

Especially interesting and relevant to this study, Tauberer’s account of OGD history includes a few cases of “data liberation” in the 1990s in which important government information was made available on the Internet for public access, including the creation of *Thomas.gov* (legislation information) by the U.S. House of Representatives and the opening up of the EDGAR database through efforts of activists. EDGAR, the Electronic Data Gathering, Analysis and Retrieval System is a database of disclosure documents that corporations submit to the U.S. Securities and Exchange Commission (SEC) on a regular basis. These documents are critical for investors and traders to make informed decisions, but the system was operated by a private sector company and charged a high price for the public. In 1993, activists led by Carl Malamud, founder of foundation *Public.Resource.Org*, purchased access to the EDGAR database and made it freely available to the public on the Internet, with a grant from the National Science Foundation and the help from other interested parties including the New York University (Markoff, 1993). After providing the free service for two years, Malamud successfully motivated the SEC to adopt this service as the official method of distributing EDGAR freely to the public (“S.E.C. Seeks to Keep”, 1995; Tauberer, 2014). Tauberer (2014) attributes the success of opening up EDGAR to external pressures on government agencies. He is probably the only author who has connected these 1990s data liberation cases with the OGD movement. In his account, however, the failed JURIS campaign was not mentioned.

## 2.2. Outcomes of social movements

Research on social movements has generated extensive case studies, theories, and models that can help explain social changes, protests, and political campaigns. For example, relative deprivation theory, resource mobilization theory, and political process theory have been extensively used in early research to explain the origins, organization, and outcomes of social movements (Gurney & Tierney, 1982; McCarthy & Zald, 1977; Tilly, 1978).

In the past few decades, political opportunity structure (POS), a loose conceptual framework used by political process theorists, has been particularly influential (Porta & Diani, 2006, p.16). As the central theoretical concept in the political process theory, political opportunity structure is “consistent—but not necessarily formal or permanent—dimensions of the political struggle that encourage people to engage in contentious politics” (Tarrow, 1998, pp.19–20). Instead of attributing success and failure to specific tactics or organization characteristics, POS emphasizes aspects of political environment that affect outcomes of social movement (Burstein, 1999). According to Doug McAdam (1996), one of the primary contributors of POS, the emergence, development, and outcomes of social movement are largely dependent on “the opportunities afforded insurgents by the shifting institutional structure and the ideological disposition of those in power” (p. 23). The use of the external

political factors to explain social movement outcomes is considered one of the theoretical advantages of political process theory (Giugni, 1998).

POS is a broad concept and does not provide a formula that applies universally to all instances of social movements. McAdam’s (1982) early work considers political opportunities as “any event or broad social process that serves to undermine the calculations and assumptions on which the political establishment is structured” (p. 41). But a number of dimensions/properties have been discovered and defined by POS researchers to increase the analytical power, including the degree of openness (or closure) of the local political system (Eisinger, 1973), the availability of influential/elite allies (Gamson, 1975), tolerance for protest among the elite (Jenkins & Perrow, 1977), the degree of stability or instability of political alignments (Tarrow, 1983), and political conflicts between and within elites (Tarrow, 1989), just to name a few. Porta and Diani (2006), in their comprehensive introduction to social movements, summarize key political opportunities as political institutions, political cultures, the behavior of opponents of social movements, and the behavior of their allies (p. 222). A review of the studies reveals what constitutes political opportunities varies based on the historical context and institutional conditions of the social movement itself; through comparative analysis, researchers have developed deep theoretical understandings of “the relationship between social movements and the institutional political system” (Porta & Diani, 2006, p.17).

In the social movement literature, outcomes/consequences have also been extensively discussed. Scholars treat social movement success/failure as a complicated matter because social movements are collective behaviors and different actors may define success differently (Giugni, 1999). In addition, social movements do not only have political and policy outcomes, but also broader cultural and institutional effects (Giugni, 1998). The idea of differentiating purposive consequences and indirect, unintended consequences is helpful to this study because a failed case may not have directly observable political outcomes; we need to look beyond the purposive consequences for its significance and impact. POS provides a loose framework and some useful analytical tools for analyzing the JURIS case. Political opportunity analysis in this paper focuses on the interactions of the movement with its context.

## 3. Methodology

This paper presents a historical case study, investigating the JURIS case as a failed challenge in the early OGD social movement. In case studies, one or a few instances of a phenomenon are studied in depth (Blatter, 2008). Because of the in-depth empirical analysis, case studies have the advantage of providing thick description, conceptual richness, and internal validity (Blatter, 2008). Depending on the views of the researchers, there are different approaches to case study (Blatter, 2008). In particular, researchers, such as Ragin (1992, 1997), advocate a case-oriented case study approach, which, as opposed to variable-oriented approach, treats the entire case(s), rather than variables, as the point of analysis. The emphasis on the entire case as the analytical unit has certain theoretical advantages, such as the ability to identify new class of phenomena and provide deeper understandings (Amenta, 2013). This study follows this approach in the hope of generating rich descriptive interpretation of an interesting episode in the history of OGD. Meanwhile it employs social movement theories to guide the analysis.

Although case study is most often associated with the research of contemporary phenomena, some case-focused researchers mention directly or indirectly the association between case study and history (Amenta, 2013; Ragin, 1992; Tilly, 1981; Wiewiorka, 1992). Indeed, historical analysis is a long-established research technique in social sciences to understand social and cultural phenomena, especially social changes (Howell & Prevenier, 2001; Tuchman, 1994). Social scientists often utilize historical comparison and analysis in their investigations into contemporary social events. Using written residues of the past to describe and interpret past events, historical analysis “moves beyond description to the use of historical events and evidence ... to develop a

general understanding of the social world” (Singleton & Straits, 1999, p. 376). Driven by the need for “prospective outlook” and “greater sophistication in causal argumentation,” historical social scientists employ case studies to provide rich, theoretical interpretations (Amenta, 2013). They treat events/phenomena/episodes in history as cases which become the units of analysis. In particular, the method has been widely employed in the study of social movements, and “the use of events as units of analysis was especially helpful in the historical understanding of strikes and other contentious events for which newspaper reports but not richer information were available” (Jasper, 2007, p. 4457). Similarly, this study draws from the tradition of historical-analysis research to understand and interpret the JURIS case, as well as its related social-historical context. Historical investigation refutes simplified interpretations of the past and, specifically for this study, reveals how the access rights to legal information were shaped by different social forces (Tosh, 2002). In addition, historical analysis is especially helpful in studying an ongoing process that is undergoing rapid change.

