

LAW LIBRARY JOURNAL

ARTICLES

The History of Oregon's So-Called "Sanctuary" Law [2022-10]

Tina S. Ching 233

The Right to Access Legal Information:
Progress and Evolving Norms in a Digital Age [2022-11]

Heidi Frostestad Kuehl 261

Bolstering the Asian American Law Library Collection:
A Collection Development Guide [2022-12]

Mari Cheney, Mandy Lee, and Anna Lawless-Collins 285

Organized for Service: The Hicks Classification System and the Evolution of Law
School Curriculum [2022-13]

John L. Moreland 305



0023-9283(202222)114:3:1-F

American Association of Law Libraries

Editorial Staff

Editor: Tom Gaylord
Publications Manager: Heather Haemker
Production: ALA Production Services

2022–2023 Association Officers

Beth Adelman, President; June Hsiao Liebert, Vice President/President-Elect; Mary Jenkins, Secretary; Miriam Childs, Treasurer; Diane M. Rodriguez, Immediate Past President; Kristina Alayan, Susan David deMaine, Andre Davison, Michelle Hook Dewey, Stacy Etheridge, Kristina L. Niedringhaus, Board Members; Vani Ungapen, Executive Director.

2022–2023 *Law Library Journal* Editorial Board

Tom Gaylord, Chair; Peter Hook, Heidi Frostestad Kuehl, Nicholas Mignanelli, Clanitra Stewart Nejd, Sarah Ryan, Michael Whiteman, Members; Heather Haemker, Staff Liaison.

Law Library Journal® (ISSN 0023-9283) is published quarterly in the Winter, Spring, Summer, and Fall by the American Association of Law Libraries, 230 W. Monroe St., Suite 2650, Chicago, IL 60606. Telephone: 312.939.4764; fax: 312.431.1097; email: aallhq@aall.org.

Advertising Representatives: Innovative Media Solutions, 320 W. Chestnut Street, PO Box 399, Oneida, IL 61467. Telephone: 309.483.6467; fax: 309.483.2371; email: bill@innovativemediasolutions.com.

All correspondence regarding editorial matters should be sent to Heather Haemker, **Director of Marketing & Communications**, AALL, 230 W. Monroe St., Suite 2650, Chicago, IL 60606. Telephone: 312.205.8038; email: hhaemker@aall.org.

This publication is provided for informational and educational purposes only. The American Association of Law Libraries does not assume, and expressly disclaims, any responsibility for the statements advanced by the contributors to, and the advertisers in, the Association's publications. Editorial views do not necessarily represent the official position of the Association or of its officers, directors, staff, or representatives. All advertising copy is subject to editorial approval. The Association does not endorse or make any guarantee with respect to any products or services mentioned or advertised in the publication. *Law Library Journal* is printed on acid-free paper.

Notice

All articles copyright © 2022 by the American Association of Law Libraries, except where otherwise expressly indicated. Except as otherwise expressly provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use or for any other educational purpose provided that (1) copies are distributed at or below cost, (2) author and journal are identified, and (3) proper notice of copyright is affixed to each copy. For articles in which it holds copyright, the American Association of Law Libraries grants permission for copies to be made for classroom use or for any other educational purpose under the same conditions.

Table of Contents

General Articles

- The History of Oregon's So-Called "Sanctuary" Law
[2022-10] *Tina S. Ching* 233
- The Right to Access Legal Information: Progress
and Evolving Norms in a Digital Age [2022-11] *Heidi Frostestad Kuehl* 261
- Bolstering the Asian American Law Library
Collection: A Collection Development Guide
[2022-12] *Mari Cheney, Mandy Lee,
and Anna Lawless-Collins* 285
- Organized for Service: The Hicks Classification
System and the Evolution of Law School
Curriculum [2022-13] *John L. Moreland* 305

Review Article

- Keeping Up with New Legal Titles [2022-14] *Susan Azyndar
Susan David deMaine* 319

The History of Oregon’s So-Called “Sanctuary” Law*

Tina S. Ching**

Sanctuary laws are known as intensely partisan policy responding to immigration decisions made during the Trump administration. However, Oregon’s law has been in place since 1987 and continues to evolve. This article documents the history of this pioneering state law through the passage of the 2021 Sanctuary Promise Act.

Introduction	233
Pre-legislation: A Racial-Profilng Problem	236
Near Success . . . as a Police Dog Bill—H.B. 2450 (1983)	238
Opposition from Local Law Enforcement—H.B. 2337 (1985)	241
Third Time’s a Charm—H.B. 2314 (1987)	245
Post 9/11 Amendments—H.B. 2089 (2003)	248
Attempt to Repeal Oregon’s “Sanctuary” Law—Measure 105 (2018)	249
Nonsubstantive Updates—S.B. 355 (2019)	251
The Sanctuary Promise Act—H.B. 3265 (2021)	251
The Future of O.R.S. § 181A.820	255
Appendix: Changes to the Text	255

Introduction

¶1 The term “sanctuary” became a politicized term in the United States during the presidency of Donald J. Trump. It has been used to describe a range of policies and proclamations passed by cities, counties, states, and institutions, such as colleges and universities, in response to executive orders issued by the Trump administration to

* © Tina S. Ching, 2022.

** Associate Director for Technical Services, Robert Crown Law Library, Stanford Law School, Stanford, California. Funding for this research was provided by the American Association of Law Libraries Research Fund (an endowment established by LexisNexis®). This project would not have been possible without the help and insight of my research assistant, Shiwanni Johnson. Special thanks to Danny Santos and Rocky Barilla for their generosity and time. This research was made possible through the support of the University of Oregon Libraries with assistance from Erin Stoddart, Justin Demsky, Marcie Stout, Crystal Karlsen, Kate Thornhill, Gabriele Hayden, and Jonathan Cain.

actively apprehend, detain, and deport undocumented people in the United States.¹ Generally, the term “sanctuary” has been applied to policies that limit local law enforcement cooperation with federal agents from Immigration and Customs Enforcement (ICE), as well as the Department of Homeland Security (DHS), and U.S. Customs and Border Protection (CBP). However, “sanctuary” has been used to embody different meanings by people across the political spectrum. This has caused confusion as to what types of laws and proclamations are being passed. California Senate leader Kevin de León (D-Los Angeles) said, “On the far right, it is a highly politically charged word. On the far left, the word is grossly misleading. Reporters and editorial boards and activists on both sides of the spectrum just keep using it. But it’s a misnomer.”²

¶2 These laws and policies generally indicate whether there will be cooperation with federal authorities on the enforcement of immigration laws. The highly polarized arena of politics surrounding the issue of immigration has generated a rhetorical landscape illustrative of politics today. In recent years, many jurisdictions proposed policies either supporting sanctuary policies or prohibiting such policies.

¶3 However, sanctuary policies have been passed before in the United States. In the early 1980s, faith-based groups, including hundreds of churches and synagogues across the country, offered sanctuary to Central Americans seeking asylum and being denied refugee status.³ Most asylum seekers were from El Salvador and Guatemala trying to escape the violence in their home countries. This became known as the Central American Sanctuary Movement.⁴ Some cities passed resolutions declaring support for the refugees, including Los Angeles, California;⁵ Madison, Wisconsin;⁶ Berkeley, California;⁷ and Seattle, Washington.⁸ While many cities and counties passed sanctuary policies, only one statewide law was passed, but it had little to do with Central American refugees and more to do with racial profiling repeatedly occurring across the state.

¶4 In 1987, the state of Oregon passed an anti-racial profiling law that aimed to disentangle local law enforcement from federal immigration authorities. This law prohibited the use of state and local law enforcement resources to detect or apprehend persons whose only violation was being in the country without documentation. When the law originally passed, it received bipartisan support and passed nearly unanimously.

1. See Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017); Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017); Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

2. George Skelton, *What Does “Sanctuary State” Actually Mean? It’s Time for Lawmakers to Figure It Out*, L.A. TIMES, Mar. 16, 2017, <https://www.latimes.com/politics/la-pol-sac-skelton-sanctuary-state-compromise-20170316-story.html> [<https://perma.cc/BH37-QKEJ>].

3. LOREN COLLINGWOOD & BENJAMIN GONZALEZ O’BRIEN, *SANCTUARY CITIES: THE POLITICS OF REFUGE* 3–4 (2019).

4. *Id.* at 18–19.

5. *Id.* at 18. The first known sanctuary-related policy was Special Order 40 passed in 1979 by the Los Angeles Police Department to encourage cooperation and trust between law enforcement and undocumented members of the community. The policy prohibited officers from investigating immigration status.

6. COLLINGWOOD & O’BRIEN, *supra* note 3, at 16.

7. *Id.* at 31.

8. *Id.* at 30.

¶5 Several states looked to the pioneering Oregon law as a model for developing their own statewide sanctuary laws. Examples include Arizona, New Mexico, and Vermont, whose legislatures either considered or passed a statewide sanctuary law in 2017. On the other hand, some states developed laws to prevent and limit the impact of sanctuary policies passed by cities and counties. The development of these laws look very different from the origins and creation of the law in Oregon 30 years earlier. This is because the Oregon law was created to reduce racial profiling by law enforcement and was developed under a very different political climate. However, the law was not immune to modern politics. In 2018, a citizen-led initiative gained enough support to be placed on the ballot. The initiative called for the repeal of Oregon's long-standing law. The initiative eventually failed, leaving in place the oldest state sanctuary law in the country. More recently, in 2021, changes were proposed in the state legislature to modernize and strengthen the law. Unlike in 1987, this issue was not as widely accepted. What is known as the Sanctuary Promise Act passed a Democratic-controlled House and Senate and was signed by the governor, Kate Brown, a Democrat.

¶6 This article follows the origins and history of Oregon's so-called sanctuary law with a significant focus on the legislative documents. To track the changes and gain a better understanding of the law, we can look to several sources, including news, court documents, interviews, and legislative history. The legislative history includes the records of the legislators and committees, including bill drafts, committee meeting notes and recordings, staff bill analyses and reports, and testimony. Legislative history can be used by courts to indicate legislative intent. For instance, in Oregon, legislative intent can be introduced as evidence despite the clarity of the law.⁹

¶7 Locating the public records of the work of our elected officials, however, is confounding because of what can be a confusing legislative process layered with unintuitive online systems intended to provide transparency to the process and free access to the public.¹⁰ Even seasoned reference librarians can have difficulty locating and tracking the legislative history of a law or bill.¹¹ In many cases, the records kept as a part of the

9. OR. REV. STAT. § 174.020 (2021); *State v. Gaines*, 206 P.3d 1042 (Or. 2009).

10. For bills that were passed since 2007, most of the documents and materials produced through the legislative process are available online through the Oregon State Legislature's website at <https://www.oregonlegislature.gov/> [<https://perma.cc/65ZU-676C>].

11. Providing easier access to the documents, media, and information available on these state laws allows for researchers to review the materials and build scholarship and research to continue the conversation on these important national issues. The official materials pre-2007 related to the passage of what is now known as Oregon's sanctuary law are available only at the Oregon state archives in Salem. Some of the print materials are also available on microfiche at the three law school libraries in the state (University of Oregon School of Law in Eugene, Lewis and Clark Law School in Portland, and Willamette University College of Law in Salem).

As a part of the grant for this project, many of the pre-2007 documents and testimony referenced in this article have been digitized and archived on the Center for Open Science platform at <https://osf.io/a92su/> [<https://perma.cc/8FEN-VACR>]. In the instances where audio was digitized and archived, unofficial transcripts were also created and made available in the same folder. Additional information about the project is available at <https://osf.io/a92su/wiki/home/> [<https://perma.cc/A6P9-D4B7>] and <https://sanctuarylaw.uoregon.edu/> [<https://perma.cc/43BE-EC37>].

legislative process do not tell the entire story, and a full understanding of how a law is passed may require additional information to help fill any gaps. In this case, court records and other government documents (including documents filed with the Elections Division related to the voter initiative process) were also included, as they are very relevant to understanding the full history of this law. When gaps were not filled by those other documents, court documents, news articles, and interviews helped to provide context that was necessary to answer questions not apparent in the legislative materials. What follows is not a legislative history. It is a recount of how a law was developed and evolved over the years with a focus on legal and legislative documents.

Pre-legislation: A Racial-Profilng Problem

¹⁸ The case of Delmiro Trevino was unfortunately not unique in the state of Oregon. His case was just one example of what it was like for many Latinx people living in Oregon and repeatedly harassed by local law enforcement. Trevino was a resident of Independence, a city located in Polk County, Oregon, about 60 miles southwest of Portland.¹² On January 9, 1977, he was at a restaurant with “three other Chicanos” when they were approached by four law enforcement officers from Independence and Polk County who proceeded to interrogate those at the table.¹³ Trevino was grabbed by the arm, forced to stand, and interrogated about his citizenship.¹⁴ The officer from Independence identified Trevino as “a long-time resident” of the city, and he was released. After leaving the restaurant, Trevino went to his father-in-law’s house and saw some of the same law enforcement officers outside of the house.¹⁵ One of the sheriffs asked him to produce his citizenship papers. Trevino showed his Oregon driver’s license and was allowed to leave. Trevino was a U.S. citizen.¹⁶

¹⁹ Trevino, angry about being harassed by law enforcement, later enlisted a young attorney from Marion-Polk Legal Aid named Frank “Rocky” Barilla.¹⁷ Barilla was a recent graduate of the University of Southern California School of Law and was a fellow from the Reginald Heber Smith Community Lawyer Fellowship Program.¹⁸ This program attracted young lawyers (known as Reggies) to the field of poverty law and placed them in legal services offices across the country.¹⁹ During his time at Marion-Polk Legal

12. Civil Rights Complaint Class Action at 5, *Trevino v. Dahlin* (D. Or. Mar. 15, 1977) (No. 77-209), <https://osf.io/gmcns/> [<https://perma.cc/2STR-96SE>] (hereinafter Complaint).

13. *Id.*

14. *Id.*

15. *Id.* at 6.

16. *Id.* at 2.

17. Interview with Rocky Barilla (Aug. 14, 2020) (hereinafter Barilla).

18. Email from Rocky Barilla (Dec. 2, 2021) (on file with author); email from Daniel Santos (Dec. 5, 2021) (on file with author); Barilla, *supra* note 17.

19. Barilla, *supra* note 17; see also REGINALD HEBER SMITH CMTY. LAWYER FELLOWSHIP PROGRAM, *Historical Note*, https://aspace.ll.georgetown.edu/public/agents/corporate_entities/36 [<https://perma.cc/B7LS-VX5E>].

Aid, most of Barilla's clients were people of color, and he became the de facto expert in immigration law.²⁰

¶10 On March 15, 1977, Barilla filed a class action lawsuit against the law enforcement officers and Immigration and Naturalization Service (INS)²¹ alleging "a pattern and practice of stopping, detaining, interrogating, searching, and harassing"²² people like Trevino based on the color of their skin. This was all done without warrants, probable cause, or reasonable belief that Trevino and others were in the United States illegally or that they were guilty of any crime.²³

¶11 Just a little over a month after Barilla filed the lawsuit, James Redden, the Oregon attorney general, issued an opinion responding to immigration-related questions from the governor's legal counsel.²⁴ While the Trevino case is not specifically mentioned in the opinion, the opinion demonstrates that harassment by local law enforcement officials of people who appeared to be Latinx was a common scenario. Three questions were posed in the opinion. The first question was, "What, if any, jurisdiction do state and local law enforcement officers have to enforce United States statutes and regulations regarding immigration and naturalization?" The answer was one word: "None."²⁵ The opinion continues to indicate that state and local law enforcement officers may stop or detain and interrogate persons only if they are suspected of violating a state law or local ordinance.²⁶ Federal law enforcement officers "would probably have to have probable cause or a well-warranted suspicion" to detain and interrogate suspected undocumented persons in Oregon.²⁷

¶12 On July 17, 1978, the parties to the Trevino case agreed to a stipulation, and the case was dismissed.²⁸ In the stipulation, the INS district director in Portland stated that local law enforcement agencies are not authorized "to make arrests of individuals on the sole charge of illegal entry or violation of immigration status, without the presence of Immigration and Naturalization Service officers."²⁹ While this was the end of the Trevino case, this did not put an end to unlawful stops and harassment of Latinx in Oregon by law enforcement based on racial profiling.

20. Barilla, *supra* note 17.

21. Immigration and Naturalization Service (INS) was the federal agency charged with enforcement of immigration laws at the time. The agencies have changed over time, and currently these matters are handled by the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services, and the United States Bureau of Customs and Border Protection.

22. Complaint, *supra* note 12, at 6.

23. *Id.* at 7.

24. Op. Att'y Gen. OR. No. 7439 (1977), <https://osf.io/m6d7y/> [<https://perma.cc/F4UU-9ZEW>] (hereinafter Attorney General's Opinion).

25. *Id.* at 759.

26. *Id.*

27. *Id.* at 763.

28. Stipulation, Trevino v. Dahlin (No. 77-209) (D. Or. 1978), <https://osf.io/ajnz8/> [<https://perma.cc/TJ83-VRXY>].

29. Stipulation, *supra* note 28, at 2.

Near Success . . . as a Police Dog Bill—H.B. 2450 (1983)

¶13 In 1979, a group of young, social-justice-oriented activists established the Hispanic Political Action Committee (HPAC) “to advocate for the political equity of Hispanics in the state.”³⁰ The organization went on to spearhead several successful legislative efforts. One of HPAC’s areas of focus was the increasing concerns of police harassment based on perceived immigration status.³¹ In this area, HPAC found support from Oregon House Representative Dick Springer.³²

¶14 Springer, a member of the House Judiciary Committee, contacted the Legislative Counsel Committee to inquire what authority police had to assist in enforcing immigration law and whether a flat prohibition against any such police activity would be legally allowed. Legislative counsel agreed with the attorney general’s opinion that there was no authority, and a prohibitive piece of legislation would be sound.³³ A bill was drafted and sponsored by the Committee on the Judiciary at the request of HPAC. The bill was introduced in the House in January 1983 and assigned to the House Judiciary Committee.

¶15 On February 14, a House Judiciary subcommittee held the first hearing and work session on the bill. Gail Castillo,³⁴ then president of HPAC, testified on behalf of the bill.³⁵ Castillo described the harassment of people, families, and children. Many were American citizens who “were suspected of being illegal aliens” based on how they were dressed and the color of their skin or hair. They were being asked to prove their place of birth.³⁶

¶16 Castillo referenced research conducted by attorney and HPAC member Rocky Barilla, who stated that immigration law “is clear that state and local law enforcement officers have no authority to enforce immigration laws.”³⁷ The problem is that some local law enforcement agencies attempt to enforce immigration laws. He referenced several lawsuits in Oregon including the 1977 case where he represented Delmiro Trevino. Barilla concluded that the major problems with illegal enforcement were:

1. The harassment of minorities violates their constitutional rights.
2. Local law enforcement are not trained in immigration law.

30. Daniel P. Santos, Oregon Legislative Efforts Regarding State and Local Enforcement of Federal Immigration Law 2 (1986) (unpublished paper) (on file with author).

31. *Id.*; Interview with Daniel Santos (Jan. 14, 2020).

32. Richard (Dick) Samuel Springer was a Democrat representing the 12th District which, at the time, included parts of Portland.

33. Santos, *supra* note 30, at 16.

34. The legislative documents refer to Gail Castillo as Gail Castile or Gail.

35. *H.B. 2450 Relating to Law Enforcement Before Subcomm. 1 of the H. Comm. on the Judiciary*, 62nd Leg., Reg. Sess. (Or. 1983) (statement of Gail Castillo, Pres. of the Hispanic Pol. Action Comm.), <https://osf.io/7e58d/> [<https://perma.cc/S788-D6V7>].

36. *Id.*

37. ROCKY BARILLA, RE: HOUSE BILL 2450, REGARDING ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE, 62nd Leg., Reg. Sess. (Or. 1983), <https://osf.io/a7vm9/> [<https://perma.cc/6LJV-3T9B>].

3. Local governments sustain significant costs to defend these cases, and these costs are not covered by insurance.
4. Local law enforcement resources are taken away from investigating actual criminal matters.³⁸

The subcommittee voted do pass, and the bill moved on to the full committee.

¶17 During the full House Committee on the Judiciary work session held on March 7, 1983, the committee discussed the rationale behind the proposed law. Some local law enforcement jurisdictions believed it was their responsibility to assist INS officers, which resulted in several lawsuits. In the staff measure analysis, Legislative Counsel Linda Zuckerman indicated that:

The purpose of HB 2450 . . . is to resolve the problems presented by state and local law enforcement agencies' enforcing federal immigration laws. The intent of the bill is to clarify in the Oregon statutes the status of existing law . . . that state and local law enforcement agencies may not take responsibility for detecting or apprehending persons whose only offense is residing in this country in violation of federal immigration laws. . . . [They] may not expend their monies or use their personnel to detect or apprehend persons on that basis.³⁹

During the committee meeting, Zuckerman indicated that INS confirmed "there is no authority to delegate down authority for civil immigration laws to local officials" and that "it is not their policy to have locals enforce the civil immigration laws."⁴⁰

¶18 The only opposition in the record was brought up by Rep. Smith. He had been contacted by Mr. Hill, a constituent whose daughter was killed by an undocumented drunk driver. Mr. Hill opposed the legislation, believing that local law enforcement officials should assist INS in removing illegal aliens.⁴¹

¶19 Minor amendments were proposed and approved unanimously. The bill was amended with a report to the House floor with a do-pass recommendation. On March 16, there was a motion by Rep. Thomas Mason of Portland to rerefer the bill to the Committee on the Judiciary. That motion failed. The bill ultimately passed the House with a 40 to 11 vote. Once in the Senate, despite an assessment from the Legislative Fiscal Office that there would be no financial impact,⁴² the bill was referred to the Ways and Means Committee.

¶20 On June 13, 1983, a confused subcommittee of the Joint Ways and Means Committee heard the bill. At the hearing, representing HPAC were Gail Castillo, the past president, and Danny Santos, the current president.⁴³ Rep. Springer, as the sponsor, introduced the bill with speculation as to why the bill was referred to the Ways and

38. *Id.*

39. LINDA ZUCKERMAN, STAFF MEASURE ANALYSIS ON H.B. 2450 FOR H. COMM. ON THE JUDICIARY, 62nd Leg., Reg. Sess. (Or. 1983), <https://osf.io/qvnst/> [<https://perma.cc/MF7C-XKEW>].

40. *Hearing on H.B. 2450 Before the H. Comm. on the Judiciary*, 62nd Leg., Reg. Sess. (Or. 1983) (statement of Linda Zuckerman, Legislative Counsel), <https://osf.io/r5kq4/> [<https://perma.cc/2QCY-CJGM>].

41. *Id.* (statement of Rep. Norman Smith).

42. LEGISLATIVE FISCAL OFFICE, FISCAL IMPACT ASSESSMENT ON H.B. 2450, 62nd Leg., Reg. Sess. (Or. 1983), <https://osf.io/qvnst/> [<https://perma.cc/Q7MW-MT7Y>].

43. Daniel P. Santos is referred to as Danny Santos in most of the documents and hearings.

Means Committee instead of going directly to the Senate Judiciary Committee. He thought it was because of concern Rep. Mason raised during the floor debate that an officer who violated this law could be prosecuted for official misconduct, which might result in a fiscal impact. However, there were very few cases of prosecutions for official misconduct, so he argued the impact, if any, would be minimal. In fact, one of the outcomes of this bill was to reduce potential liability from local law enforcement improperly attempting to enforce a law in which it had no jurisdiction.⁴⁴

¶21 Rep. Jones questioned why this bill stated it was protecting Oregon citizens when it was giving extra protection to those of “Hispanic birth.”⁴⁵ Santos and Castillo clarified that the bill did protect Oregon citizens; it would still allow INS to enforce the law, and local law enforcement would still be allowed to stop persons with cause. At this point, the chair acknowledged that this bill should have gone to the Senate Judiciary Committee, and there was continued confusion from at least one additional member about the committee referral.⁴⁶

¶22 The committee members discussed incidental stops and other scenarios with Santos and Castillo. They asked questions about what would happen if someone was arrested and then suspected to be undocumented.⁴⁷ The bill also protected other ethnic minorities. Santos mentioned that Americans who appeared Mexican were being stopped, including American Indians and possibly Filipinos.⁴⁸ The chair commented that “we will have to see if we can get ‘El Presidente’ of the Senate to take another look at this and see if it shouldn’t go to Senate Judiciary, instead of the Ways and Means.”⁴⁹

¶23 Two more witnesses spoke on the impact of the bill. Paul Tiffany from the Oregon Bureau of Labor and Industries brought up a policy conflict with Oregon’s Farm Labor contractor statute, which made it unlawful to “knowingly employ a person not legally present in this country.”⁵⁰ The agency would need to detect legal and illegal aliens to enforce that section. Sue Acuff from the Legislative Fiscal Office indicated that there did not appear to be a fiscal impact with this bill.⁵¹

¶24 The chair indicated to Santos, “If we have another hearing, you will be notified to that.”⁵² However, Ways and Means did not have another hearing or work session on the bill. Instead, the bill had the one hearing and was set to die. In what appeared to be a last-ditch effort, the bill made its way to the Senate Judiciary Committee as H.B. 2870, a bill related to police dogs.⁵³ H.B. 2870 was amended to delete the previous language on police dogs, and it was substituted with the language of H.B. 2450:

44. *Hearing on H.B. 2450 Before Subcomm. 2 of the Joint Comm. on Ways & Means*, 62nd Leg., Reg. Sess. (Or. 1983), <https://osf.io/vq9e7/> [<https://perma.cc/9K5N-YQDH>].

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. EXHIBIT B: PROPOSED AMENDMENTS TO HOUSE BILL 2870, 62nd Leg., Reg. Sess. (Or. 1983),

Sen. Brown: House Bill 2870. This bill we put on the schedule because a bill that passed the House and has gone to the Ways and Means Committee and it's gotten tangled up there.

Sen. Hendrickson: The Dog Bill?

Maria Mesa:⁵⁴ Yeah.

Sen. Brown: I always knew that bill might be good for something.

The amended bill was eventually passed out of committee, after some additional confusion about it being the police dog bill. When the bill eventually reached the Senate floor, during an evening session, there was question as to whether the amendment to H.B. 2870 was germane. Because the title of the bill had been amended from a bill related to police dogs to a bill "relating to law enforcement," it was ruled to be germane. There was a failed motion to rerefer the bill to the Committee on the Judiciary. The bill passed; however, several senators requested that an explanation be entered into the Journal. In the Journal, it states, "I voted no because I do not believe we have a constitutional right to direct police forces not to enforce the laws of this nation."⁵⁵

¶25 Since H.B. 2870 had been substituted with new language, the bill had to now go back to the House. According to Santos, "HPAC was informed that the substitute bill was technically flawed and that the House rules would not be suspended to seek passage of the bill."⁵⁶ Back in the House, the bill was tabled, bringing the amended police dog bill to its end. However, that was not the end for HPAC's bill. Just days later was "one last breath of hope."⁵⁷

¶26 July 15 was the final day of the session, and a conference committee was reviewing SB 731, a bill relating to crimes. Both the Senate and the House passed different versions of the bill, and the committee was charged with overcoming the differences in the bills. The committee decided to recommend the House version of the bill with amendments. Among the amendments was included the language from H.B. 2450. The House adopted the report and repassed the bill; however, the Senate subsequently refused to adopt the report and repass the bill.⁵⁸ "Senator Walt Brown of Milwaukie walked the floor and pointed out the HPAC legislation to some Senators who had supported HPAC efforts but who now had voted against SB 731."⁵⁹ Sen. Ruth McFarland of Boring moved for reconsideration, but the motion failed and the bill finally died.

Opposition from Local Law Enforcement—H.B. 2337 (1985)

¶27 In the following legislative session, in 1985, the bill was amended to include a section that clarified local law enforcement could contact INS to verify immigration

<https://osf.io/2gzuy/> [<https://perma.cc/9VYJ-AC9B>].

54. Maria Mesa is identified as the Committee Assistant.

55. S. Journal, 62nd Leg., Reg. Sess., at 172 (Or. 1983).

56. Santos, *supra* note 30, at 22.

57. *Id.* at 24.

58. Senate Measures S-138, 62nd Leg., Reg. Sess. (Or. 1983).

59. Santos, *supra* note 30, at 24.

status if the person is arrested for any criminal offense. Once again, the bill passed the House and was subsequently referred to the Senate Judiciary Committee.

¶28 Rocky Barilla was now working as legal counsel for the state legislature. In the new staff measure analysis, Barilla specified that:

[S]everal local law enforcement agencies have been successfully challenged for the unauthorized enforcement of Immigration laws. These lawsuits have been costly to the city and county governments in terms of money and time expended. . . . The intent of the measure is to ensure that only INS enforces immigration law; and to verify that police have only the authority to enforce criminal laws.⁶⁰

The inability of local governments to obtain insurance for civil rights violations was also a part of the rationale for the bill.⁶¹

¶29 On February 26, Danny Santos, as president of HPAC, testified to a House Judiciary subcommittee indicating that “[i]t is clear that state and local law enforcement officers have no authority to enforce immigration laws.”⁶² The three issues were civil rights abuses against Hispanic and other minorities, local law enforcement not trained in the enforcement of immigration laws, and taxpayer costs for defending these violations by law enforcement.⁶³

¶30 Also testifying in support of the bill was Vietta Helmle with the Oregon Coalition Against Domestic and Sexual Violence. She discussed the issues with undocumented victims of violence who are afraid to utilize services because they fear being turned in to immigration. The victims do not contact the local police departments because they are worried they would be reported to immigration authorities instead.⁶⁴

¶31 The House Judiciary subcommittee held another meeting on March 1. This was when the first major opposition was heard on the bill from local law enforcement officials. Chuck Foster, sheriff of Marion County speaking on behalf of the Sheriff’s Association, was the first to testify in opposition of the legislation. He testified that the legislation violated the oath of office for law enforcement officers and encouraged congressional resolution on this issue.⁶⁵ Committee members asked Sheriff Foster to discuss different scenarios involving his office’s work with INS and undocumented people.

¶32 Sheriff Norman B. Neal of Douglas County also testified in opposition to H.B. 2337. He indicated concern about timber being planted by people brought in illegally, further saying that this law would limit the ability of law enforcement to keep track of tree-planting crews. “What I see this bill doing is restricting us back in the number of

60. ROCKY BARILLA, STAFF MEASURE ANALYSIS ON H.B. 2337 FOR H. COMM. ON THE JUDICIARY, 63rd Leg., Reg. Sess. (Or. 1985), <https://osf.io/ns2pa/> [<https://perma.cc/3W83-S2YX>].

61. *Id.*

62. *H.B. 2337 Relating to Law Enforcement Before Subcomm. 2 of the H. Comm. on the Judiciary*, 63rd Leg., Reg. Sess. (Or. 1985) (statement of Danny Santos, Pres. of the Hispanic Pol. Action Comm.), <https://osf.io/rncvz/> [<https://perma.cc/68Y2-C87D>].

63. *Id.*

64. *Id.* (statement of Vietta Helmle, Or. Coalition Against Domestic & Sexual Violence).