Historical analysis depends on reliable sources to reconstruct past events. This study employs carefully selected historical sources and perspective-laden interpretations to reconstruct the past. Primary sources usually refer to the accounts of the historical events generated by people who participated in and witnessed the events. In this paper, primary sources include key stakeholders’ announcements and discussions of the JURIS campaign during the study period, especially the messages posted to the Law-Lib Listserv and other Internet distribution venues at the time. Law-Lib listserv was the primary law librarian discussion forum in the U.S. where law librarians discuss matters related to legal information. Because law librarians were important stakeholders of legal information and participants of the JURIS movement, the organizers of the JURIS campaign made calls, announcements, updates, and related sources on the Law-Lib Listserv and reported regularly the progress of the campaign. Many of these reports were initially posted to the campaign organizer’s listserv, TAP-INFO Internet Distribution List, and then forwarded to other Listservs. Although TAP-INFO listserv’s archives cannot be found, the Law-Lib Listserv archives have been maintained by the University of California – Davis (<https://lists.ucdavis.edu/sympa/arc/law-lib>). In addition, original documents (including letters and contracts), press releases, and news reports of relevant stakeholders also serve as primary sources in this study. Secondary sources refer to accounts or descriptions of events generated by people who did not directly witness the historical events. Secondary documents in this study include mass media articles related to JURIS and scholarly works

that mention JURIS or the JURIS campaign. For example, *A History of Online Information Services: 1963–1976* by Bourne and Bellardo-Hahn (2003) includes an account of the early history of JURIS. Facts, figures, and claims were cross-checked to ensure the reliability of the sources.

#### 4. The case of JURIS

This section provides a historical account of the JURIS case with its general background, in rough chronological sequence. In order to add readability, Table 1 lists all the major events related to the JURIS history and their relevant stakeholders.

##### 4.1. Background: legal information access in the United States

In the U.S., the significance of equal access to government information lies in the fact that the American democracy has always been associated with an informed public. Since its founding years, the U.S. federal government has been seeking ways to disseminate government information (Shuler, Jaeger, & Bertot, 2010). Because of such an emphasis, the law dictates that government information, including primary legal information, is free for public access; anyone has the right to access, use, repackage, add value to, sell, or resell primary legal information and make profit.

In the U.S. primary legal information includes the direct products of legislative, judicial, and executive actions, such as statutes and codes enacted by legislative bodies and administrative regulations established by governmental agencies based on statutes (Finet, 1999; Tussey, 1998). In particular, in the U.S. common law legal system, accumulated judicial decisions become important parts of the law, called *common law*, *case law*, or *precedent*. This body of precedent binds future decisions—when the parties disagree on the interpretation of the law, they look to past rulings of similar or relevant cases. Attorneys, judges, and legal scholars need to refer frequently to previous court decisions, and therefore case law publishing is of special importance as well as difficult, considering the sheer volume of court decisions generated every day by the complicated U.S. court system.

The distribution of U.S. legal information has traditionally relied on private sectors. Commercial publishers gradually developed a comprehensive system of legal information, enhanced with finding aids, for the American legal system (Berring, 1995; Tussey, 1998). For example, as the largest legal publisher, West Publishing has systematically collected and published all available court decisions from both federal

**Table 1**  
Key events and relevant stakeholder in JURIS history.

Time	Event(s)	Relevant stakeholders
1970	JURIS system was created	DOJ
1972	JURIS was launched officially, with data leased from LITE database	DOJ, US Air Force
1974	JURIS added Lexis federal case law through contract	DOJ, MDC
1975	JURIS lost Lexis information	DOJ, MDC
1975–1983	JURIS used federal case law information digitized by US Air Force from West publications	DOJ, US Air Force, West Publishing
1983	JURIS signed a five-year contract with West for accessing West’s case law materials	DOJ, West Publishing
1988	JURIS signed another five-year contract with West for accessing West’s case law materials	DOJ, West Publishing
April 1991	TAP criticized the West/DOJ contract terms	TAP, DOJ, West Publishing
1992–1993	DOJ and West negotiated for a new contract	DOJ, West Publishing
July 7, 1993	The Crown Jewel Campaign petition letter was sent to Attorney General Janet Reno	TAP, Lawyers, computer professionals, librarians (AALL), public interest groups, concerned citizens
August–September 1993	DOJ investigated ways to make non-proprietary sections of JURIS available to the public	DOJ
September 30, 1993	West Publishing announced that it would not renew the contract after December 31, 1993	DOJ, West Publishing
October 25, 1993	- DOJ revealed its plan to permanently shut down the JURIS system - Tax Analysts (a non-profit publisher) proposed to replace the missing case law in JURIS and make it publicly accessible	DOJ, Tax Analysts
November 1993	Tax Analysts filed a FOIA request for JURIS data	Tax Analysts, DOJ
January 1, 1994	JURIS system stopped operation	DOJ
1994–1996	Lawsuit between Tax Analysts and DOJ	Tax Analysts, DOJ, West Publishing
1995	Baizer, an attorney requested FLITE data under FOIA, but failed	Baizer, US Air Force
2007	Public.Resource.Org filed a FOIA request for JURIS data	Public.Resource.Org, DOJ
2008	Public.Resource.Org obtained a copy of (portions of) JURIS data from two researchers	Public.Resource.Org
September 2009	Public.Resource.Org made the obtained data publicly available	Public.Resource.Org

courts and state courts of the U.S. since the late 19th century (Surrency, 1981). In the 20th century, West Publishing's case law publications became the "quasi-official" records of American case law (Hanson, 2002, p. 567). These case reports included not only the text of the opinions but also some "value-added" secondary information, including syllabi (summarizing each opinion's general holdings), headnotes (summarizing the specific points of law recited in each opinion), and key numbers (categorizing the points of law into different legal topics and subtopics) (Tussey, 1998, p. 178). The secondary materials served as important finding aids and research tools for legal professionals in the print environment (Hanson, 2002). The U.S. government publishes a small portion of basic legal information at both federal and state levels, such as the Supreme Court decisions through the Government Publishing Office (GPO), but these publications are often available much later than the commercial products and do not contain secondary sources as commercial products do (Tussey, 1998).

The dominant business models created by the commercial publishers were developed to meet the needs of certain consumers, particularly commercial enterprises (e.g., law firms), while deemphasizing the needs of other consumers, including the general public (Arewa, 2006). In the print environment, lawyers had access to legal information through physical law libraries (including their firm libraries), court-houses, and bar associations (Berring, 1997; Gallacher, 2008). The general public could also access the case law if they had access to a law library that was open to the public. But book-based legal information already presented problems. For example, not all law libraries were open to the general public. Scholars who were interested in using legal information to conduct interdisciplinary research were limited in their ability to use the finding tools in print format (Gallacher, 2008). In addition, although commercial publishers generally met lawyers' demands for legal information in the print environment, the approach to publishing all precedent exacerbated problems with the ever-increasing volume of legal information (Arewa, 2006; Hanson, 2002). This was one of the reasons that law became one of the first fields in the U.S. that digitized their materials and successfully established commercial electronic information services as early as the late 1960s (Bourne & Bellardo-Hahn, 2003; Berring, 1997). Before the 1990s, LexisNexis, West, and a handful of other commercial providers had built massive databases with public-domain legal information. But the access to such digital legal information was largely limited to law firms and government agencies because of the expensive access fees (Zhu, 2012).

In the transition from print to a digital environment, concerns for access to legal information have heightened because more and more law libraries have grown to rely solely on digital information (Gallacher, 2008). When book-based legal research is inadequate or no longer an option, access to the law increasingly depends on one's ability to pay (Gallacher, 2008). Through the use of license agreements and rights management technology, information providers have greater control over access (Arewa, 2006; Gallacher, 2008).