65. *House Judiciary Subcomm. 2 Meeting Minutes 4*, 63rd Leg., Reg. Sess. (Or. 1985), <https://osf.io/98b6p/> [<https://perma.cc/ZT2M-QVWG>].

ways where we could very well have our woods working alive with these type of people and never leaving.”⁶⁶

¶133 Sheriff Neal also named another issue, which occurs once the timber work is done. Immigration is called and arrests workers who have not been paid for their work. He mentioned that there are contractors who are doing this, and legislation should be developed to restrict their activity instead. This bill would limit local law enforcement’s ability to provide information to immigration services. “If local law enforcement ignores these people, we’ll find them camped on our rivers, and with no means of support. And then, eventually, to feed themselves, they’ll need to steal from a property owner or whatever.”⁶⁷

¶134 Alvin Allen, Stayton Chief of Police, also testified against the bill. He predicted the law would be detrimental to law enforcement in communities with an influx of summer migrant labor. Based on his previous work in eastern Oregon, he described an issue with migrant labor staying in the community after the work is complete. Because local law enforcement was familiar with the community members, they were able to identify people who were considered neighbors and those who needed to be checked by immigration.⁶⁸

¶135 Chief Allen, in response to a question from counsel Barilla, indicated that most of his previous work with immigration was related to Hispanic or Mexican aliens and that no Canadians were ever picked up because there was not a large influx of Canadian people. Barilla informed him that “approximately 15% of the illegal immigration in the Northwest is from Canada.” Since moving from eastern Oregon, in his seven years working in Stayton, Chief Allen stated that he had no contact with INS.⁶⁹

¶136 Next, HPAC President Santos addressed the committee. HPAC was not opposed to the enforcement of federal immigration law, but instead was asking for the law to be enforced by INS as designated by law. He stated that the testimony from law enforcement demonstrated their confusion about the role they play. “[T]here’s a matter of training in immigration law and . . . a question as to liability . . . for improper enforcement of Federal immigration law. . . . I think one thing that’s being overlooked here is the concern for the Hispanic citizen.”⁷⁰

¶137 Rebecca Crocker, also testifying on behalf of HPAC as the legislative director, emphasized that they were there on behalf of the Hispanic people and “some of the laws that they’re trying to enforce just because we are brown and not because of the fact that they even know we’re suspected of being illegal aliens.” Local law enforcement “should

66. *H.B. 2337 Relating to Law Enforcement Before Subcomm. 2 of the H. Comm. on the Judiciary*, 63rd Leg., Reg. Sess. (Or. 1985) (statement of Normal Neal, Douglas County Sheriff), <https://osf.io/9hvp5/> [<https://perma.cc/KK7Z-WZUG>].

67. *Id.*

68. *Id.* (statement of Alvin Allen, Stayton Chief of Police).

69. *Id.*

70. *Id.* (statement of Danny Santos, Pres. of the Hispanic Pol. Action Comm.).

be using their funds to take care of the local problems that they have, and do it more adequately, and then giving INS their responsibility.”⁷¹

¶38 The committee held a work session a few days later on March 5. Rep. Bellamy suggested adding language to clarify that if an individual is arrested for a criminal charge, local law enforcement could then contact INS about the person’s status.

Nothing in this section is intended to prohibit a law enforcement agency upon the arrest of an individual for criminal charges other than being an illegal alien.

There was a brief discussion about messaging to local law enforcement about complying with state and federal laws. The subcommittee voted to move the amended bill to the full committee with a do-pass recommendation.⁷²

¶39 In a House committee work session held on March 13, Barilla reviewed the bill. In the revised staff measure analysis, he wrote:

Immigration Law is federal civil law which is enforced solely by the Immigration and Naturalization Service. The INS have specialized training in Immigration law and its enforcement. There is no authority for local law enforcement agencies to enforce Immigration laws. Several local law enforcement agencies have been successfully challenged for the unauthorized enforcement of Immigration laws. These lawsuits have been costly to the city and county governments in terms of money and time expended.⁷³

The committee discussed the amendment proposed by Rep. Bellamy.

¶40 The proposal included language requiring admission of being in the country in violation of immigration laws. This language was later removed from the proposal. Additional language clarifying that law enforcement could contact INS after a person was arrested for a criminal offense was discussed, and the full committee voted to move the bill to the floor with a do-pass-as-amended recommendation.

¶41 The bill passed the House and went to the Senate, where it was assigned to the Senate Judiciary Committee. On June 12, the committee held a public work session on the bill. Santos gave background information on the bill and discussed the problems with local expenditure of resources to enforce federal immigration law and the liability issues associated with such unlawful enforcement.⁷⁴ He indicated that HPAC was not opposed to the amendments because the law required that a person be arrested for a criminal offense. The purpose of the law was not to prohibit criminal laws from being enforced but to stop harassment of people based on their ethnic appearance.⁷⁵

71. *Id.* (statement of Rebecca Crocker, Legislative Dir. of the Hispanic Pol. Action Comm.).

72. *H. Comm. on Judiciary Subcomm. 2 Work Sess.*, 63rd Leg., Reg. Sess. (Or. 1985), <https://osf.io/pnvt6/> [<https://perma.cc/5Q28-CDSY>].

73. EXHIBIT A: STAFF MEASURE ANALYSIS, House Comm. on Judiciary, 63rd Leg., Reg. Sess. (Or. 1985), <https://osf.io/gzet9/> [<https://perma.cc/K7W2-4Q8V>].

74. EXHIBIT B: H.B. 2337 RELATING TO LAW ENFORCEMENT BEFORE THE SEN. COMM. ON THE JUDICIARY, 63rd Leg., Reg. Sess. (Or. 1985) (statement of Danny Santos & Rebecca Crocker, Hispanic Pol. Action Comm.), <https://osf.io/64xty/> [<https://perma.cc/D684-CEDN>].

75. *H.B. 2337 Relating to Law Enforcement Before the Sen. Comm. on the Judiciary*, 63rd Leg., Reg. Sess. (Or. 1985) (hereinafter *H.B. 2337 Hearing*) (statement of Danny Santos, Hispanic Pol. Action Comm.), <https://osf.io/ag5mj/> [<https://perma.cc/JSM5-TFYW>].

¶42 Next, Paul Tiffany, administrator of the Wage and Hour Division for the Oregon Bureau of Labor and Industries, testified. He indicated a possible conflict in state policy. The bureau's practice is to accompany INS when checking foreign labor crews for citizenship status. This is to investigate contractors who were employing illegal labor. The concern was that those activities could be interpreted as law enforcement-type activities. Tiffany recommended an amendment to the bill to specifically exclude the bureau: "For the purposes of subsection one of this section, the Bureau of Labor and Industries [BLI] is not a law enforcement agency."⁷⁶ Santos responded that HPAC was not opposed to this amendment because "they [BLI] don't lead or assist to the investigation itself."⁷⁷

¶43 Noteworthy is an exhibit that was not discussed at the session. A letter from a constituent made the first reference to "sanctuary" in discussing this proposed law; not until 2018 did another such reference appear. "It is not fair to those waiting years for entry to allow illegals to swarm through our borders and enter so-called sanctuaries. Communists will do anything to infiltrate [sic] the US."⁷⁸

¶44 For no apparent reason, the committee never revisited the bill, and it died in committee at the end of the session.

Third Time's a Charm—H.B. 2314 (1987)⁷⁹

¶45 In 1986, Rep. Jim Hill, an African American representing Salem, was running for the state senate. He convinced Barilla to run for the seat he was vacating. Rep. Rocky Barilla became the first Latinx elected to Oregon state office in 1986.⁸⁰

¶46 On February 6, 1987, a House Judiciary subcommittee held a hearing on H.B. 2314. Santos described how the law would help improve "community relations with the Hispanic citizenry."⁸¹ Local law enforcement, untrained in immigration law, had a history of harassing members of the community in their attempt to enforce immigration

76. EXHIBIT C: H.B. 2337 RELATING TO LAW ENFORCEMENT BEFORE THE SEN. COMM. ON THE JUDICIARY, 63rd Leg., Reg. Sess. (Or. 1985) (testimony of Paul Tiffany, Bureau of Labor & Indus.), <https://osf.io/8fgep/> [<https://perma.cc/55XX-GNAZ>].

77. *H.B. 2337 Hearing*, *supra* note 76, (statement of Danny Santos, Hispanic Pol. Action Comm.).

78. EXHIBIT U: H.B. 2337 RELATING TO LAW ENFORCEMENT BEFORE THE SEN. COMM. ON THE JUDICIARY, 63rd Leg., Reg. Sess. (Or. 1985) (Apr. 17, 1985, letter from Jean McGregor to Sen. Glenn Otto), <https://osf.io/6zrs7/> [<https://perma.cc/75W6-FDUW>]. It is unclear whether the letter came with the text underlined or if it was added after the letter was received.

79. Santos, *supra* note 30. Santos prophetically ends his law school paper with "Perhaps the third time will be a charm." The Santos paper is dated January 13, 1986.

80. Raul Soto-Seelig was the first Latinx appointed to state office in 1977. Lauren Hernandez & Diane Dietz, *Oregon Legislature Reflects Growing Latino Influence, but Will It Last?*, STATESMAN J. (Oct. 21, 2017), <https://www.statesmanjournal.com/story/news/2017/10/21/oregon-legislature-reflects-growing-latino-influence-but-last/714877001/> [<https://perma.cc/3KNW-8NM7>].

81. EXHIBIT A: H.B. 2314 RELATING TO LAW ENFORCEMENT BEFORE THE H. SUBCOMM. ON THE JUDICIARY, 64th Leg., Reg. Sess. (Or. 1987) (written statement of Danny Santos, Pres. of Hispanic Pol. Action Comm.), <https://osf.io/4zqsc/> [<https://perma.cc/T93K-MC77>].

law. However, local law enforcement was not trained or updated in immigration law, resulting in costly civil rights violations.⁸²

¶147 Rep. Barilla, who spoke next, focused on the potential cost savings to the state in terms of avoiding potential civil rights lawsuits against local law enforcement, the wasted time of law enforcement on noncriminal matters, and the limitations on prison space.⁸³ Robert Mendoza from the Commission on Hispanic Affairs discussed the impact illegal enforcement has on the civil rights of “Hispanics and other ethnic minorities, including United States citizens.”⁸⁴

¶148 In response to a question about opposition to the bill from Rep. Phillips, Rep. Barilla indicated that past opposition may have come from the district attorneys’ association and some sheriffs. This was followed by a discussion on the diversity of law enforcement in the state and the lack of minorities in law enforcement. Rep. Miller stated that the office of the Portland chief of police indicated “police there would not be participating in immigration issues.”⁸⁵ The following week, the subcommittee voted to recommend H.B. 2314 to the full committee, and the full committee voted to move the bill to the House floor with a do-pass recommendation.⁸⁶ The bill, this time carried by Rep. Barilla, passed the House with only three nays.⁸⁷

¶149 The Senate Committee on the Judiciary first held a public hearing and work session on the bill on May 20, 1987. At the hearing, both Rep. Barilla and Santos spoke in support of the bill. Rep. Barilla explained that the bill codifies the attorney general’s opinion of 1977⁸⁸ and ensures that local law enforcement do not increase litigation costs for false arrests, overcrowd jails, or infringe on civil rights by attempting to enforce complex immigration laws that they are not trained for, including the new Immigration Reform Act of 1986.⁸⁹

¶150 At the hearing, the committee chair introduced a proposed amendment from the Bureau of Labor and Industries. The issue (raised in the last session by Tiffany) sought to clarify that the Bureau of Labor and Industries was not considered a law

82. *H.B. 2314 Relating to Law Enforcement Before the H. Subcomm. on the Judiciary*, 64th Leg., Reg. Sess. (Or. 1987) (hereinafter *H.B. 2314 Hearing*) (statement of Danny Santos, Hispanic Pol. Action Comm.), <https://osf.io/348xh/> [<https://perma.cc/N99G-3HBK>].

83. EXHIBIT B: H.B. 2314 RELATING TO LAW ENFORCEMENT BEFORE THE H. SUBCOMM. ON THE JUDICIARY, 64th Leg., Reg. Sess. (Or. 1987) (testimony of Rep. Rocky Barilla), <https://osf.io/hzn2u/> [<https://perma.cc/6J2Q-8FZ6>].

84. EXHIBIT C: H.B. 2314 RELATING TO LAW ENFORCEMENT BEFORE THE H. SUBCOMM. ON THE JUDICIARY, 64th Leg., Reg. Sess. (Or. Feb. 6, 1987) (written statement of Robert Mendoza, Comm’n on Hispanic Affs.), <https://osf.io/g23cp/> [<https://perma.cc/U3XC-VV6U>].

85. *H.B. 2314 Hearing*, *supra* note 82.

86. *H.B. 2314 Relating to Law Enforcement Before the H. Subcomm. on the Judiciary*, 64th Leg., Reg. Sess. (Or. 1987) (work session), <https://osf.io/6zfq4/> [<https://perma.cc/5UST-AD5G>]; *H. Judiciary Comm. Meeting Minutes*, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/fyjzp/> [<https://perma.cc/VFZA-P3RX>].

87. *H.B. 2314 Oregon House of Representatives Electronic Roll Call*, at 4, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/zt352/> [<https://perma.cc/A4P8-2QSQ>].

88. Attorney General’s Opinion, *supra* note 24.

89. EXHIBIT E: H.B. 2314 LOCAL ENFORCEMENT OF IMMIGRATION LAWS BEFORE THE SEN. JUDICIARY COMMITTEE, 64th Leg., Reg. Sess. (Or. 1987) (testimony to be given by Rep. Rocky Barilla), <https://osf.io/jxv69/> [<https://perma.cc/KSA4-YCV9>].

enforcement agency so that it could continue to enforce Oregon's farm labor contractor statute with the assistance of INS representatives.⁹⁰ Rep. Barilla indicated that he had no objection to the amendment.

¶51 Next, Lieutenant Lee Erickson, Assistant Division Commander of the State Police Criminal Division, spoke in opposition of the bill. "The Oregon State Police, by policy, does not enforce federal immigration laws." The concern was that the bill "would hamper the Department's ability to conduct a criminal investigation."⁹¹ Lt. Erickson noted that the infamous Rajneesh investigation⁹² involved participation from immigration authorities. Chair Frye asked Rep. Barilla and Lt. Erickson to "figure out something."⁹³

¶52 The committee returned to the bill on June 3, 1987. In his introduction, Frye stated, "It's been in the legislature at least three sessions, and I was not exactly enamored of it the first time I saw it, but I've kind of changed my view on it."⁹⁴ At the work session, the committee reviewed the proposed amendments including the one "worked out" by Rep. Barilla and Lt. Erickson.⁹⁵ In the staff measure analysis, co-counsel Eric Carlson explained that the amendment "would allow the INS to request criminal investigation information about persons who are named in INS records."⁹⁶ Additionally, "offense" was replaced with "violation of law," and "contact" was replaced with "exchange information with."⁹⁷ The committee voted to move the bill as amended to the floor with a do-pass recommendation. On June 9, 1987, the bill passed the Senate with only one nay.

¶53 Because of the Senate amendments, the bill was sent back to the House to vote on the Senate version of the bill. On June 29, the bill (with the Senate amendments) passed the House with only one nay and one excused. The bill was signed by Governor Goldschmidt on July 7 and became effective September 27, 1987.⁹⁸

90. EXHIBIT G: BUREAU OF LABOR AND INDUSTRIES 1, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/8nca4/> [<https://perma.cc/2T7T-WE6N>] (dated Apr. for the May 20, 1987, Senate Judiciary Committee hearing).

91. EXHIBIT H: H.B. 2314 LOCAL ENFORCEMENT OF IMMIGRATION LAWS BEFORE THE SEN. JUDICIARY COMMITTEE 1, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/myct2/> [<https://perma.cc/FX6Z-E2R6>] (testimony of Lee Erickson, Dep't of State Police).

92. Referring to a religious community in eastern Oregon in the 1980s. It was the subject of a popular Netflix documentary called *Wild Wild Country*.

93. H.B. 2314 *Local Enforcement of Immigration Laws Before the Sen. Judiciary Committee*, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/24r7y/> [<https://perma.cc/Z8TJ-JRAF>].

94. H.B. 2314 *Local Enforcement of Immigration Laws Before the Sen. Judiciary Committee*, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/5vk9z/> [<https://perma.cc/C8VS-8LHL>].

95. EXHIBIT C: PROPOSED AMENDMENTS TO H.B. 2314, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/mbhgk/> [<https://perma.cc/EGD7-54YY>].

96. EXHIBIT D: STAFF MEASURE ANALYSIS, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/yx6rz/> [<https://perma.cc/3RV2-RBAG>].

97. *Id.*

98. FINAL LEGISLATIVE CALENDAR, 64th Leg., Reg. Sess. (Or. 1987).

Post 9/11 Amendments—H.B. 2089 (2003)

¶154 H.B. 2089, originally a bill introduced to address restitution for victims of crimes, was amended to clarify when local law enforcement can arrest someone for violating federal immigration laws. It also updated the names of federal agencies that local law enforcement may work with.⁹⁹ After the events of September 11, 2001, Governor John Kitzhaber requested a review of Oregon law by Attorney General Hardy Myers “to identify where gaps exist that ought to be closed to improve our capacity to detect and deter further terrorist attacks.”¹⁰⁰

¶155 “Since it was enacted in 1987, O.R.S. § 181.850 has had a salutary effect in encouraging victims of crime to cooperate with police without fear of being deported. In addition, the statute has been an important part of efforts to address concerns about racial and ethnic profiling.”¹⁰¹ The text of the statute “prohibits a state or local law enforcement officer from arresting a person for whom there is a federal criminal arrest warrant based on alleged violations of federal immigration law.”¹⁰² However, this was not the legislature’s intent.

¶156 “A court construing O.R.S. § 181.850 would be required to pursue the intention of the Legislature. . . . The text of the statute controls if it is unambiguous, but even in such a case, O.R.S. § 174.020 authorizes a litigant to offer evidence of the Legislature’s intent. Here, the Legislature’s intent is contradicted by the text.”¹⁰³ The staff measure summary for H.B. 2314¹⁰⁴ is quoted to indicate the intent of the measure.

¶157 In his testimony to the House Judiciary Committee, Pete Shepard, Deputy Attorney General, reinforced the positive impact of the statute in building relationships with community members who may be victims or witnesses of crimes. Under this law, they could work with law enforcement without worrying about their immigration status. The bill was supported by the Oregon State Sheriffs’ Association, Oregon Association of Chiefs of Police, and Oregon District Attorneys Association.¹⁰⁵

¶158 Shepard was joined by David Fidanque, Executive Director of the ACLU of Oregon. He indicated that the recommended changes to the statute would not make a difference in the interpretation of the statute and how it has been implemented.

[This] is the original anti-racial and ethnic profiling statute adopted by this legislative body. And it was adopted, not to provide special protections for people who might be in this country without being in . . . full compliance with federal immigration law. It was intended to prevent state

99. Engrossed H.B. 2089, 72nd Leg., Reg. Sess. (Or. 2003), <https://osf.io/q2kd4/> [<https://perma.cc/WW2J-34E9>].

100. PETE SHEPARD, EXHIBIT C: WRITTEN TESTIMONY OF DEPARTMENT OF JUSTICE IN SUPPORT OF H.B. 2089, 72nd Leg., Reg. Sess. (Or. 2003), <https://osf.io/bjesh/> [<https://perma.cc/85M7-YRKV>].

101. *Id.*

102. *Id.*

103. *Id.*

104. H.B. 2314 STAFF MEASURE ANALYSIS, at 6, 64th Leg., Reg. Sess. (Or. 1987), <https://osf.io/zts352/> [<https://perma.cc/8NGS-B6AF>].

105. H.B. 2089 *Relating to Criminal Procedure*, 72nd Leg., Reg. Sess. (Or. 2003) (testimony of Pete Shepard, Dept of Justice), <https://osf.io/ef7jc/> [<https://perma.cc/3QXM-T9ZQ>].

and local police from treating people who looked or sounded different, as if they were suspects because of who they were and how they sounded and how they looked.¹⁰⁶

Rep. Barker spoke with his local chief of police, who was concerned about being prevented from talking to Muslim people. Fidanque responded that the law "clearly permits state and local law enforcement officials to follow any lead in a criminal case."¹⁰⁷

¶159 The bill passed the House on June 12, 2003. A public hearing was held by the Senate Judiciary Committee on June 26 and the bill was moved to the Senate floor with a do-pass recommendation. It then passed the Senate and was signed by the governor. The amendments became effective January 1, 2004.¹⁰⁸

Attempt to Repeal Oregon's "Sanctuary" Law—Measure 105 (2018)

¶160 In 2016, Donald Trump was elected the 45th president of the United States. In his first week in office, he issued a series of executive orders focused on strictly enforcing immigration laws and securing the border. In particular, he proclaimed that "[s]anctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic."¹⁰⁹ Oregon's long-standing anti-racial profiling law now took on a very politically partisan meaning and was a target for repeal.

¶161 In July 2017, an initiative petition was filed for the 2018 election to repeal O.R.S. § 181A.820.¹¹⁰ In the state of Oregon, any person can propose a change to Oregon laws or the Oregon constitution using the initiative process.¹¹¹ After meeting specific requirements, the attorney general prepares a ballot title¹¹² that includes a caption, a result of "yes" vote statement, a result of "no" vote statement, and a summary.¹¹³ A notice and comment period is then available to the public,¹¹⁴ during which the text may be amended before it is placed on the ballot to be voted on in the next election.¹¹⁵

¶162 In the case of Measure 105, there were a few conflicts in the measure's language prior to the election that are described in the letter from the Department of Justice

106. *Id.* (testimony of David Fidanque, ACLU of Or.).

107. *Id.*

108. Oregon Legislative Assembly, 2003 Summary of Legislation 104 (Legislative Administration Committee Services Office 2003).

109. Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

110. Renumbered from OR. REV. STAT. § 181.850 in 2015 by the Legislative Counsel.

111. OR. REV. STAT. § 250.045.

112. *Id.* § 250.065.

113. *Id.* § 250.035.

114. *Id.* § 250.067.

115. OR. SEC'Y OF STATE, *Make or Change State Law* (2020), <https://sos.oregon.gov/elections/Pages/statelaw.aspx> [<https://perma.cc/D379-84PC>]; OR. SEC'Y OF STATE ELECTIONS DIV., *State Initiative and Referendum Manual* (rev. 3/2020), <https://sos.oregon.gov/elections/documents/stateir.pdf> [<https://perma.cc/JJK79-DWU5>].

attached to the initiative petition.¹¹⁶ In regard to the caption describing the measure, the petitioners did not believe it accurately reflected the existing law and suggested replacing the words “limiting” with “prohibiting” and “enforce” with “cooperating.” In its review, the Department of Justice argued that the caption as written was more accurate than suggestions from the petitioners. The caption read:

Repeals law limiting use of state/local law enforcement resources to enforce federal immigration laws.¹¹⁷

Both the “yes” and “no” vote statements were revised based on submitted comments suggesting specific language and punctuation changes.¹¹⁸ Similarly, suggestions were made to amend the summary, but with a minor exception, the summary was not revised.¹¹⁹ The measure was on the ballot during the 2018 general election. In addition to the contested statements and summary, the Voters’ Pamphlet included submitted arguments in favor of and arguments against the measure.¹²⁰

¶63 In the arguments in favor of the measure, proponents referred to the law as an “illegal-immigrant sanctuary statute” and promoted stereotypes of illegal immigrants as criminals prone to violate other laws and commit violent acts. They claimed that the law prevents local law enforcement from being able to do their jobs. In addition to one of the chief petitioners, comments were from elected state officials, a veteran, and a sheriff.¹²¹

¶64 There were many more arguments in opposition published in the Voters’ Pamphlet.¹²² Current and former law enforcement and district attorneys, religious communities, business leaders, labor unions, immigrant rights groups, and civil rights groups submitted statements in support of keeping the anti-racial profiling law. Arguments urging a no vote on the measure included support of immigrants in the community and the benefits that came from the law, including trust between law enforcement and immigrant communities.

¶65 Ultimately, the measure did not pass; the law remained in effect. However, the vote was 675,389 to 1,172,774.¹²³ Over a third of the voters in the election supported the repeal of Oregon’s long-standing anti-racial profiling law.

116. Initiative Petition 2018-022 Certified Ballot Title, at 4 (Or. July 18, 2017), <https://osf.io/w8fkq/> [<https://perma.cc/C9SH-7UYE>] (hereinafter Petition); submitted comments are available at <https://osf.io/azqb3/> [<https://perma.cc/5VDR-3JYL>].

117. Petition, *supra* note 116, at 5 (2nd page of letter).

118. *Id.* at 5–7.

119. *Id.* at 7–9.

120. Voters’ Pamphlet, Oregon General Election (Or. 2018), <https://osf.io/rnv59/> [<https://perma.cc/D2FC-YKYQ>].

121. *Id.* at 96–97.

122. *Id.* at 98–110.

123. Measure 105, General Election Abstract of Votes (Or. 2018), <https://osf.io/4bjr6/> [<https://perma.cc/ANN7-JYFN>].

Nonsubstantive Updates—S.B. 355 (2019)

¶66 In 2019, a periodic “reviser’s bill” from the Office of Legislative Counsel was proposed to make “non-substantive, corrective, and technical changes to Oregon law.”¹²⁴ Of particular relevance, the language of the statute was updated to reflect the current names of the federal agencies. “United States Immigration and Customs Enforcement, United States Citizenship and Immigration Services and United States Customs and Border Protection” was updated with “the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services and the United States Bureau of Customs and Border Protection.”

The Sanctuary Promise Act—H.B. 3265 (2021)

¶67 In February 2021, H.B. 3265, known as the Sanctuary Promise Act, was introduced.¹²⁵ Proponents of the bill claimed that it would close some of the gaps of the 30-year-old law. It changed the enforcement and information-sharing provisions, prevented warrantless arrests at courthouses, and further restricted the use of public resources to enforce immigration laws. The bill created a new provision, beyond O.R.S. § 181A.820, that required requests from federal agencies for immigration enforcement assistance to be declined and reported to the governor’s office. This information would be published in an annual report. The law further prohibited law enforcement agencies from entering into agreements to assist with immigration enforcement.¹²⁶ As introduced, the bill also allowed for a private right of action. While strengthening and modernizing the existing law, it was clear through testimony and committee hearings that the need for the law was being debated.

¶68 There were a few early changes made to the language of the bill that amended O.R.S. § 181A.820. One proposal removed the language allowing attorneys fees and costs to be awarded to a person bringing a civil action against a law enforcement agency. According to Leland Baxter-Neal, Director of Advocacy at Latino Network and a key member of the drafting and lobbying coalition:

Quite simply, there were key stakeholders who would have opposed the bill if we didn’t remove those provisions. They were concerned that it would expose certain public entities to economic liability that they weren’t comfortable with. So after consultation with our coalition, we limited the private right of action to only injunctive relief. It was a painful change to make because we see attorneys’ fees in particular as a critical tool for access to justice.¹²⁷

124. S.B. 355 STAFF MEASURE SUMMARY, 80th Leg., Reg. Sess. (Or. 2019), <https://osf.io/5kydp/> [<https://perma.cc/TW82-WKCCQ>].

125. H.B. 3265, 81st Leg., Reg. Sess. (Or. 2021) (Oregon Legislative Information on H.B. 3265), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3265> [<https://perma.cc/HZL5-KUUBJ>].

126. H.B. 3265, 81st Leg., Reg. Sess. (Or. 2021) (introduced), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3265/Introduced> [<https://perma.cc/7X29-PMC8>].

127. Email with Leland Baxter-Neal (Aug. 6, 2021) (on file with author).

The most significant change, however, amended the rationale for using law enforcement resources. As introduced, the bill maintained the previous language:

for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

This language was amended and ultimately adopted to state:

for the purpose of detecting or apprehending persons **for the purpose of enforcing** federal immigration laws.

While this change was not addressed in the legislative documents, according to Baxter-Neal, the change was needed “to clarify as well as broaden its scope and reach.”¹²⁸ The previous language was being interpreted by agencies to be narrower than intended. “The language . . . shifts the focus off the individual targeted and focuses it on the conduct of the agency or officers.”¹²⁹

¶169 The first public hearing was held by the House Committee on Judiciary on March 25, 2021.¹³⁰ Due to COVID-19 restrictions, the hearing was held as a video conference and streamed online. Rep. Teresa Alonso Leon, representing House District 22, was chief sponsor of the bill and gave introductory remarks to the committee. The bill updated the language and clarified the decades-old sanctuary law. She stated that the federal immigration system was broken, but that this bill represented a way for the state to protect Oregonians.¹³¹

¶170 Speaking in support of the bill was Rep. Lisa Reynolds from House District 36. She stated that the law would protect Oregonians from racial profiling and that local and state law enforcement would continue to work with federal law enforcement. The bill would help Oregonians feel safe and not at risk based on their perceived immigration status.¹³² John Hummel, the district attorney from Deschutes County, emphasized that the law would help undocumented persons to feel more comfortable when contacting law enforcement.¹³³

¶171 Erin Pettigrew from the Oregon Judicial Department discussed the issue of access to justice in courts and the need for participating in the legal system with no fear. While neutral on the bill, the OJD was requesting amendments that would make the courts exempt from the prohibition on collecting immigration or citizenship status information.¹³⁴

128. *Id.*

129. *Id.*

130. *Hearing on H.B. 3265 Before the H. Comm. on Judiciary*, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021031317> [<https://perma.cc/4WN8-S9E6>].

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*; *Sanctuary Promise Act: Hearing on H.B. 3265 Before the H. Comm. on Judiciary 1*, 81st Leg., Reg. Sess. (Or. 2021) (statement of Erin Pettigrew, Access to Justice Counsel, Or. Judicial Dep’t), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/20686> [<https://>].

¶72 Three additional community members spoke in support of the bill: Sindy Avila, a DACA recipient; Baxter-Neal; and Sarah Kim Pak, an attorney with the National Immigration Law Center. They discussed the lost trust with local law enforcement, the need for clarification in the law, and the importance of disentangling local police from federal law enforcement.¹³⁵

¶73 In addition to the live testimony, 163¹³⁶ written documents were submitted as public testimony, most in support of the bill. The testimony came from an attorney from Lake Oswego, religious community members (primarily from the Interfaith Movement for Immigrant Justice), a librarian, a nurse, members from immigrant rights groups, members from the Oregon Pediatric Society, an LGBTQ advocacy group, the Oregon National Organization for Women, the Oregon AFL-CIO, the Multnomah County DA, a Bend City councilor, the ACLU of Oregon, the SEIU, DACA recipients, Planned Parenthood, PCUN, the City of Portland, the Rogue Climate (a climate justice organization), the Coalition of Communities of Color, and the Oregon Criminal Defense Lawyers Association.¹³⁷

¶74 Writing in opposition of the bill were three community members, including Donna Bleiler of Salem, who wrote:

STRONGLY OPPOSE This bill places Oregon citizens and police officers in danger. Are we the 33rd state admitted to the U.S. or are we a foreign country? Refusing federal protection from illegal criminal individuals puts the state at risk and all Oregonians.¹³⁸

David Wall of Newberg wrote:

THE STATE OF OREGON by enacting "Sanctuary Laws" shielding foreign aliens from detection is an act of sedition and insurrection.¹³⁹

Additionally, the Oregon Department of Corrections, while neutral on the bill, wrote in to indicate the department would not be able to apply for a federal grant of approximately \$2.5 million for costs related to the incarceration of undocumented individuals.¹⁴⁰

perma.cc/95BS-D9AU].