In the early 1990s, U.S. federal courts and some state courts began to make use of the Internet to disseminate information in response to public expectations and the advancement of information technology, which in turn gave rise to smaller commercial legal publishers and public legal information providers. Starting in the 1990s, many digital start-ups entered the legal information market and offered different sets of information services at much lower prices than Westlaw and LexisNexis. Public legal information providers such as Legal Information Institute (LII) at Cornell University began offering primary legal information on its Web site and developed editorial products that helped increase public understanding of law.

Today most courts in the U.S. publish their decisions online soon after they are available, and various content providers provide a wide range of free or low-cost legal information services that benefit the general public. However, primary legal information is still scattered on the Internet and often difficult to find, and historical case law is usually missing from the free services. The digital environment lacks an

effective system through which the public could access comprehensive digital legal information.

#### 4.2. The beginning of JURIS

JURIS was an early online computer-assisted legal research system developed by the U.S. Department of Justice (DOJ). It contained public-domain legal information created by the DOJ or obtained from other government agencies, such as the U.S. Air Force. It was created in 1970, when lawyers and librarians at the DOJ developed a computerized retrieval system containing materials generated by the DOJ to aid in DOJ legal research and speed up judicial proceedings throughout the country (Morrissey, 1970). The DOJ officially launched JURIS in 1972 with a variety of legal information, including the DOJ *Manual of the Law of Search and Seizure*, legal briefs, memos, formbooks, and other internal and external documents generated by or for the DOJ. JURIS also provided U.S. Code (the consolidated codification of the general U.S. federal laws) converted from the Legal Information Through Electronics (LITE) database, a separate legal information system that had been developed by the U.S. Air Force Accounting and Finance Center in 1964 (Bourne & Bellardo-Hahn, 2003; Kavass & Hood, 1983). With an initial purpose of storing and retrieving military law materials, LITE contained the U.S. Code, regulations, military court decisions, and federal court decisions ("LITE Research," 1968; "LITE Source Data," 1968). The U.S. Department of Defense (DOD) used LITE for legal research beginning in 1965 and also leased the content to U.S. government agencies and other interested parties ("Leasing of LITE," 1968).

Users did not heavily employ JURIS in the early 1970s; DOJ employees mainly used JURIS for training, demonstrations, and limited search requests (Bourne & Bellardo-Hahn, 2003, p. 335). It was not used frequently partly because the database was relatively small and did not include federal case law. To remedy this, the DOJ contracted with Mead Data Central (MDC), the owner of Lexis, in 1974 to access Lexis materials, which included federal case law. Meanwhile, DOJ staff redesigned the JURIS system to make it compatible with Lexis, so people could access both Lexis materials and DOJ content from the same terminals provided by MDC (Kondos, 1974). After the arrival of case law content, JURIS became widely used by DOJ employees to support investigation and litigation (Bourne & Bellardo-Hahn, 2003). In the early years, DOJ attorneys and staff were the main users of JURIS (Soma & Stern, 1983). However, before JURIS was shut down, 15,000 government employees were active users (Wolf, 1994). It should be noted that although the DOJ, a public entity, maintained the JURIS system, it was not a free service. It relied on both government appropriations and user payments to recover its costs (Kavass & Hood, 1983). JURIS billed government employees at a rate of about \$73 per hour when they used the database (Love, 1993b; Opperman, 1993). Funds were appropriated for online legal research and government officials' fees were paid for by these funds (Love, 1993b). These user fees paid for the cost of running JURIS, including data acquisition, dissemination, administrative overhead, and training and development, plus a profit (Love, 1993d).

In 1975, for reasons unknown, the DOJ and MDC did not reach an agreement for a new contract which would provide access to federal court materials (Bourne & Bellardo-Hahn, 2003). As a result, in the mid-1970s JURIS borrowed the Supreme Court case law database on magnetic tape from LITE, which became known as FLITE (Federal Legal Information Through Electronics) (Bourne & Bellardo-Hahn, 2003). Throughout the mid-1970s, the Air Force continued to add data to FLITE. Most importantly for the history of JURIS, the Air Force licensed and digitized data from physical West publications—*Federal Reporter*, *Federal Reporter Second Series*, *Federal Supplement*, and *Federal Rules Decisions*, plus West's *U.S. Code Congressional and Administrative News*. In return, the Air Force provided a free copy of the resulting electronic materials to West Publishing on an exclusive basis (West Publishing Company and United States of America, 1976). However, the license did not allow FLITE to share this digitized West content with JURIS

and required that a separate license be made to provide this content for JURIS clients (*West Publishing Company and United States of America, 1976*). There is no clear evidence showing West and JURIS made a contract at that time. But the fact that West later claimed ownership to 1975–1983 federal court digital content contained in JURIS suggests that there was a license, and JURIS used the West content converted by FLITE until 1983 (*Love, 1993a*). In 1983, JURIS created a contract with West to use the latter's federal case law database.

JURIS signed two five-year government contracts with West Publishing for accessing West's case law materials, one in 1983 and the other in 1988 (*Carelli, 1997; Love, 1993a*). The switch from FLITE to West was consistent with the federal information policy at the time. The Reagan administration required government agencies to reduce the size of their budgets and publishing program (*Holden & Herson, 1996*). Circular A-76 reissued by the Office of Management and Budget (OMB) in 1983 especially encouraged government agencies to contract out information services so as to improve efficiency in information management (*Hernon & McClure, 1987*).

In addition to the edited texts of federal case law, West provided JURIS with West-created value-added materials, including syllabi, headnotes, and West Key Number classifications (*Opperman, 1993*). The information garnered from West constituted a large portion of the JURIS database. The terms of their contract required that if the vendor (West Publishing) ever withdrew, all the data they supplied would be returned or deleted from JURIS (*Love, 1993b*). This term would become important later.

Meanwhile, JURIS collected a large amount of legal and non-legal materials over the years from different origins and integrated them into the system. In addition to obtaining federal case law from the Supreme Court, the Court of Appeals, and the Court of Claims, JURIS collected public laws, statutes, regulations, federal executive orders, attorney general opinions, DOJ briefs, monographs and manuals, foreign treaties, and cases of administrative law (*Love, 1993c*). With this large accumulation of federal legal information, at its height in the early 1990s, JURIS was the largest database of its kind (*Love, 1993b*).

#### 4.3. *The changes of legal information environment in the early 1990s*

By the early 1990s, there were generally two ways to access legal information in the U.S. One was by visiting physical libraries, including law firm libraries, public law libraries, and academic law libraries (law school libraries). Many federal depository libraries also had legal materials—in fact many of them were law libraries. The other way was using commercial online services, typically Lexis and Westlaw. These full-text online services were created in the 1970s and have been the most comprehensive legal information systems since then (*Bourne & Bellardo-Hahn, 2003*). Law professionals in medium or large law firms, corporate legal departments, and government agencies usually had access to all of the above resources (*American Bar Association [ABA] Technology Resource Center, 1992, 1993*). The fees involved with searching Lexis or Westlaw were often charged to their clients or paid for by the government (*Whiteman, 2000*). Students and faculty members in law schools also had access to Lexis and Westlaw because these providers had established educational programs that offered deeply discounted access to law schools (*Wernick, 2000*). For everyone else, including regular citizens and pro bono lawyers, the only way to access legal information was by visiting public law libraries or law school libraries which were open to the public (*ABA Technology Resource Center, 1989, 1991; Gallacher, 2008*).