135. Hearing, *supra* note 130.

136. Actually 164 were submitted, but one (Linda Craig, Portland) was for a different bill.

137. *Sanctuary Promise Act: Hearing on H.B. 3265 Before the H. Comm. on Judiciary*, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Testimony/HB3265> [<https://perma.cc/36JH-LZND>].

138. *Sanctuary Promise Act: Hearing on H.B. 3265 Before the H. Comm. On Judiciary*, 81st Leg., Reg. Sess. (Or. 2021) (statement of Donna Bleiler, Salem), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/16472> [<https://perma.cc/K6AM-Y4YZ>].

139. *Sanctuary Promise Act: Hearing on H.B. 3265 Before the H. Comm. on Judiciary*, 81st Leg., Reg. Sess. (Or. 2021) (statement of David S. Wall, Newberg), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/20834> [<https://perma.cc/Y3L5-RUJ7>].

140. *Sanctuary Promise Act: Hearing on H.B. 3265 Before the H. Comm. on Judiciary*, 81st Leg., Reg. Sess. (Or. 2021) (statement of Steve Robbins, Or. Dep't of Corrections), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/20613> [<https://perma.cc/JB5K-Z23S>].

¶75 At the House Judiciary work session held on April 13, the amended bill was discussed.¹⁴¹ The bill included a fiscal impact statement reflecting \$905,071 in costs from the general fund, allocated to the Department of Justice to implement and enforce the law.¹⁴² The fiscal impact statement detailed how the funds were to be used. Four positions would be created in the Department of Justice “to develop processes for intake and referral, data collection, data request, dissemination, investigation, analysis, and create a staffed hotline for suspected violations.”¹⁴³ Additionally, a later budget report indicated that the FTE (full-time equivalent) would be used to develop training and outreach and “develop a cultural component for trauma informed support services.”¹⁴⁴ The House Judiciary (with three no votes) recommended passage of the bill with amendments, and the bill was referred to the Ways and Means Committee because of the fiscal component.¹⁴⁵

¶76 The bill was assigned to the Joint Committee on Ways and Means, subcommittee on public safety, which held its first work session on the bill June 9.¹⁴⁶ An amendment was requested by the Joint Committee on Ways and Means to include a section in the bill indicating the appropriation from the general fund to the Department of Justice.¹⁴⁷ There was minimal discussion. Sen. Hansell indicated that he would vote no because he did not agree that the state should prevent local law enforcement from working with ICE. Two other members joined him in voting no. The amendment passed and was sent to the full committee.¹⁴⁸

¶77 On June 11, the full Joint Committee on Ways and Means met to discuss the bill. Sen. Hansell reiterated his comment from the subcommittee that he did not agree that law enforcement should not be allowed to work with ICE.¹⁴⁹ Sen. Gorsek discussed the concern that immigrant and refugee communities would be less inclined to call the police if they think law enforcement is working with ICE.¹⁵⁰ Sen. Frederick explained

141. *H. Comm. on Judiciary Work Sess.*, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021041033> [https://perma.cc/FA28-265Q]; Proposed Amendments to H.B. 3265, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/ProposedAmendment/20347> [https://perma.cc/5JA4-D2M6].

142. FISCAL IMPACT OF PROPOSED LEGISLATION, MEASURE: H.B. 3265 A, at 1, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/244813> [https://perma.cc/D6NB-PWVW].

143. *Id.* at 2.

144. H.B. 3265 BUDGET REPORT & MEASURE SUMMARY, Joint Comm. on Ways & Means, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Analysis/HB3265> [https://perma.cc/3JMR-22UB].

145. H.B. 3265, *supra* note 125.

146. *Id.*

147. PROPOSED AMENDMENTS TO A-ENGROSSED H.B. 3265, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/ProposedAmendment/21279> [https://perma.cc/T2ZM-XXUX].

148. H.B. 3265, *supra* note 125.

149. *Hearing on H.B. 3265 Before Joint Comm. on Ways & Means*, 81st Leg., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2021061117&startStreamAt=9621> [https://perma.cc/C6EZ-L39S].

150. *Id.*

that during the 2020 wildfires, police came to tell groups of Latinos that they needed to leave, but they hesitated because they thought police were working with ICE to catch them. There is a need to try and develop trust.¹⁵¹ The vote was 14-9-0 to pass the bill with the amendments. On June 22, the bill passed the Senate 16-13-1. It was signed by Governor Kate Brown on July 19, 2021.¹⁵²

The Future of O.R.S. § 181A.820

¶178 With the inauguration of the Biden administration came changes in federal policies and priorities. Some of the executive orders issued by President Trump on immigration enforcement were revoked.¹⁵³ The passage of the Sanctuary Promise Act signals a recommitment by the state of Oregon to protect members of the community from racial profiling and unnecessary harassment by law enforcement. It is an attempt to help communities build trust in law enforcement so members will report criminal activity affecting their safety and the safety of their loved ones.

¶179 However, none of these changes eliminate a long-standing history of racial profiling and targeting of immigrants by law enforcement in the state of Oregon. Local law enforcement continue to work with immigration agents and provide information that leads to the detention and deportation of people in the state despite a long-standing law prohibiting such activities. As a result, more and more people, including families and children, do not cooperate with authorities as they fear they may be reported to immigration services.

¶180 It will take time to determine whether the strengthening of the law and reporting requirements will have an effect on immigrant and refugee communities. How will this new law change the practices of law enforcement? Will it prevent federal immigration authorities from reaching out to local law enforcement? While a right of action is specifically allowed, how many people will have the resources to exercise their right to file a lawsuit?

¶181 Long-term systemic changes need to be made to gain the trust and safety of communities of color. This sanctuary law was intended to protect Oregonians from harassment by law enforcement based on racial profiling. The law was necessary 30 years ago when it was first passed, it is still needed today, and it will need to evolve as long as these abuses continue to occur.

Appendix: Changes to the Text

H.B. 2450 (1983) AS INTRODUCED

No law enforcement agency of the State of Oregon or any subdivision of the state shall use agency moneys, material or personnel for the detection or apprehension of persons

151. *Id.*

152. H.B. 3265, *supra* note 125.

153. *E.g.*, Exec. Order No. 13993, 86 Fed. Reg. 7051 (Jan. 20, 2021).

whose only offense is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.

H.B. 2450 AS AMENDED BY THE HOUSE JUDICIARY COMMITTEE (MAR. 9, 1983)

No law enforcement agency of the State of Oregon or of any **political** subdivision of the state shall use agency moneys, material or personnel for the [*detection or apprehension of*] **purpose of detecting or apprehending** persons whose only offense is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.

H.B. 2337 (1985) AS INTRODUCED

No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, [*material*] **equipment** or personnel for the purpose of detecting or apprehending persons whose only offense is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.

H.B. 2337 AS AMENDED BY THE HOUSE JUDICIARY COMMITTEE (MAR. 14, 1985)

(1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only offense is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.

(2) **Notwithstanding subsection (1) of this section, a law enforcement agency may contact the United States Immigration and Naturalization Service in order to verify the immigration status of a person if the person is arrested for any criminal offense.**

H.B. 2314 (1987) AS INTRODUCED

(1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only offense is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may contact the United States Immigration and Naturalization Service in order to verify the immigration status of a person if the person is arrested for any criminal offense.

H.B. 2314 SENATE AMENDMENTS (JUNE 5, 1987)

(1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only [offense] **violation of law** is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may [contact] **exchange information with** the United States Immigration and Naturalization Service in order to: (a) [v]Verify the immigration status of a person if the person is

arrested for any criminal offense; or **(b) Request criminal investigation information with reference to persons named in service records.**

(3) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

H.B. 2089 COMMITTEE ON JUDICIARY AMENDMENTS (JUNE 9, 2003)

(1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship [*residing*] **present** in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may exchange information with the [*United States Immigration and Naturalization Service*] **United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services and the United States Bureau of Customs and Border Protection** in order to: (a) Verify the immigration status of a person if the person is arrested for any criminal offense; or (b) Request criminal investigation information with reference to persons named in [*service*] records of the **United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services or the United States Bureau of Customs and Border Protection.**

(3) **Notwithstanding subsection (1) of this section, a law enforcement agency may arrest any person who: (a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and (b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.**

[~~(3)~~] (4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

(5) As used in this section, "warrant of arrest" has the meaning given that term in ORS 131.005.

S.B. 355 (2019) TECHNICAL CORRECTIONS

(1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may exchange information with [*the*] United States [*Bureau of*] Immigration and Customs Enforcement, [*the*] United States [*Bureau of*] Citizenship and Immigration Services and [*the*] United States [*Bureau of*] Customs and Border Protection in order to: (a) Verify the immigration status of a person if the person is arrested for any criminal offense; or (b) Request criminal investigation information with reference to persons named in records of [*the*] United States [*Bureau of*] Immigration and Customs Enforcement, [*the*]

United States [*Bureau of*] Citizenship and Immigration Services or [the] United States [*Bureau of*] Customs and Border Protection.

(3) Notwithstanding subsection (1) of this section, a law enforcement agency may arrest any person who: (a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and (b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.

(4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

(5) As used in this section, “warrant of arrest” has the meaning given that term in ORS 131.005.

H.B. 3265 SANCTUARY PROMISE ACT¹⁵⁴

(1) As used in this section:

(a) “**Federal immigration authority**” has the meaning given that term in ORS 180.805.

(b) “**Warrant of arrest**” has the meaning given that term in ORS 131.005.

[(1)] (2) [No] A law enforcement agency [*of the State of Oregon or of any political subdivision of the state shall*] **may not** use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons [*whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of*] **for the purpose of enforcing** federal immigration laws.

(3) **A law enforcement agency may not enter into a formal or informal agreement with a federal immigration authority relating to the detention of a person described in subsection (2) of this section.**

[(2)] (4) Notwithstanding subsection [(1)] (2) of this section, a law enforcement agency may exchange information with [*United States Immigration and Customs Enforcement, United States Citizenship and Immigration Services and United States Customs and Border Protection*] **a federal immigration authority** in order to[:][*(a) Verify the immigration status of a person if the person is arrested for any criminal offense; or*][(b)] [R] request criminal investigation information with reference to persons named in records of [*United States Immigration and Customs Enforcement, United States Citizenship and Immigration Services or United States Customs and Border Protection*] **the federal immigration authority.**

[(3)] (5) Notwithstanding subsection [(1)] (2) of this section, a law enforcement agency may arrest any person who:(a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and(b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.

154. Several amendments were made to H.B. 3265 during the session. This version indicates only the -A4 amendments that were adopted and amended O.R.S. § 181A.820. H.B. 3265 made several other changes to the law outside of O.R.S. § 181A.820. Other amendments can be found at <https://olis.oregonlegislature.gov/liz/2021R1/Measures/ProposedAmendments/HB3265> [<https://perma.cc/ZL7B-Z2HF>].

(6) Any person may bring a civil action against a law enforcement agency that violates subsection (2) or (3) of this section to enjoin the violation.

[(4)] (7) For purposes of subsection [(1)] (2) or (3) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

[(5) As used in this section, "warrant of arrest" has the meaning given that term in ORS 131.005.]

LANGUAGE OF ORS § 181A.820 AS OF 2021

(1) As used in this section:

(a) "Federal immigration authority" has the meaning given that term in ORS 180.805.

(b) "Warrant of arrest" has the meaning given that term in ORS 131.005.

(2) A law enforcement agency may not use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons for the purpose of enforcing federal immigration laws.

(3) A law enforcement agency may not enter into a formal or informal agreement with a federal immigration authority relating to the detention of a person described in subsection (2) of this section.

(4) Notwithstanding subsection (2) of this section, a law enforcement agency may exchange information with a federal immigration authority in order to request criminal investigation information with reference to persons named in records of the federal immigration authority.

(5) Notwithstanding subsection (2) of this section, a law enforcement agency may arrest any person who: (a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and (b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.

(6) Any person may bring a civil action against a law enforcement agency that violates subsection (2) or (3) of this section to enjoin the violation.

(7) For purposes of subsection (2) or (3) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

The Right to Access Legal Information: Progress and Evolving Norms in a Digital Age*

Heidi Frostestad Kuehl**

The right to access information is a historically fundamental right according to international legal norms. During an era of increasingly complex innovation and burgeoning digital legal information, the tension between access and barriers to easily accessible legal information like encryption and privacy have changed the landscape of open access. This article addresses the traditional international law facilitation of open access to legal information and current legislative efforts for protection of these norms. It also offers a matrix of international and national initiatives as model regimes for this important right to access information and, especially, preserving open access to legal information.

Introduction: An Overview of Open Access to Legal Information	262
International Law Protections and Emerging Legal Standards for Access to Information	264
UN Governance.	265
OECD Governance of AI in a Technological Age	267
Regional Efforts and Legal Norms	268
National Legal Efforts in an Age of AI.	270
Barriers and Opportunities for Open Access and AI Management: Encryption, Privacy, and National Legislative Efforts.	272
Encryption Barriers.	272
Privacy Protections Inherent in Emerging Technologies	274
National Legislation—Advancements in AI Initiatives	276
Recommendations for Future Efforts: UN, OECD, and Regional Norms as Success Stories	277
UN Overarching Norms: Fundamental Human Rights	278

* © Heidi Frostestad Kuehl, 2022.

** Director, David C. Shapiro Memorial Law Library, and Associate Professor of Law, Northern Illinois University College of Law, DeKalb, Illinois. Thanks so much to the 2021 participants of the Boulder Conference for their review and helpful comments. Thanks also to the October 2020 Junior Scholars Conference participants at the Loyola University School of Law, coordinated by the NIU College of Law, for helpful critique of my work, especially Professors Peter DiCola and Andrew Mamo. Finally, thanks to my daughter, Grace, for inspiration and love.

OECD Initiatives for International Business	280
World Bank—Doing Business and Economic Guidelines	280
EU/OAS—Access to Information Models	281
United States—Extraterritorial Guidance After the CLOUD Act	282
Conclusion: Hope for Future Open Access Innovations	281

Introduction: An Overview of Open Access to Legal Information

¶1 Public viewing of, knowledge about, and access to available laws of nation-states has existed since ancient times when all laws were written in stone and displayed in public, such as the Code of Hammurabi.¹ Efforts to promote open access to legal information in modern times have existed since the inception of the Internet and are representative of democratic societies.² In the 1990s, the movement toward providing access to Supreme Court decisions online blossomed at Case Western University through Project Hermes, and Cornell Law School developed the highly successful Legal Information Institute.³ The World Legal Information Institute followed to promote the digitization of primary materials worldwide.⁴ More recently, the Durham Statement articulates efforts to provide open access to legal information in the United States and promote the scholarly enterprise.⁵ The Montreal Declaration on Public Access to Law (2002) outlines important goals in the open access movement to maximize access to information to promote justice and the rule of law, positing that public legal information is common digital property and should be accessible by all free of charge, and nonprofit groups have a right to freely publish legal information to create access even if the government controls the information.⁶ There are also ongoing initiatives to offer free PACER at prominent law schools like Northwestern,⁷ comprehensive efforts to digitize reporters at the Harvard Law Library through the Library Innovation Lab,⁸ and continuation of historic efforts to provide a comprehensive U.S. legal repository in the spirit of open access.⁹

1. See, e.g., Leesi Ebenezer Mitee, *The Right of Public Access to Legal Information: A Proposal for Its Universal Recognition as a Human Right*, 18 GERMAN L.J. 1429 (2017).

2. See, e.g., Michael W. Carroll, *The Movement for Open Access on Law*, 10 LEWIS & CLARK L. REV. 741 (2006).

3. See Mitee, *supra* note 1, at 1441; see also CORNELL L. SCH., LEGAL INFO. INST., <https://www.law.cornell.edu/> [<https://perma.cc/RP3T-PA66>].