In the early 1990s, the legal information environment began to experience major changes, with the development of personal computers, networked technologies, and the Internet being important factors in this shift. It has been noted by scholars that during the Clinton administration, American information policy began to change. Contrary to the Reagan and Bush administrations, which staunchly supported private-sector information providers over in-house government dissemination,

the Clinton administration was more active in developing an information dissemination infrastructure for the government (*Holden & Herson, 1996; Molholm, 1994*).

In the digital legal information market, Lexis and Westlaw still held dominance, although free resources began to appear on the Internet. For example, two professors at Cornell Law School started the Legal Information Institute (LII), which is still an important public legal information provider (*Bruce & Martin, 1994*). Meanwhile, small legal commercial providers began to use the CD-ROM as a low-cost alternative for legal publishing, making legal information more affordable (*Felsenthal, 1995*).

Just as technology, information policy, and the legal information market were changing, social expectations about legal information access were also changing. Public interest groups and library associations made recommendations to the federal government that public-funded databases should be freely available to everyone (*McMullen, 2000; Oslund, 1996; Thomason, 1995*). These groups played an important role in making the government-owned database EDGAR, which contained reports and financial information of public companies filed with the U.S. government, freely available on the Internet (*Thomason, 1995*). In the meantime, public interest groups became determined to make another important government database freely available: JURIS.

#### 4.4. *The Crown Jewel Campaign*

In the early 1990s, the general public became interested in legal information databases. This rise in interest was sparked by activist groups who considered JURIS to be a public asset since taxpayers paid for it. “The Crown Jewel Campaign” was started by these activists and demanded that federal court decisions be open to the public (*Hafner, 1993; Love, 1993c*).

The leading organization in the Crown Jewel Campaign was the Taxpayer Assets Project (TAP), under the leadership of James Love, an activist in the area of intellectual property. TAP was founded by Ralph Nader (an American attorney, author, lecturer, political activist, and four-time candidate for President of the U.S.) in 1988 to monitor the management and sale of government property, including information systems and data, government-funded research and development, spectrum allocation, and other government assets. It advocated for government transparency, openness, and accountability (*Hafner, 1993*). TAP focused on the JURIS system because the database contained considerable federal legal information, including decades' worth of federal court opinions and extensive collections of administrative law (*TAP, 2010*). In April 1991, in a testimony before the Joint Committee on Printing (JCP), a U.S. Congress joint committee that oversees the printing procedures of the U.S. federal government, TAP criticized the West/DOJ contract terms that allowed West to retain commercial rights to all materials provided to the DOJ (*Love, 1993c*). TAP argued that West's claims on the rights were untenable because the database included non-copyrighted public documents—texts of the federal court decisions (*Love, 1993c*).

Many others became involved in the campaign for public access. On July 7, 1993, 295 lawyers, computer professionals, librarians, leaders of public interest groups, and other citizens wrote letters to Attorney General Janet Reno, asking her to take steps to provide open citizen access to JURIS (*Love, 1993c*). These petitioners were each motivated by different purposes. Law schools faced the dilemma of turning down outside users' access to LexisNexis and Westlaw and hoped that JURIS access could provide a public-access solution. Likewise, average citizens, represented by organizations such as Public Citizen, who did not have the economic resources of business lobby groups hoped to gain low-cost access to JURIS information. The American Association of Law Libraries (AALL), representing law librarians and government documents librarians, also urged that the DOJ allow the 1400-member federal depository library program and others to obtain access to the non-copyrighted materials in JURIS (*Love, 1993c*).

Particularly relevant to today's OGD, some groups of participants sought the possibility of reusing the data. Small publishers, represented by Tax Analysts, a nonprofit organization that published taxation news and tax-related federal court decisions, and Hyperlaw, a CD-ROM publisher of legal materials, hoped to create their own innovative services and products using the case law data. In addition, if access to JURIS became available freely or at a lower cost, the rates of commercial products would fall dramatically (Love, 1993b). Therefore, they maintained that access to JURIS would promote innovation in legal information distribution and make the legal information market more competitive (Hafner, 1993; Love, 1993b).

Computer scientists were also concerned about the reuse of case law data. Those working on information retrieval and artificial intelligence technology found it impossible to obtain bodies of case law from commercial publishers for research purposes because publishers were highly protective of this data (Hafner, 1993). Therefore, they hoped to open up JURIS access so that they could obtain necessary data to conduct research (Hafner, 1993). The call for opening up data for reuse was supported by several nonprofit organizations who participated in the campaign, including the Information Trust Institute, Computer Professionals for Social Responsibility (CPSR), and the Linguistic Data Consortium. One of the participants of the campaign, Carole D. Hafner (1993), a computer scientist working on natural language processing for legal texts, believed that “the anti-competitive situation that is currently stifling research and innovation in the legal information field”, and she stated that:

I had created a computer-based alternative to some parts of the West paper-based bibliographic system in 1978, but that my ideas, and the ideas of other researchers, could only be refined “on paper”. Since West and its only major competitor, Mead Data Systems, refuse to sell their text to the public, the government is the only possible source of large bodies of legal text. I argued that free competition in the legal information industry would lead to a wide variety of innovative products – instead of two almost identical ones – and would lower the cost of all legal information.

#### 4.5. The termination of JURIS

The Crown Jewel Campaign coincided with the new contract negotiation between DOJ and West in 1992 and 1993 and appeared to have a major impact on the negotiation. Roger Cooper, Deputy Assistant Attorney General for Information Resources Management at the DOJ, said at the time, “We asked them if they would be interested in putting their database up for public access and they said no. I think the specter of the public being able to get at their database at reduced rates or any other way just scared the heck out of them” (McDonough, 1993a). On September 30, 1993, West Publishing issued a statement announcing that the company would not seek renewal with JURIS (West Publishing Company, 1993). Jerrol M. Tosrud, the executive vice president of West Publishing at the time, claimed that the company supported the open dissemination of public government information but it would “reinvent” its relationship with the federal government by providing an even better array of services through the company's (fee-based) Westlaw online legal information service (West Publishing Company, 1993). In the statement, Tosrud also emphasized the role of private sector in information dissemination:

Vice President Gore is right. It is time to re-invent, re-think and re-do government. America is on the verge of a new information era which requires reassessment of the respective roles of government and private business. West, as a leader of America's robust information industry, is committed to using its technology to move forward into the new information era. As part of the new order, government must

become more effective. That effectiveness can, in part, be accomplished by relying on America's private sector to provide information products more efficiently.

Soon after the statement, the DOJ official made a decision to shut down JURIS. Because West chose not to renew contract with the DOJ, the old contract would terminate on December 31st, 1993. West would cease the provision of federal case law to JURIS, and, as spelled out in the 1983 contract, West would require the DOJ to erase all the federal case law it provided to JURIS from 1983 to 1993. DOJ officials claimed that the West database on federal case law constituted 80% of the data in JURIS, and that the loss of the case law data made JURIS economically non-viable (McDonough, 1993a). Although the DOJ still owned some of the historical case law materials key-punched into the database by the FLITE system, the current and recent case law materials were too important for JURIS to be useful without their inclusion. Therefore, the decision was made to shut down the system and terminate all twenty-nine JURIS employees on January 1, 1994 (Love, 1993c). Since the termination, DOJ employees have been using commercial legal databases, usually Westlaw.