4. See WORLD LEGAL INFO. INST. (WORLDLII), <http://www.worldlii.org/> [<https://perma.cc/7BP6-XJLT>].

5. See Richard A. Danner, Kelly Leong & Wayne V. Miller, *The Durham Statement Two Years Later: Open Access in the Law School Journal Environment*, 103 LAW LIBR. J. 39, 2011 LAW LIBR. J. 2.

6. MONTREAL DECLARATION ON FREE ACCESS TO LAW (2002), <https://www.canlii.org/en/info/mtldeclaration.html> [<https://perma.cc/86SF-SG75>].

7. See Adam R. Pah et al., *How to Build a More Open Justice System*, 369 SCI. 134 (2020).

8. See CASE LAW ACCESS PROJECT, HARV. L. SCH., <https://case.law/> [<https://perma.cc/3CAL-DLUL>]; Project: Caselaw Access Project, LIBR. INNOVATION LAB, HARV. L. SCH., <https://lil.law.harvard.edu/projects/caselaw-access-project/> [<https://perma.cc/Y2EB-3AWD>].

9. See, e.g., FREE L. PROJECT, <https://free.law/> [<https://perma.cc/93JM-V3QH>].

¶12 An emerging international issue that often works in tandem with open access and freedom of information is the advancement of digital technologies such as artificial intelligence (AI), authentication of legal information, and encryption.¹⁰ Perplexing barriers to universal access are the sophistication of encryption, commercial ownership, and emerging AI in the public and private international law spheres and use of AI by corporations in international business.¹¹ International organizations, such as the OECD (Organisation for Economic Co-operation and Development) and World Bank, are working to ensure cooperation by the G20 countries to promote and secure open access to information while developing AI technologies in the commercial context.¹² Corporate actors in G20 nations will need to continue to provide access to data in a cross-border context with accountability, transparency, and inclusion standards in accordance with other OECD conventions for multinational corporations.¹³ Since these standards were recently adopted in 2019, it will be interesting to see how AI developments and transparency of legal information in this new landscape of encryption technologies evolve. Ideally, best practices will emerge from the OECD guidelines and World Bank AI procedures.¹⁴ Other regional and international organizations will likely continue efforts to provide open access to legal information, but an effective framework of implementation of standards and best practices must continue at national levels to prevent widespread global encryption barriers.¹⁵ Nations will increasingly continue to

10. See, e.g., U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression, *Report to the General Assembly on Artificial Intelligence Technologies and Implications for Freedom of Expression and the Information Environment*, U.N. Doc. A/73/348 (Aug. 29, 2018), <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ReportGA73.aspx> [<https://perma.cc/T97L-JZ5E>]; see also U.N. Hum. Rts. Spec. Procs., *Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Research Paper 1/2018 (June 2018), <https://www.ohchr.org/Documents/Issues/Opinion/EncryptionAnonymityFollowUpReport.pdf> [<https://perma.cc/Y3NA-BJQV>].

11. See U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression, *Fact Sheet, Artificial Intelligence Technologies and Freedom of Expression*, https://www.ohchr.org/Documents/Issues/Expression/Factsheet_3.pdf [<https://perma.cc/JMZ3-745U>]; see also Country Visits: *Special Rapporteur on Freedom of Expression and Opinion*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/country-visits> [<https://perma.cc/T8FT-7LNF>].

12. OECD, *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449 (2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449> [<https://perma.cc/8EB9-2G47>]; *Bank Policy: Access to Information*, WORLD BANK (July 1, 2015), <https://ppfdocuments.azureedge.net/3693.pdf> [<https://perma.cc/3WNE-9WJQ>].

13. See OECD, *G20 Ministerial Statement on Trade and Digital Economy*, <https://www.mofa.go.jp/files/000486596.pdf> [<https://perma.cc/7C6X-WVKT>].

14. See *Role of the AI Committee*, WORLD BANK, <https://www.worldbank.org/en/access-to-information/ai-committee> [<https://perma.cc/BP8C-ECJN>]; *Access to Information Directive/Procedure*, WORLD BANK (Oct. 18, 2019), <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=e5c12f4e-7f50-44f7-a0d8-78614350f97c> [<https://perma.cc/496G-8DMK>].

15. See, e.g., Hague Convention on Private Int'l Law (HCCH), *Convention of 25 October 1980 on International Access to Justice* (1980), <https://www.hcch.net/en/instruments/conventions/full-text/?cid=91> [<https://perma.cc/PAS6-JTM5>]; see also Timothy L. Coggins & Sarah G. Holterhoff, *Authenticating Digital Government Information*, in *GOVERNMENT INFORMATION MANAGEMENT IN THE 21ST CENTURY* 133 (Peggy

grapple with encryption devices and uniformity for creating free access until standards solidify for regions and nations.¹⁶ This article introduces the international and national standards for combatting encryption barriers and problematic AI. Then, it gives background to the legal structures that exist for encryption/AI and privacy or other legal rights. Finally, the article illustrates successful jurisdictional approaches and best practices for balancing open access and privacy rights within the context of international business. As encryption technologies continue to advance with high velocity, we must continue to educate and inform businesses, governments, and international organizations to advance the rule of law while uniformly applying the human rights norms of universal open access to legal information.

International Law Protections and Emerging Legal Standards for Access to Information

¹³ The international law community and national governments continue to grapple with the concept of open access to legal information during a digital age and have advanced open dissemination of information since the inception of their international organizations.¹⁷ The United Nations promulgated guidelines for open access to legal information in the context of Access to Justice initiatives; it even recently updated those guidelines to include the context of the pandemic.¹⁸ Nations and their governments have struggled to provide access to legal information across the globe.¹⁹ New technologies on a global scale like sophisticated encryption and AI complicate open access

Garvin ed., 2011), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1954&context=law-faculty-publications> [https://perma.cc/6TMJ-PMGS].

16. See, e.g., DANIEL CASTRO & ALAN McQUINN, UNLOCKING ENCRYPTION: INFORMATION SECURITY AND THE RULE OF LAW (Mar. 2016), <http://www2.itif.org/2016-unlocking-encryption.pdf> [https://perma.cc/48R4-ZVMA]; see also AMNESTY INT'L, ENCRYPTION: A MATTER OF HUMAN RIGHTS, AI INDEX POL 40/3682/2016 (Mar. 2016), https://www.amnestyusa.org/wp-content/uploads/2017/04/encryption_-_a_matter_of_human_rights_-_pol_40-3682-2016.pdf [https://perma.cc/8GN4-YUYV]; U.N. Hum. Rts. Spec. Procs., *supra* note 10.

17. OECD, *Legal Aspects of Open Access to Publicly-Funded Research*, in ENQUIRIES INTO INTELLECTUAL PROPERTY'S ECONOMIC IMPACT 373 (2015), <https://www.oecd.org/sti/ieconomy/Chapter7-KBC2-IP.pdf> [https://perma.cc/P3EE-GPCS]; see also Daniel Poulin, *Open Access to Law in Developing Countries*, FIRST MONDAY (2014), <https://firstmonday.org/ojs/index.php/fm/article/view/1193/1113> [https://perma.cc/SM4C-JBKR].

18. See U.N. OFF. ON DRUGS & CRIME, GUIDANCE NOTE, ENSURING ACCESS TO JUSTICE IN THE CONTEXT OF COVID-19 (May 2020), https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf [https://perma.cc/43D5-UXWF]; see also *United Nations and the Rule of Law: Access to Justice*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice> [https://perma.cc/X6QP-BMHM].

19. See, e.g., H.M. Hashim, *Developing a Model Guideline Addressing Legal Impediments to Open Access to Publicly Funded Research Data in Malaysia*, 18 DATA SCI. J. 27 (2019), <https://datascience.codata.org/article/10.5334/dsj-2019-027/> [https://perma.cc/7T62-D4GX]; J. Ramon Gil-Garcia, *Collaborative E-Government: Impediments and Benefits of Information-Sharing Projects in the Public Sector*, 16 EUR. J. INFO. SYS. 121 (2006); see also Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797 (2006).

initiatives.²⁰ Corporations increasingly need access to valuable encrypted or AI-driven information in international business transactions, so the OECD has recently developed its 2019 Principles on Artificial Intelligence.²¹ The United States and 59 other countries have affirmed the principles and collected AI policies from their governments.²²

UN Governance

¶4 Historically, the United Nations has led the world community in articulating standards for freedom of information and enhancing access to information to facilitate the rule of law in many contexts.²³ In 1948, the United Nations released the Universal Declaration of Human Rights, including Article 19, which protects the fundamental rights of freedom of expression and freedom of information.²⁴ The work of UNESCO (United Nations Educational Scientific and Cultural Organization) and the UN OHCHR (Office of the High Commissioner for Human Rights) protects freedom of information through their international work and development of standards for the human rights norms and rule of law globally.²⁵ Resolution 59 of the UN General Assembly also protects access to information, and later UN human rights instruments, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights in the 1960s, made additional strides toward enshrining

20. See, e.g., James A. Lewis, Denise E. Zheng & William A. Carter, Ctr. Strategic & Int'l Stud., *The Effect of Encryption on Lawful Access to Communications and Data* (Feb. 2017), <https://www.csis.org/analysis/effect-encryption-lawful-access-communications-and-data> [<https://perma.cc/G8XC-8Z53>]; Cynthia Brumfield, *Justice Department Takes Another Run at Encryption Backdoors with Lawful Access*, CSO Online (Oct. 2019), <https://www.csoonline.com/article/3444205/justice-department-takes-another-run-at-encryption-backdoors-with-lawful-access.html> [<https://perma.cc/4R77-3W2Y>] (Cloud Act agreement); see M. Perc et al., *Social and Juristic Challenges of Artificial Intelligence*, 5 HUMANITIES & SOC. SCI. COMM'NS art. 61 (2019); John Delaney & D. Sean West, *Open Access, Open Source, and the Battle to Defeat COVID-19*, JDSUPRA (Apr. 22, 2020), <https://www.jdsupra.com/legalnews/open-access-open-source-and-the-battle-73150/> [<https://perma.cc/A59L-N9GZ>]; Exec. Order No. 13,859, 84 Fed. Reg. 3967 (Feb. 14, 2019).

21. *Artificial Intelligence*, OECD, <https://www.oecd.org/going-digital/ai/> [<https://perma.cc/T9YJ-FSEN>]; *OECD AI Principles Overview*, OECD AI POLICY OBSERVATORY, [HTTPS://OECD.AI/EN/AI-PRINCIPLES](https://oecd.ai/en/ai-principles) [<https://perma.cc/K6MG-24V3>]. These new guidelines supplement the 1980 OECD Privacy Guidelines for the technological age.

22. *National AI Policies & Strategies*, OECD AI POLICY OBSERVATORY, <https://oecd.ai/dashboards> [<https://perma.cc/RPA6-J44V>].

23. *Freedom of Information*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/#:~:text=Freedom%20of%20information%20is%20an,right%20of%20freedom%20of%20expression> [<https://perma.cc/GCB7-5NS8>].

24. Toby Mendel, *Freedom of Information as an Internationally Protected Right*, ARTICLE 19, <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf> [<https://perma.cc/HG2T-J8NJ>].

25. See Press Release, U.N. Hum. Rts. Off. of the High Comm'r, COVID-19: Governments Must Promote and Protect Access to and Free Flow of Information During Pandemic—International Experts (Mar. 19, 2020), <https://www.ohchr.org/en/press-releases/2020/03/covid-19-governments-must-promote-and-protect-access-and-free-flow> [<https://perma.cc/UM8F-FWZG>].

freedom of information as a basic right.²⁶ The UN special rapporteur on freedom of opinion and expression makes country visits to assess the human rights condition for member states with respect to freedom of information and accessibility of information.²⁷ For example, the report for the recent visit to Ethiopia notes improvements by the government for public access to information.²⁸ The UN bodies, treaties, and monitoring mechanisms greatly facilitated the evolution of the ancient tradition of freedom of information, and then access to legal information from governments, as a basic human right norm.²⁹

15 The United Nations also oversees publication of innovative reports on changes of technologies globally, and these topical reports summarize developments for more recent challenges to freedom of access to information.³⁰ Member states are given the opportunity to respond and provide national guidance to make the special thematic reports even more valuable.³¹ These issues include surveillance and privacy, the pandemic and access to information, AI technologies and implications for the information environment, access to information in international organizations, encryption, online content regulation, the role of digital access providers, contemporary challenges to freedom of expression, and protection of sources and whistleblowers.³² This international cooperation for open access to information is essential as modernization of technologies continues and as we enter the Fourth Industrial Revolution in tandem with the pandemic.³³ The United Nations also facilitates efforts for big data, AI regulation, and the rule of law.³⁴ The Sixth Annual Conference on Big Data is being held this year, and the UN Global Working Group developing the Big Data Project Inventory is enhancing access to statistics for policymaking and open access.³⁵ Professors John Ackerman and Irma Sandoval-Ballesteros also have revealed the recent global explosion of freedom of information laws.³⁶ Overall, the United Nations and G7 discussions toward

26. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171; American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.

27. *Country Visits*, *supra* note 11.

28. U.N. Hum. Rts. Council, 44th Sess., Visit to Ethiopia, U.N. Doc. A/HRC/44/49/Add.1 (Apr. 29, 2020).

29. See Mendel, *supra* note 24; Paul Sturges & Almuth Gastinger, *Information Literacy as a Human Right*, 60 LIBRI: INT'L J. LIBRS. & INFO. STUD. 195 (2010).

30. *Country Visits*, *supra* note 11.

31. *Id.*

32. See, e.g., U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression, *Disease Pandemics and the Freedom of Opinion and Expression*, U.N. Doc. A/HRC/44/49 (Apr. 23, 2020), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4449-disease-pandemics-and-freedom-opinion-and-expression-report>.

33. See *Fourth Industrial Revolution*, WORLD ECON. F., <https://www.weforum.org/focus/fourth-industrial-revolution#:~:text=The%20Fourth%20Industrial%20Revolution%20represents,second%20and%20third%20industrial%20revolutions> [https://perma.cc/5PQA-F5FN].

34. *6th International Conference on Big Data for Official Statistics*, U.N. DEP'T OF ECON. & SOC. AFFS., (2020), <https://unstats.un.org/unsd/bigdata/conferences/2020/> [https://perma.cc/YMM7-E4EF].

35. *Big Data Project Inventory*, DATA ECON. LAB, <https://thedataeconomylab.com/explorer/big-data-project-inventory/> [https://perma.cc/9WFY-C9JS].

36. John M. Ackerman & Irma E. Sandoval-Ballesteros, *The Global Explosion of Freedom of*

international cooperation on AI have also expanded the international conversation toward access to justice for legal information and the rule of law.³⁷

OECD Governance of AI in a Technological Age

¶6 The OECD developed a Committee on the Digital Economy in 2016 to begin discussing the implications of AI for international business.³⁸ Then, in 2018, an OECD expert group on AI convened to work on the Principles for Artificial Intelligence (2019).³⁹ The cooperation with international organizations and regional organizations when issuing the reports is timely and advanced, with discussions of using emerging technologies in the public sector, trustworthy AI, AI in the investment and business contexts, and, more recently in 2020, identifying and measuring developments in global AI.⁴⁰ The World Bank also developed a comprehensive *Access to Information Survey* with many countries contributing their national legislative efforts.⁴¹ AI is having a drastic and steady impact on corporate transactions by business throughout the world.⁴²

¶7 The OECD recognizes that bribery, corruption, and investment transactions in international business often use complicated technologies and are facilitated by AI and other emerging technologies.⁴³ International investment law is also being driven by AI initiatives during the last information age.⁴⁴ To that end, the World Bank and ICSID (International Center for Settlement of Investment Disputes) continue to note how

Information Laws, 58 ADMIN. L. REV. 85 (2006).

37. See, e.g., *Canada-France Statement on Artificial Intelligence*, GOV'T CAN. (July 6, 2018), https://www.international.gc.ca/world-monde/international_relations-relations_europe/2018-06-07-france_ai-ia_france.aspx?lang=eng [<https://perma.cc/J57S-68M6>].