Before JURIS was officially shut down, on October 25, James Love, the campaign leader, organized a meeting of JURIS stakeholders to discuss the future of JURIS. In addition to the campaign participants mentioned previously, attendees were five DOJ officials including Stephen Colgate, the Assistant Attorney General for Administration of the DOJ, staff from Senate and House Congressional Committees, and representatives from GPO and the Congressional Research Services (CRS) (Hafner, 1993). At the meeting, the DOJ officials claimed they did not realize the public interests in JURIS and expressed sympathy to the campaign (Hafner, 1993; Love, 1993b).

The focus of the meeting was the results of shutting down JURIS and the potential solutions. At this time, when West just withdrew from the JURIS contract, the DOJ had two options: first, to use the Westlaw or other commercial databases, and second, to create its own new database of case law by means of contracting with another legal publisher in order to replace the lost data (McDonough, 1993b). Regarding the first option, DOJ officials said that with the use of commercial services, the government's total online research expenditures might increase from \$12 million per year to \$18 million per year (Love, 1993b). Many public interest groups supported the second option because the DOJ could use this opportunity to open up public access to JURIS. Tax Analysts (TA) proposed to replace the missing case law data for JURIS. They estimated it would take six months and \$5.5 million to replace the case law content and \$450,000 per year to maintain the collection. The DOJ would have had exclusive rights to the data, including the rights to provide public access (Love, 1993b). However, DOJ officials stated that they did not have sufficient time to develop such a plan—the appropriation bill that funded the DOJ had already passed through Congress and it was therefore too late to seek additional funding to put forth the plan proposed by TA to replace the missing case laws (Love, 1993b). Moreover, the employees who had been working for the JURIS project had already been advised to seek other positions (Hafner, 1993). Although the DOJ had the authority to spend the additional money on commercial services such as Westlaw or Lexis, it did not have the legal authority to contract with other publishers to repurchase the digitized historical case law materials (Love, 1993b). Also, since the replacement information provided by TA would not contain West's citations and, more importantly, the page numbers, attorneys might not find the data very useful as it could not be easily applied in practice (Love, 1993b).

#### 4.6. Reclaiming JURIS data

Soon after the announced termination of JURIS by the DOJ, TA requested that the DOJ disclose the JURIS database under the Freedom of Information Act (FOIA) (1966) which gives U.S. citizens the right to

ask for and gain access to government information and records. Two weeks later, the DOJ complied, but all non-DOJ material within the database was refused, including the West-provided portion of the database and the content from FLITE, which was key-punched by the U.S. Air Force. Thus, the only portions of the database which could be disclosed were those created in-house or provided for the DOJ by other government agencies. Later, the DOJ claimed the non-disclosed case law data of JURIS provided by West and the U.S. Air Force were considered “library reference materials” rather than “agency records” and thus not subject to the FOIA (U.S. Department of Justice, 1997). However, even if they were subject to the FOIA, the DOJ expressed that the content provided by West was commercial information and should therefore be exempt, as the FOIA did not apply to commercial information (U.S. Department of Justice, 1997).

TA appealed to the DOJ’s Office of Information and Privacy, but the office failed to rule on the appeal by the statutory due date because of their case backlog. In 1994, TA filed a lawsuit against the DOJ under the FOIA at the D.C. federal district court. West Publishing Company intervened because of its interest in this case (*Tax Analysts v. Department of Justice*, 1996). The case lasted until January 1996, when U.S. District Judge Gladys Kessler concluded that the “West-provided data in JURIS is not an ‘agency record’ under FOIA,” so the court could not compel the DOJ to disclose the information (*Tax Analysts v. Department of Justice*, 1996). The DOJ did not explicitly explain the rationale for withholding the FLITE data, but the case report shows that the DOJ treated this information as a portion of the West-provided content.

Robert D. Baizer, an attorney residing in Oakland, California, filed a similar FOIA lawsuit in California with the U.S. Air Force for the FLITE database, which he argued was in the public domain (*Baizer v. Department of the Air Force*, 1995). On March 10, 1995, Judge Fern M. Smith from the U.S. District Court in the North District of California denied the lawsuit. The court found that the database was not an “agency record” but merely contained “reference materials” that could be obtained from commercial services as well as public libraries (in print format), and FOIA excluded library reference materials (*Baizer v. Department of the Air Force*, 1995).

The campaign to free up the JURIS data failed, and the public did not gain access to the West-provided or FLITE-created case law content in the 1990s. But information activists did not give up their efforts. In 2007, the information activist group [Public.Resource.Org](#) (the organization that freed up EDGAR in the early 1990s) filed another FOIA request to the DOJ. The DOJ claimed that it did not maintain a copy of JURIS, but [Public.Resource.Org](#) managed to obtain a copy of a portion of the database, including the West-provided and FLITE case law materials, from a research organization, Linguistic Data Consortium (LDC) at University of Pennsylvania, who had obtained the data on two CDs for research purposes in 1998. The license agreement between DOJ and LDC prohibited redistribution of JURIS ([Public.Resource.Org](#), 2008); however, in the response to [Public.Resource.Org](#)’s FOIA request, the DOJ claimed that it did not maintain the license between LDC and the DOJ and that it normally did not restrict the reuse of data (U.S. Department of Justice, 2008). Based on the DOJ’s response, [Public.Resource.Org](#) made the obtained copy of JURIS data publicly available in September 2008, fifteen years after the Crown Jewel Campaign ([Public.Resource.Org](#), 2008).

## 5. Analysis and findings

To reveal the underlying reasons of success or failure of a social movement, POS researchers suggest investigating the interaction of the movement with its relevant political context, rather than looking internally at protest organization and activities. Following this approach, this section analyzes the outcomes of the JURIS campaign, utilizing a few POS dimensions identified by social movement researchers, including political institutions, political cultures, the behavior of opponents of

social movements, and the behavior of their allies. The analysis focuses on the broader social political factors and actors that were related to the JURIS campaign and contributed to the failure of this challenge.

### 5.1. A pro-business political cultures

The formal institutional structure is usually stable and not a deciding variable if and when a social movement will be successful (Porta & Diani, 2006, p. 206). POS researchers suggest examining “the more informal structure of power relations that characterize the system at a given point in time,” in particular, the “relative openness or closure of the institutionalized political system” (McAdam, 1996, p. 27). This “openness and closure” suggests whether challengers have meaningful access to the (formal) institutional structure. The more open the system is, the more likely the challengers will be able to access to the system and therefore make changes. The overall U.S. political system has been relative open historically, which was why the campaign participants were able to raise the issue to JCP and write protest letters to Attorney General in the first place. In terms of the “local” political institutions, the DOJ, the government agency that created and maintained the JURIS database, was also quite open at the time. Before the shutdown of JURIS, the DOJ officials met with the activists and other stakeholders to openly discuss the future of JURIS. The openness of the external and local political institutions was advantageous to the campaign. Why, then, did the campaign fail in spite of this political opportunity?