38. *OECD Creates Expert Group to Foster Trust in Artificial Intelligence*, OECD (Sept. 13, 2018), <https://www.oecd.org/sti/ieconomy/oecd-creates-expert-group-to-foster-trust-in-artificial-intelligence.htm> [<https://perma.cc/L563-XSNF>].

39. *Forty-Two Countries Adopt New OECD Principles on Artificial Intelligence*, OECD (May 22, 2019), <https://www.oecd.org/science/forty-two-countries-adopt-new-oecd-principles-on-artificial-intelligence.htm> [<https://perma.cc/HW3G-9MBW>]; *List of Participants in the OECD Expert Group on AI (AIGO)*, OECD, <https://oecd.ai/en/list-of-participants-oecd-expert-group-on-ai> [<https://perma.cc/RVC3-937V>].

40. *Artificial Intelligence*, *supra* note 21; *Identifying and Measuring Developments in Artificial Intelligence*, OECD I LIBR. (May 1, 2020), https://www.oecd-ilibrary.org/science-and-technology/identify-ing-and-measuring-developments-in-artificial-intelligence_5f65ff7e-en [<https://perma.cc/9LJE-VHZD>].

41. *Access to Information*, *supra* note 14.

42. Martin Petrin, *Corporate Management in the Age of AI*, 2019 COLUM. BUS. L. REV. 965.

43. Austin Pulle, *Corrupt Payments in International Business*, 4 INT'L TRADE & BUS. L. ANN. 177 (1999); Nora M. Rubin, *A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland*, 14 AM. U. INT'L L. REV. 257 (1998); Carl Pacini, *Foreign Corrupt Practices Act: Taking a Bite Out of Bribery in International Business Transactions*, 17 FORDHAM J. CORP. & FIN. L. 545 (2012); Peter Muchlinski, *Human Rights, Social Responsibility and the Regulation of International Business: The Development of International Standards by Intergovernmental Organisations*, 3 NON-ST. ACTORS & INT'L L. 123 (2003); Attila Menyhard, Richard Thomas & David Dederick, *International Business and Law in Cross-Border Transactions: A European Perspective*, 34 SUFFOLK TRANSNAT'L L. REV. 347 (2011).

44. Justin Shields, *Smart Machines and Smarter Policy: Foreign Investment Regulation, National Security, and Technology Transfer in the Age of Artificial Intelligence*, 51 JOHN MARSHALL L. REV. 279 (2018).

technology and AI may assist with investing in developing countries and encouraging growth.⁴⁵ Multinational enterprises will have to wait and see how the new guidelines will impact their AI-driven businesses and the blossoming of the rule of law in regional and national contexts.⁴⁶ Often, information management advances have deep effects in international business and achieve efficiencies while balancing challenges of privacy and encryption.⁴⁷ These efforts work to complement the UN and regional efforts to safeguard access to information and innovation.⁴⁸ The impact of the high velocity of technological advancements in the business world is yet to be gauged, but the international community is currently responding appropriately with working groups to grapple with the myriad international business effects.⁴⁹

Regional Efforts and Legal Norms

18 Regional and supranational organizations, such as the OAS (Organization of American States), ASEAN (Association of Southeast Asian Nations), and EU (European Union), have been proactive during the digital age with promoting access to justice and the free access to legal information while also balancing the need to innovate with AI and other technologies.⁵⁰ The European Commission has recently drafted a white paper titled “Artificial Intelligence—A European Approach to Excellence and Trust.”⁵¹ The OAS developed a clear policy on transparent access to legal information for all regional laws and instruments.⁵² The Inter-American Legal Framework for Access to Legal

45. Davide Strusani & Georges Vivien Hounbonon, *The Role of Artificial Intelligence in Supporting Development in Emerging Markets*, EM COMPASS, July 2019, at 1, <http://documents1.worldbank.org/curated/en/539371567673606214/pdf/The-Role-of-Artificial-Intelligence-in-Supporting-Development-in-Emerging-Markets.pdf> [<https://perma.cc/6NU7-YUTA>]; *How Can Artificial Intelligence Support Development? We Asked a Robot*, WORLD BANK (May 24, 2018), <https://www.worldbank.org/en/news/feature/2018/05/24/how-can-artificial-intelligence-support-development-we-asked-a-robot> [<https://perma.cc/Q9VK-HR9C>]; see also Catherine Cheney, *The Promise and Pitfalls of Artificial Intelligence for Global Development*, DEVEX (Jan. 23, 2018), <https://www.devex.com/news/the-promise-and-pitfalls-of-artificial-intelligence-for-global-development-91881> [<https://perma.cc/VC4U-R2B7>]; Leebong Lee & Young-Jin Choi, *The Rise of Artificial Intelligence: What Does It Mean for Development?*, WORLD BANK BLOGS (June 28, 2017), <https://blogs.worldbank.org/digital-development/rise-artificial-intelligence-what-does-it-mean-development> [<https://perma.cc/ZCB5-3WKW>].

46. A.I. Sukhorukov et al., *Tendencies of Information Management Development in the Conditions of the Origin of a New Ecosystem of the Digital Economy*, in 2018 ELEVENTH INTERNATIONAL CONFERENCE “MANAGEMENT OF LARGE-SCALE SYSTEM DEVELOPMENT” 1 (2018).

47. Ashley Deeks, *The International Legal Dynamics of Encryption*, Hoover Institution Series Paper No. 1609 (2016), https://www.hoover.org/sites/default/files/research/docs/deeks_webready.pdf [<https://perma.cc/K2MT-JURG>].

48. Mark Barnes et al., *Senate Introduces the Safeguarding American Innovation Act*, ROPES & GRAY (June 22, 2020), <https://www.ropesgray.com/en/newsroom/alerts/2020/06/Senate-Introduces-the-Safeguarding-American-Innovation-Act-Targeting-Research-Theft> [<https://perma.cc/GU63-LYJ8>].

49. *Id.*

50. Commission White Paper on Artificial Intelligence—A European Approach to Excellence and Trust, COM (2020) 65 final (Feb. 19, 2020).

51. *Id.*

52. *Frequently Asked Questions on Access to Information*, OAS, http://www.oas.org/airf/access_to_information_faq.aspx [<https://perma.cc/GU9G-N9XS>].

Information creates a robust structure for the OAS and Inter-American Commission of Human Rights documentation.⁵³ The OAS is also investigating the use of big data and AI and its impact on the rule of law and enforcement in the region.⁵⁴ AI is also exploding in Asia and leading world development, so laws and regulations are lagging for increasingly technological realms.⁵⁵ There is a need for continued freedom of access to information and a recognition of access to justice issues that stem from rapid rates of change in technological advancements.⁵⁶

¹⁹ Historically, the Council of Europe promulgated uniform standards for the access of information among its members.⁵⁷ In 2009, the Council of Europe enacted the Convention on Access to Official Documents.⁵⁸ This treaty, which has 10 ratifications so far, protects the fundamental right to access official documents held by public authorities.⁵⁹ The only exceptions to open access according to the Access to Official Documents treaty are privacy, defense, or national security of the member states.⁶⁰ The EU similarly protects openly accessible information by Council Regulation No. 1049/2001 *Regarding Public Access to European Parliament, Council and Commission Documents*, Art. 4.⁶¹ Recent cases in the European Court of Justice (ECJ), such as *Access Info Europe v. Council of the European Union* in 2011, affirmed the right to access European Parliament, Council, and Commission documents.⁶² Article 42 of the European Charter of Fundamental Rights expressly gives the right to access information for EU institutional documents in addition to the Treaty of Lisbon's Article 15

53. OAS, *THE INTER-AMERICAN LEGAL FRAMEWORK REGARDING THE RIGHT TO ACCESS TO INFORMATION* (2d ed. 2012), <https://www.oas.org/en/iachr/expression/docs/publications/2012%2009%2027%20ACCESS%20TO%20INFORMATION%202012%20edits.pdf> [<https://perma.cc/P3NP-JPF9>].

54. Victor Muñoz, Sylvia Constain & Luis Almagro, *OAS Member States Use Big Data, Artificial Intelligence and Analytics to Combat Corruption*, FIN. AMS. (n.d.), <https://financetnt.com/oas-member-states-use-big-data-artificial-intelligence-and-analytics-to-combat-corruption-inform-citizens/> [<https://perma.cc/Q8XE-CHU7>].

55. Ayesha Khanna & Parag Khanna, *Where Asia Is Taking the World with AI*, FORBES (May 21, 2020), <https://www.forbes.com/sites/insights-ibmai/2020/05/21/where-asia-is-taking-the-world-with-ai/#63798bd67947> [<https://perma.cc/BW6T-BN82>]; MCKINSEY & CO., *ARTIFICIAL INTELLIGENCE AND SOUTHEAST ASIA'S FUTURE*, <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Artificial%20Intelligence/AI%20and%20SE%20ASIA%20future/Artificial-intelligence-and-Southeast-Asias-future.ashx> [<https://perma.cc/5DBL-J48N>].

56. LAW LIBR. CONG., *REGULATION OF ARTIFICIAL INTELLIGENCE IN SELECTED JURISDICTIONS* (Jan. 2019), <https://irp.fas.org/eprint/lloc-ai.pdf> [<https://perma.cc/M5XP-8CMF>].

57. *Standards on Access to Information*, COUNCIL EUR., <https://www.coe.int/en/web/documents-records-archives-information/council-of-europe-standards> [<https://perma.cc/6LBU-ZNW7>].

58. Council of Europe Convention on Access to Official Documents, CETS No. 205, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205> [<https://perma.cc/5TGA-8BSG>].

59. *Id.*

60. *Id.*

61. Council Regulation 1049/2001, art. 4, 2001 O.J. (L 145) (EC) 43, 45.

62. *Access Info Europe v. Council of the European Union*, GLOBAL FREEDOM OF EXPRESSION, COLUM. UNIV., <https://globalfreedomofexpression.columbia.edu/cases/ecj-access-info-europe-v-council-european-union/> [<https://perma.cc/CT2T-JDK5>].

protections.⁶³ Numerous protections exist in member states within the EU as well for ensuring open access to legal documentation and governmental information.⁶⁴

¶10 Other regions and nations are following suit with open access laws and digital initiatives like those enhancing open access in the United States and Europe.⁶⁵ Comprehensive access to laws for free continues to expand in the EU, such as EUR-Lex and the HUDOC system at the European Court of Human Rights, and other admirable examples exist within EU Member Countries like France (Legifrance) and the United Kingdom (HMSO).⁶⁶ Other worldwide efforts to provide access like the original Cornell Legal Information Institute include CanLII, BAILII, AUSTLII, ASIANLII, and WorldLII with comprehensive sets of digitized laws, regulations, and case law for the public.⁶⁷ Africa has also recently made strides with protecting the fundamental right to access information.⁶⁸ Africa still struggles with providing comprehensive access to information in certain countries, though, because of the lack of governmental support and infrastructure.

National Legal Efforts in an Age of AI

¶11 AI is impacting the development and advancement of the rule of law and access to information, especially in the context of communications and data protection.⁶⁹ Data protection laws are being promulgated to protect private data in various countries around the globe with emerging technologies threatening privacy.⁷⁰ DLA Piper has a comprehensive dataset for world data protection laws and national legislation.⁷¹ UNCTAD (United Nations Conference on Trade and Development) also keeps a comprehensive portal of legislation in effect and pending legislation for international data

63. Charter of Fundamental Rights of the European Union, art. 42, 2012 O.J. (C 326) (EC) 391, 404.

64. See, e.g., Freedom of Information Act 2000, c. 36 (U.K.), <https://www.legislation.gov.uk/ukpga/2000/36/contents> [<https://perma.cc/GN98-R557>].

65. See, e.g., *WJP Rule of Law Index 2021*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021> [<https://perma.cc/TD4P-W5HH>]; *Democracy Index 2021: The China Challenge*, ECON. INTEL. UNIT, <https://www.eiu.com/topic/democracy-index> [<https://perma.cc/W9BU-PHYD>].

66. See, e.g., EUR-LEX: ACCESS TO EUROPEAN UNION LAW, <https://eur-lex.europa.eu/homepage.html> [<https://perma.cc/TXC9-X3EM>]; LÉGIFRANCE, <https://www.legifrance.gouv.fr/> [<https://perma.cc/T49P-YRYU>]; LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/> [<https://perma.cc/5M89-C4LB>].

67. See, e.g., CANLII, <https://www.canlii.org/en/> [<https://perma.cc/2DA4-VFWD>]; BAILII, <https://www.bailii.org/> [<https://perma.cc/Q8QH-D9SE>]; AUSTLII, <http://www.austlii.edu.au/> [<https://perma.cc/6HHH-AQGR>]; WORLIDLII, <http://www.worldlii.org/> [<https://perma.cc/8PRG-C9LX>]; ASIANLII, <http://www.asianlii.org/> [<https://perma.cc/X778-7ZVH>].

68. See, e.g., *How to Build a Free or Open Access Legal Website*, AFRICANLII, <https://africanlii.org/content/how-build-free-or-open-access-legal-website> [<https://perma.cc/792M-RV4E>].

69. See LAW LIBR. CONG., *supra* note 56.

70. See, e.g., *Brazil: Personal Data Protection Law Enacted*, LAW LIBR. CONG., <https://www.loc.gov/item/global-legal-monitor/2018-08-28/brazil-personal-data-protection-law-enacted/> [<https://perma.cc/67U5-NNBP>].

71. *Data Protection Laws of the World*, DLA PIPER, <https://www.dlapiperdataprotection.com/> [<https://perma.cc/9PR9-5585>].

protection and e-commerce.⁷² In an increasingly technological age, there are tensions between the right to access laws and legal information and the right to privacy in certain contexts.⁷³ As a result, governments and international organizations have passed many iterations of data protection laws in a broad attempt to regulate interception of data while using technologies.⁷⁴ The European Union also developed the strict EU General Data Protection Regulation, which imposes hefty fines for violations.⁷⁵ The EU GDPR is meant to protect data privacy in a digital age.⁷⁶ Many nations are now enacting additional legislation and regulations to supplement privacy laws in a time of great technological innovation and during the onset of the pandemic.⁷⁷ The GDPR is a directive which requires each member nation of the European Union to implement national legislation to protect digital privacy accordingly.⁷⁸ The OAS and Latin America are also modernizing their regional laws and conventions to reflect privacy protection in a digital age.⁷⁹ Overall, the international community and national legislatures are responding with modernized approaches to balance the privacy interests and using robust technologies while balancing competing fundamental rights to open access for information.

72. *Data Protection and Privacy Legislation Worldwide*, UNCTAD, https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx#:~:text=132%20out%20of%20194%20countries,23%20are%20least%20developed%20countries [https://perma.cc/4LZ5-YY82].

73. See David Townsend, *Privacy, Health Insurance, and Medical Research: Tensions Raised by the European Data Protection Law*, 29 CRITICAL STUD. CONTEMP. BIOSCIS. 477 (2010), Jeanette The, Note, *Privacy Wars in Cyberspace*, 4 YALE J.L. & TECH. 1 (2001–2002); Susan Maret & Antoon De Baets, *The Tension Between Privacy and Security*, 1 SECRECY & SOC'Y no. 1, art. 9 (2016), <https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1011&context=secrecyandsociety> [https://perma.cc/8V5P-A878].

74. Christopher Kuner, *Data Protection Law and International Jurisdiction on the Internet (Part 1)*, 18 INT'L J.L. & INFO. TECH. 176 (2010).

75. *What Is GDPR, the EU's New Data Protection Law?*, GDPR.EU, <https://gdpr.eu/what-is-gdpr/#:~:text=The%20General%20Data%20Protection%20Regulation,to%20people%20in%20the%20EU> [https://perma.cc/6GXK-DX5Y].