On the surface, the DOJ made the decision to shut down its own system and refused to rebuild the system not because they opposed the idea of public access to legal information, but for multiple seemingly realistic reasons, including timing, appropriation problem, and the likely loss of West’s citations. However, if we take into consideration the political institution and the political culture with regard to information dissemination in the U.S., we may get closer to the more fundamental reason for the termination of JURIS: the compelling factor was the DOJ’s reluctance to compete with the private-sector information providers. Commercial vendors, such as West and LexisNexis, already offered similar services and therefore many would argue that there were more important issues for DOJ to attend to than to fix its own system and compete with the commercial providers, as it would be redundant and a waste.

Debates about the superiority of private or public information dissemination have been rampant in the discussions of the political economy of government information. It has been a long-held and deeply rooted belief within some American political ideologies that the government should not impinge upon or compete with the private sector (Gosling, 2008, pp. 9–10). Government publishing as a public enterprise has a history of expansion and contraction in line with the prevailing political ideologies of the day, which may be best illustrated by the history of the Government Printing Office (GPO, now Government Publishing Office) (Walters, 2005). In the Reagan era of the early 1980s, private-sector production and dissemination of government information was greatly encouraged. The Reagan administration tried to limit the role of the government as a printer and disseminator for efficiency and cost-saving means and minimize the government’s competition with the private sector (Hernon & McClure, 1988).

In 1985, the OMB issued the much-debated Circular A-130, which “prescribes a general policy framework within the Paperwork Reduction Act” for government information resources management (Sprehe, 1987, p. 189). The circular states that “the government should look first to private sources, where available, to provide the commercial goods and services needed by the government to act on the public’s behalf” (U.S. Office of Management and Budget, 1985). This circular reveals some of the important assumptions and values of the Reagan administration: government information is a commodity with economic value; private enterprise is superior to public enterprise, therefore privatization of the government’s publishing activities should be encouraged (Crawford & Stimatz, 2000; Detlefsen, 1984). OMB A-130



defines access to information as the function of providing government information to members of the public “upon their request,” which is “consistent with the Freedom of Information Act” (U.S. Office of Management and Budget, 1985). In this sense, government agencies’ roles in providing access to information were rather reactive or passive (Crawford & Stimatz, 2000).

In the 1990s, the fact that the Clinton-Gore administration put more emphasis on information policy seemed to contradict the privatization policy of the Reagan-Bush administrations and gave hope to many public interest groups that pushed for more public access to government information (Molholm, 1994). The Clinton administration treated government information as a public good and was supportive of a more active information dissemination infrastructure (Holden & Herson, 1996). The Circular A-130 revised by the Clinton administration stressed the public’s right to know through information technology (Office of Management and Budget, 1994). However, different values and philosophies still co-existed within the federal government. In fact, in the early to mid-1990s the prospect of GPO providing centralized, electronic public access to government information was obscure, even after U.S. Congress enacted the Government Printing Office Electronic Information Access Enhancement Act of 1993 with bipartisan support in Congress and the election of President Clinton (Cocklin, 1998; Dugan & Cheverie, 1992; Love, 1994). Many even predicted that FDLP would cease to exist (Cornwell, 1996; Ryan, 1997; Wilkinson, 1996). In an interview, Wayne P. Kelley spoke of the difficulty in offering free access to government information during his tenure as the Superintendent of Documents from 1991 to 1997, particularly regarding the problem of privatization (Cheney, Tulis, & Peterson, 1999). In this sense, the DOJ’s values remained similar to that prescribed by the Reagan-era OMB A-130—it might be willing to open up the database it owned but was not prepared to undertake the responsibilities of information dissemination or to openly compete with companies in the private sector. In sum, the political opportunity for OGD expanded slightly under the Clinton Administration as the privatization policy became unstable and more contentious than before, but the overall political culture still favored information privatization. Accordingly, the political institution and political culture in the early 1990s did not create a strong enough political opportunity for the JURIS campaign. It was premature to request public access from a government agency that held a Reagan-era pro-business point of view.

### 5.2. *The lack of powerful allies*

The outcomes of social movements rely on participants’ effectiveness in bargaining with allies and opponents (Burstein, Einwohner, & Hollander, 1995). In particular, the importance of powerful allies has been emphasized by many POS researchers (McAdam, 1996). The JURIS campaign was organized by public interests groups and attracted participation from various groups interested in low-cost or free access to digital legal information. Critical to its outcomes, this campaign did not gain support from strong and powerful allies either within the political system or outside the existing institution. The DOJ officials responded to the campaign by agreeing to meet with the campaign participants and by expressing sympathy to the purposes of the campaign at the all-stakeholder meeting. But they did demonstrate any substantive support for these purposes.

When considering the lack of elite allies in the JURIS campaign, it is particularly interesting to compare the JURIS case with the development of today’s OGD. Many scholars have implicitly and explicitly attributed the advancement of the OGD movement, at least partially, to the efforts from government agencies (e.g., Dawes et al., 2016; McDermott, 2010). Some scholars even consider government as an OGD activist (Sieber & Johnson, 2015). In an open data study conducted by Open Society Foundations, Hogge (2010) reports that three groups of actors were crucial to the success of OGD in both the U.S. and the U.K.: civil society, especially the civil hackers; “engaged and well-resourced” government

bureaucrats in the middle; and mandate from the top of the political system (p.4). In the U.S., the Obama administration’s open government initiative has helped the OGD movement mobilize many government agencies at state, municipal, and local levels. In the White House Status Report on Open Government (White House, 2011), all major open government activities focus on or at least involve making government information/data available to the public. In contrast, the JURIS campaign gained support from a group of technologist and other interested group but not from government agencies at any level. Although other factors may also have increased the political opportunities for the OGD movement after the 2000s, it is hard to deny that powerful allies’ involvement created a great difference between the political culture in the early 1990s and that in the 2010s. If we compare the JURIS case with the successful opening up of EDGAR, the importance of allies is even more apparent—the involvement of organizations such as the National Science foundation and the New York University was critical to the success.

### 5.3. *The strong opponent and the complexity of copyrightability*

While lacking support from elite allies, the campaign received resistance from a strong opponent. JURIS contained not only legal data created by U.S. government, but also case law data provided by West Publishing. This publisher would not allow public access to its core content because it had significant monetary investment in these data. The complexity of contractual and copyrightability issues of the case law data provided by West was one of the important factors that led to the failure of the JURIS campaign. West—or the dominating legal information publishers in general—was resistant to this social movement and its behavior had crucial effects on the outcome of the campaign. When the public groups challenged to open up JURIS, West withdrew from the new contact negotiation with the DOJ for the fear of losing control of its data. When the contract ended, all data provided by West Publishing was removed from JURIS due to the license terms agreed upon by the DOJ and West, which explicitly stated that all West content must be withdrawn once the contracts were terminated. According to the contracts, West retained commercial rights to all of the materials. These commercial rights extend to both copyrighted, value-added materials and non-copyrighted public documents (Wolf, 1994).

The terms of the contract were consistent with the licensing/leasing practice of that time. In the 1980s and the early 1990s, some contracts accompanying magnetic tapes and CD-ROMs included clauses that gave leasers the rights to remove the data once the contract was terminated or the subscription was cancelled (Lowry, 1993). This reflected the database publishers’ protectiveness of digital information products. Database customers often accepted the terms without too much consideration due to lack of experience. Only over time did licensors and licensees begin to look for perpetual access solutions for e-resource subscriptions. This case illustrates how, without the strong protection of copyright law, database owners had already started to use another important method—contracts, or license agreements—to protect their public-domain database material. The use of licenses to protect non-copyrightable material remains a topic of discussion in debates around intellectual property law today (Rolnik, Lamoureux, & Smith, 2008).

In addition to the contract terms, whether the “edited” legal information, especially digital versions of legal information, was copyrightable, remained uncertain. The ambiguities around copyrightability issues were probably another major reason why the DOJ did not try to retain the rights to the federal case law materials in JURIS provided by West. Although *Wheaton v. Peters* (1834) established the public nature of statutes and court decisions as early as 1848, the value-added content and features of the database might have allowed West some copyright protection, but all of this was unclear at the time. While West’s headnotes,

summaries, and the key number system were usually accepted as copyrightable work,<sup>1</sup> some features were more contentious.

One important area of contention was the selection and arrangement of the court decisions, and more specifically the pagination. Because U.S. federal courts and many state courts required that lawyers provide West citations and page numbers for referenced court decisions, West pagination was necessary to users and had therefore become one of West's competitive tools in the legal publishing industry (Wyman, 1996). In fact, West's copyright claim on the pagination was upheld by the court in a legal suit with Lexis (*West Publishing Co. v. Mead Data Central*, 1986).<sup>2</sup> In 1985, MDC announced a plan to utilize the page numbers from West's *National Reporter* for the body of Lexis cases so that users of Lexis would not have to refer to the physical books published by West. West then filed a copyright lawsuit, in response to which the court granted a preliminary injunction against MDC in 1986. MDC then filed an antitrust lawsuit against West (Brown, 2003). In 1988, West licensed its pagination system to Lexis as a settlement of the lawsuits between West and MDC (Scheffey, 1996).

Another area of contention focused on the editorial additions and corrections to the basic texts of court decisions. West claimed that they had edited, corrected, and made additions (e.g., provided dates and attorneys' names) to their versions of court decisions. West argued that the edited texts of court decisions in West reporters were copyrightable, whether in print books or in electronic databases, because they were edited and corrected by professional editors (*Matthew Bender & Co. v. West Publishing Co.*, 1998).

The content West leased to JURIS was a combination of both public and "copyrightable" material. West collected public legal information and also built into it their augmented or slightly value-added, arguably copyrightable, content. All of this was arranged with the West citation system, which is arguably copyrightable as well. This ambiguous mix in the West database of arguably copyrighted material and public domain legal information might have been an important reason why the DOJ signed the counterintuitive contract in the first place and did not provide public access to the JURIS system.

West's interests determine its role as a strong opponent of the movement. With the ambiguous legal issues and West's strong protection of its data, the campaign participants were not in a solid position in bargaining with the private sector information providers and negotiating for the public's access rights.

6. Discussion

Looking at institution/structure and the system of alliances and oppositions, the direct outcome of the JURIS campaign—the failure in opening up the database and the shutdown of the JURIS system—lies in three major factors (RQ1). First, the political institution was relatively stable, and despite certain changes, the institutional culture still supported the privatization of information—government agencies tended to rely on private sectors to distribute information. Second, the challenge did not have powerful political allies either within or outside the political system, especially in comparison with the 21st century OGD movement. Third, the challenge had an opponent with strong legal claims about contracts and the copyrightability of the data, which had not been fully clarified by court. As a result, the JURIS campaign did not succeed even though the political opportunity was gradually expanding. The OGD social movement was not able to achieve greater influence until the political opportunities became more favorable in the years to come.

<sup>1</sup> This might be an overgeneralization, but the discussion is beyond the scope of this paper. Legal scholars have different opinions about the originality of these editorial materials. See Tussey (1998).

<sup>2</sup> Whether pagination could be protected by copyright law is complicated. There are several cases related to the issue; see Petretti (1998) for detailed discussions.

The following power-interest table summarizes the primary goals or concerns of the main stakeholders and their relative power in the JURIS case (Fig. 1). The major contention existed between the two most interested parties: the campaign organizers and participants, who were eager to gain access to and re use JURIS data; and the commercial publisher, West Publishing, who was highly concerned about protecting their data to retain competitive advantage in the legal information market. As analyzed in the previous section, the behavior of opponents of social movements, in this case the West Publishing, played an important role in the failure of JURIS campaign. The DOJ had great power but showed little interest in making JURIS publicly available or rebuilding the database after West withdrew its data.

Fig. 1 also implies the lack of public awareness toward the campaign. Political process theorists consider mobilization as a key factor in social movements (McAdam, McCarthy, & Zald, 1996). The JURIS campaign organizers were able to mobilize many interested social groups including lawyers, computer professionals, librarians, different public interest groups, and some citizens, assumedly through personal networks and the early form of the Internet; however, most members of the general public (who could make powerful allies), were not reached or mobilized. The JURIS campaign illustrated how public access to and the reuse of primary legal data was becoming more and more expected and desired by the public, but this expectation was not as prevalent as today. In contrast to the small number of participants in the JURIS campaign, today's OGD community includes a large number of influential public groups (such as the World Wide Web foundation, GovTrack, Open Government Data Group, and Open Knowledge Foundation), as well as civic hackers, which in turn makes the movement more prominent. The lack of public awareness may be another important failure factor.

Social movement theorists suggest looking beyond direct political or policy outcomes of social movements because movements not only have goal-related outcomes but also broader, external, and sometimes unintended consequences (Giugni, 1998, 1999). This is helpful in answering RQ2. Although information activist groups failed to gain access to the JURIS database for the public in the 1990s, as an early episode of a grass-root OGD campaign to free primary legal information, this case was important to the OGD movement and the notion of public access in the following aspects.

First off, the failure of the JURIS campaign was not an end, but a beginning to a series of related protests. In particular, the lawsuits and general upheaval surrounding the shutdown of JURIS sparked a debate over who owns the law in digital format. Before the shutdown of JURIS, the *Feist Publications, Inc. v. Rural Telephone Service Co.* (1991) case had established that a compilation of factual information could be

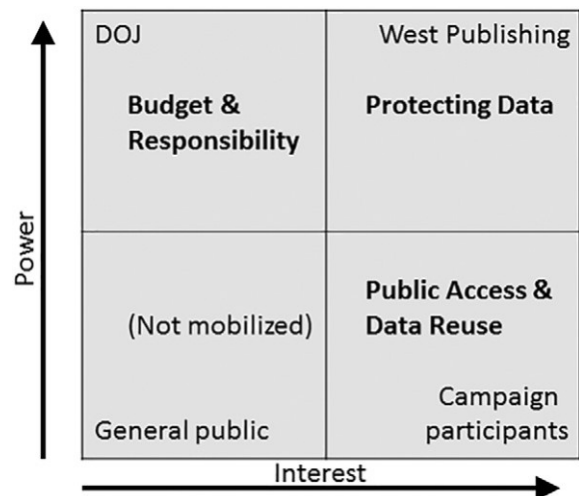


Fig. 1. Power-interest table of major stakeholders.

copyrightable only if there existed sufficient originality and creativity. Making the claim that considerable time and money had been spent collecting the data was not sufficient for copyright ownership. But the *Feist* case seemed contradictory when compared to the earlier ruling regarding MDC and West, in which the court supported the copyrightability of West's pagination system (*West Publishing Co. v. Mead Data Central, Inc.*, 1986). Given these paradoxical rulings, it was not clear how the *Feist* decision applied to legal information when analyzed with MDC and West. The campaign to save the data from JURIS did not directly challenge West's copyright claim on the federal case law information, but many followers did. For example, one of the major figures in the JURIS campaign, Hyperlaw, Inc. (a New York publishing company that published legal information on CD-ROM), challenged West's claim to copyright. The publishing company sought a declaration of non-infringement with respect to the use of West's case law content in its own CD-ROM product in *Matthew Bender and Co. v. West Publishing* (1998). In the late 1990s, the court finally clarified that West did not have copyright protection on both the pagination system and the West-published text of the written court decisions of the case law. These cases can be considered as the continuation of the JURIS campaign and part of the OGD movement. JURIS was one episode, but OGD, as any social movement, is a sustained challenge. In the United States, opening up the primary legal information in a government database involved complicated issues such as copyright and database protection. In today's global trend of OGD, many countries may experience similar obstacles that need persistent efforts from advocates to overcome.

Moreover, the information activists' actions related to JURIS had significant influence on the movement opponents—dominant commercial information providers. The request for public access to legal databases licensed by a publisher became a cause of concern for information providers and database producers because providers were worried about rights to their databases. The JURIS case demonstrated the changes and destabilization of the existing social norms about access rights. If the public had successfully obtained access rights to primary legal information through JURIS, it would have created a different access method that would have competed against the commercial services that traditional information providers tried to maintain. This also explains why Lexis, who was West's major competitor and who had fought against West's control over case law materials for years, did not offer to supply data to JURIS after West withdrew (Allison, 1994). Lexis and West were on the same side in a debate against this alternative, more open way to access. Since the JURIS case, commercial legal information providers have further strengthened the protection of their databases and have tried to maintain the commercialized access, employing various methods such as lobbying for database legislation and reinforcing contractual arrangements. More importantly, because the copyrightability of the case law was greatly challenged in the JURIS campaign and database protection became untenable, dominant legal information providers gradually switched their focal point from protecting arguably public-domain raw data to creating more “value-added” services. This transformation agreed with the emphasis of today's OGD movement, which is to reuse government data to create various data products and services. This move to value-added services not only benefited the information providers themselves in the increasingly competitive market, but also promoted creativity of smaller information providers. In this sense, the JURIS campaign opened a new page of OGD because a more favorable environment for the 21st century OGD began to develop.

In addition, public interest groups gained experience through the JURIS campaign at a time when OGD was not a prominent trend. This experience was applied to later development of OGD and can be applied to related protests and social movements. In fact, the JURIS case is a perfect demonstration of the connection between the RTI movement and the OGD movement. The RTI movement focuses on the human and political rights to access government information, while OGD focuses more on reusing government data for various purposes (Yannoukakou & Araka, 2014). Both foci were reflected in the JURIS campaign. The

challengers posed the essential question of who should own digital legal information and who should have access to it, and then worked actively to change the climate of digital legal information availability and dissemination which was controlled by large publishers and providers and was not easily available to the public. The synergy of RTI and OGD is of great importance in the current global trend of uniting the open data community and the RTI community (Access Info Europe & Open Knowledge Foundation, 2011; Open Knowledge Foundation, 2012; World Wide Web Foundation, 2016). The World Wide Web Foundation's Open Data Lab suggests that “the process of opening government data should start from the bottom up”, which is especially important for environments where RTI has not been formally established (Open Data Labs Jakarta, 2015). Although the JURIS case happened in the U.S. within a particular social-political context, as a bottom-up political campaign, the JURIS case demonstrates the complexity of opening up government data, and may provide a valuable lesson to the global RTI/OGD trend. It shows the importance of choosing the movement timing—a favorable political culture expands the political opportunity, which will increase the chance of success. It is also critical to gain support from powerful allies, especially those within the formal political institution. Mobilizing the public is probably necessary for a successful protest in the current world. Furthermore, persistence is needed, especially when complicated legal issues are involved.

## 7. Conclusions

Open government data movement has arisen in particular social political contexts in today's world. While many consider the modern-day OGD movement started in the middle to late 2000s and emphasize the role of government initiatives in this movement, this paper argues that the beginning of the modern OGD can at least be traced to the efforts of public interest groups in the early 1990s in the U.S. context. The paper presents a historical case study of the JURIS campaign, an early episode of the OGD movement that failed to achieve its direct goals, and uses this case to illustrate the complexity of social political environment surrounding an important type of government information, primary legal information, in the U.S.

The history of JURIS and the failure of the OGD request for the JURIS database reveal the complexity and challenges of the OGD movement. Through this analysis, it has been shown that many factors were involved in shaping access and reuse rights to primary legal information in digital formats in the U.S. context. Technological advancements and user expectations for access/reuse were only the beginning to this long and complicated story. The history of JURIS has revealed the many complicated social negotiations within public access. These social negotiations involve law and information policies, government agencies, public sector information providers, commercial publishers and vendors, public interest advocates, technologists, researchers, consumers, and the general public. Some of the issues and factors revealed in the JURIS case still have relevance to today's global OGD movement as discussed in Section 6. To better understand the success and failure of OGD as an international social movement, scholars and advocates may benefit from historical investigations.

A failed case is interesting because it can reveal important social political factors that people may overlook when looking at successful cases. Although the study of a single case may provide limited generalizability, it can provide potentially useful variables and directions for future studies. This study not only shows the internal complexity of a particular episode in OGD history including factors specific to a particular type of government information in a particular context/country, such as copyrightability of case law information and the issues surrounding privatization of information; it also offers theoretical explanations to the campaign outcomes, drawing from social movement theories. In doing so, this paper shows the possibility of utilizing political opportunity structure as a framework to understand the evolution of OGD social movement. In this JURIS episode, behavior of opponents,

behavior of allies, and the political culture regarding government information distribution all contributed to the failure of the challenge. In particular, the lack of support from elites (especially the lack of strong allies from the government) resulted in the relative closeness of the political institution, which may have been the most important factor that led to the failure of JURIS campaign. Limited by the scope of this research—a single case study, the relationship between these factors and the failure of the social movement cannot be generalized hastily. Only through accumulated case studies on the same social phenomenon and comparative analysis of similar cases, can researchers reveal the relationship between social movements and the institutional political system (Porta & Diani, 2006, p. 17). This paper presents a start for such case studies, and future studies of other OGD episodes are needed to provide strong explanatory power and lead to true understanding of the phenomenon.

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