76. See *Data Protection in the EU*, EUROPEAN COMM'N, https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en [https://perma.cc/6B93-8X9L].

77. See Daniel Mikkelsen et al., *Privacy, Security, and Public Health in a Pandemic Year*, MCKINSEY & Co. (June 15, 2020), <https://www.mckinsey.com/business-functions/risk/our-insights/privacy-security-and-public-health-in-a-pandemic-year> [https://perma.cc/NZ6B-AMQN]; Khari Johnson, *How Congress Is Shaping Data Privacy Laws During the Pandemic*, VENTURE BEAT (May 18, 2020), <https://venturebeat.com/2020/05/18/how-congress-is-shaping-data-privacy-laws-during-the-pandemic/> [https://perma.cc/8654-L7EM]; see also Samuel D. Goldstick et al., *COVID-19: Privacy and Cybersecurity Regulatory and Enforcement Guidance*, FOLEY (Apr. 30, 2020), <https://www.foley.com/en/insights/publications/2020/04/covid19-privacy-cybersecurity-guidance> [https://perma.cc/9FDA-4CGB].

78. See, e.g., *Data Protection Laws of the World: France*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=FR> [https://perma.cc/52EZ-QHR8].

79. OECD, *Privacy Protection, in BROADBAND POLICIES FOR LATIN AMERICA AND THE CARIBBEAN: A DIGITAL ECONOMY TOOLKIT*, ch. 15, <https://www.oecd-ilibrary.org/sites/9789264251823-18-en/index.html?itemId=/content/component/9789264251823-18-en> [https://perma.cc/4XAT-RRZ4].

Barriers and Opportunities for Open Access and AI Management: Encryption, Privacy, and National Legislative Efforts

¶12 This section gives an overview of the barriers to open access and AI management opportunities through technologies and legislation. These include encryption, privacy, and national legislative initiatives for innovative technologies like AI.⁸⁰

Encryption Barriers

¶13 Information in the cloud and other digital mediums presents myriad access and legal issues even though the word “cloud” itself denotes happy, light, and positive imagery.⁸¹ There is often a lack of control over stored information and misunderstanding by users about third-party access and user agreements, and encryption muddles up information access although it safeguards privacy.⁸² Most countries regulate encryption as a dual-use technology, which has both military and commercial uses.⁸³ Since the advent of AI, encryption increasingly is more complex, and international organizations and corporations have grappled with more sophisticated encryption with transmission of information for business.⁸⁴ Multinational enterprises typically use encryption and AI for confidentiality, automation of business processes, cognitive technologies, and data security.⁸⁵ The OECD has been a leader in developing cryptography policy.⁸⁶ In 1997, the OECD created the Guidelines for Cryptography Policy, which have provided an overarching gold standard for the evolution of international cryptography regulation.⁸⁷ The World Bank also monitors the national implementation of encryption technologies in international business and finance.⁸⁸ Recent encryption disputes with Apple, WhatsApp, Google, and other high-profile international businesses highlight the

80. See, e.g., David W. Opperbeck, *Encryption Policy and Law Enforcement in the Cloud*, 49 CONN. L. REV. 1657 (2017).

81. David Lametti, *The Cloud: Boundless Digital Potential or Enclosure 3.0*, 17 VA. J.L. & TECH. 190 (2012).

82. *Id.*

83. See Nathan Saper, *International Cryptography Regulation and the Global Information Economy*, 11 NW. J. TECH. & INTELL. PROP. 673 (2013).

84. *Id.*; see also VB Staff, *Meet the New Twist on Data Encryption That Promises Better Privacy and Security for AI*, VENTURE BEAT (Jan. 16, 2020), <https://venturebeat.com/2020/01/16/meet-the-new-twist-on-data-encryption-that-promises-better-privacy-and-security-for-ai/> [<https://perma.cc/EAP7-ZTPX>]; Matt Burgess, *How Google's AI Taught Itself to Create Its Own Encryption*, WIRED UK (Oct. 31, 2016), <https://www.wired.co.uk/article/google-artificial-intelligence-encryption> [<https://perma.cc/TV9S-TSYQ>].

85. Emilie C. Schwarz, *Human vs. Machine: A Framework of Responsibilities and Duties of Transnational Corporations for Respecting Human Rights in the Use of Artificial Intelligence*, 58 COLUM. J. TRANSNAT'L L. 232 (2019).

86. *OECD Guidelines for Cryptography Policy*, OECD (Mar. 27, 1997), <https://www.oecd.org/sti/ieconomy/guidelinesforcryptographypolicy.htm> [<https://perma.cc/C8GY-YENF>].

87. *Id.*

88. *Identification for Development, Practitioner's Guide: Encryption*, WORLD BANK, <https://id4d.worldbank.org/guide/encryption> [<https://perma.cc/2B9R-C4LH>].

tensions between protection of data and other interests in foreign countries as well as in the United States.⁸⁹

¶14 Encryption also spurs human rights debates for access to information for countries according to international law norms.⁹⁰ Even though national norms exist for encryption technologies, there seems to be little coordination internationally for regulation despite the existence of the OECD Guidelines.⁹¹ We seemingly should be living in an era of transparency for the historic right to legal information and transferability of that right to the digital realm, but we have many contradictions with the current range of encryption, cryptography, and AI technologies to safeguard information.⁹² National governments are even struggling to access information for law enforcement and to adhere to legal norms.⁹³ Many AI and encryption efforts thwart international cybercrime enforcement and effective prosecution of other international criminal networks like human trafficking.⁹⁴ The encryption debate continues in the EU,⁹⁵ and the EU does not have plans to restrict use of encryption through EU legislation or other initiatives anytime soon, although EU general policies exist.⁹⁶ Because of the world's reliance on encryption in a technological age, it will continue to exist, and world regulations must adapt to emphasize access to necessary information and to strengthen the rule of law.⁹⁷

89. See, e.g., Natasha Lomas, *Facebook Has Funds Frozen in Brazil in Another WhatsApp Encrypted Data Dispute*, TECHCRUNCH (July 1, 2016), <https://techcrunch.com/2016/07/01/facebook-has-funds-frozen-in-brazil-in-another-whatsapp-encrypted-data-dispute/> [<https://perma.cc/MZ4A-FZAE>].

90. Agnes Zaure, *The Application of International Human Rights Online* (2016) (LL.M. thesis, University of Tartu), <https://dspace.ut.ee/handle/10062/52081> [<https://dspace.ut.ee/handle/10062/52081>].

91. Ashley Deeks, *The International Legal Dynamics of Encryption*, Hoover Inst. Paper No. 1609 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587438 [<https://perma.cc/8JLJ-QFUA>].

92. David Kaye, *Challenges to Freedom of Information in the Digital Age*, 7 J. INT'L MEDIA & ENT. L. 129 (2017–2018).

93. NAT'L RSCH. COUNCIL, *ENGAGING PRIVACY AND INFORMATION PRIVACY IN A DIGITAL AGE* (James Waldo, Herbert S. Lin & Lynette I. Millett eds., 2007), <https://www.nap.edu/catalog/11896/engaging-privacy-and-information-technology-in-a-digital-age> [<https://perma.cc/C5CU-KS8C>].

94. *Artificial Intelligence Will Save Encryption from Irrelevance*, INFINIGATE (Nov. 25, 2016), <https://www.vsec.infinigate.co.uk/blog/artificial-intelligence-encryption-cybercrime> [<https://perma.cc/G8NK-BVX2>]; see also Paul M. Schwartz, *Legal Access to the Global Cloud*, 118 COLUM. L. REV. 1681 (2018); Dustin Taylor Vandenberg, *Encryption Served Three Ways: Disruptiveness as the Key to Exceptional Access*, 32 BERKELEY TECH. L.J. 531 (2017).

95. Maria Kooman, *The Encryption Debate in the European Union* (May 30, 2019), <https://carnegieendowment.org/2019/05/30/encryption-debate-in-european-union-pub-79220> [<https://perma.cc/QE24-2LB6>].

96. *Encryption Policies*, EUROPEAN COUNS., MIGRATION & HOME AFFS., https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime/encryption_en [<https://perma.cc/7EQN-QRR7>]; see also Covington Team, *Encryption Policy Issues in the EU* (May 25, 2018), <https://www.globalpolicywatch.com/2018/05/encryption-policy-issues-in-the-eu/> [<https://perma.cc/5FSX-HY6Z>]; Anjum Shabbir, *Insight: "Encryption: A Double-Edged Sword—EU Law Protections Simultaneously Impeding Cross-Border Serious Crime Investigations?"*, EU L. LIVE (June 11, 2020), <https://eulawlive.com/6324-2/> [<https://perma.cc/C3BB-EB3H>].

97. Mark Ward, *How the Modern World Depends on Encryption*, BBC NEWS (Oct. 25, 2013), <https://www.bbc.com/news/technology-24667834> [<https://perma.cc/U979-M8UA>]; see also World Map of Encryption Laws and Policies, GLOBAL PARTNERS DIGITAL, <https://www.gp-digital.org/world-map-of-encryption/> [<https://perma.cc/U258-YNXV>]; Stephen Tully, *A Human Right to Access the Internet—Problems*

Big data movements also have blossomed in a legal litigation context,⁹⁸ but these datasets also create access barriers for free access.⁹⁹ For the last 20 years, the United States and the international community have grappled with encryption and cryptography, and the landscape is becoming only more complex.¹⁰⁰ The Wassenaar Arrangement has solidified some restrictions on encryption exports.¹⁰¹

Privacy Protections Inherent in Emerging Technologies

¶15 Emerging technologies, including more advanced encryption and artificial intelligence in the law, are causing legal paradigm shifts and tensions between privacy protections and access.¹⁰² In May 2015, the United Nations released its comprehensive report on encryption, anonymity, and the human rights framework.¹⁰³ It provides a contemporary view of encryption and compelling rights of privacy and access through the lens of Special Rapporteur David Kaye.¹⁰⁴ Rapidly advancing technologies are challenging our domestic and international courts to grapple with complicated privacy issues in tandem with accessibility of information.¹⁰⁵ Some scholars argue that soft law norms may be a supplement to the lack of hard law standards and interagency cooperation for technological challenges on a national and international stage,¹⁰⁶ but these aspirations for soft law norms are not keeping pace with the high velocity of change for

and Prospects, 14 HUM. RTS. L. REV. 175 (2014).

98. See, e.g., David J. Walton, *Litigation and Trial Practice in an Era of Big Data*, LITIG., Summer 2015, at 55; Brian Dalton, *Big Data and the Litigation Analytics Revolution*, ABOVE THE L. (2020), <https://abovethelaw.com/law2020/big-data-and-the-litigation-analytics-revolution/> [<https://perma.cc/D7CT-TLY2>].

99. Daniel L. Rubinfeld & Michal S. Gal, *Access Barriers to Big Data*, 59 ARIZ. L. REV. 339 (2017); see also Tully, *supra* note 97.

100. See Rändi Bessette & Virginia Haufler, *Against All Odds: Why There Is No International Information Regime*, 2 INT'L STUD. PERSPS. 69 (2001); Ryan Budish, Herbert Burkert & Urs Gasser, *Encryption Policy and its International Impacts: A Framework for Understanding Extraterritorial Ripple Effects*, Aegis Series Paper No. 1804 (Mar. 2, 2018), <https://www.hoover.org/research/encryption-policy-and-its-international-impacts> [<https://perma.cc/M6QY-9C8M>].

101. See Implementation of Certain New Controls on Emerging Technologies Agreed at Wassenaar Arrangement 2018 Plenary, 15 C.F.R. § 774 (2021).

102. W. Keith Robinson & Joshua T. Smith, *Emerging Technologies Challenging Current Legal Paradigms*, 19 MINN. J.L. SCI. & TECH. 355 (2018).

103. See David Kaye (U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression), *Report on Encryption, Anonymity, and the Human Rights Framework*, U.N. Doc. A/HRC/29/32 (May 22, 2015), <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallForSubmission.aspx> [<https://perma.cc/47P6-UQDT>]; see also Hum. Rts. Watch, UN: *Online Anonymity, Encryption Protect Rights* (June 17, 2015), <https://www.hrw.org/news/2015/06/17/un-online-anonymity-encryption-protect-rights> [<https://perma.cc/8G9K-RCCU>].

104. See Kaye, *supra* note 103.

105. See Gary E. Marchant, *Emerging Technologies and the Courts*, 55 CONN. L. REV. 146 (2019); see also Mark Fenwick et al., *Regulation Tomorrow: What Happens When Technology Is Faster than the Law?*, 6 AM. U. BUS. L. REV. 561 (2017); Michael Guihot et al., *Nudging Robots: Innovative Solutions to Regulate Artificial Intelligence*, 20 VAND. J. ENT. & TECH. L. 385 (2017).

106. See Ryan Hagemann et al., *Soft Law for Hard Problems: The Governance of Emerging Technologies in an Uncertain Future*, 17 COLO. TECH. L.J. 37 (2018).

innovative technology.¹⁰⁷ Contemporary societies demand access to information as a historic human right, but the privacy laws and regulations often prevail for certain types of information.¹⁰⁸

¶16 Some worldwide privacy laws, regulations, and cases are informative for the modern technological age.¹⁰⁹ The *Microsoft Ireland* (2018) Supreme Court case is one recent case that illuminates the tensions between international access to data and legislative reform in the form of the CLOUD (Clarifying Lawful Overseas Use of Data) Act.¹¹⁰ In this case, the Court addressed whether data stored in a server overseas by a U.S. corporation would be accessible through a warrant in the United States according to the Stored Communications Act.¹¹¹ The Supreme Court then deferred the modernized extraterritorial issues in the Stored Communications Act to the legislature, and Congress responded quickly with the CLOUD Act.¹¹² The future remains murky regarding how the CLOUD Act will intersect with competing GDPR regulations in Europe.¹¹³ The U.S. regulation of privacy continues to be conflicted in an age of numerous technological disputes.¹¹⁴

¶17 Internationally, privacy laws and regulations for emerging technologies are more structured and robust in certain jurisdictions.¹¹⁵ The OECD updated its privacy guidelines during the last decade to enhance privacy guidance in a digital age.¹¹⁶ The 2011 OECD Recommendation on Privacy Law Enforcement and Co-Operation is a great cross-border effort among member countries.¹¹⁷ The World Bank is also facilitating the rule of law in the context of privacy issues with a new working group policy on

107. See generally *Data Privacy on a Global Scale: Keeping Pace with an Evolving Environment*, INTERNET SOC'Y (May 16, 2012), <https://www.internetsociety.org/resources/doc/2012/data-privacy-global-scale-keeping-pace-evolving-environment/> [<https://perma.cc/P2QS-VM3P>]; see also Gary E. Marchant, *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control*, 56 JURIMETRICS 209 (2016); Paolo Davide Farah & Marek Prityi, *Public Administration in the Age of Globalization and Emerging Technologies from Theories to Practice*, 88 UMKC L. REV. 397 (2019).

108. Peter K. Yu, *Data Producer's Right and the Protection of Machine-Generated Data*, 93 TUL. L. REV. 859 (2019).

109. See Urs Gasser, *Recoding Privacy Law: Reflections on the Future Relationship Among Law, Technology, and Privacy*, 130 HARV. L. REV. FORUM 61 (2016).

110. See Jennifer Daskal, *Microsoft Ireland, the CLOUD Act, and International Lawmaking 2.0*, 71 STAN. L. REV. 9 (2018).

111. See *United States v. Microsoft Corp.*, No. 17-2 (U.S. Apr. 17, 2018) (*per curiam*) (*Microsoft Ireland*).

112. *Id.*; see also Daskal, *supra* note 110.

113. See Daskal, *supra* note 110.

114. Peter Margulies, *Global Cybersecurity, Surveillance, and Privacy: The Obama Administration's Conflicted Legacy*, 24 IND. J. GLOBAL LEGAL STUD. 459 (2017).

115. See DLA PIPER, *DATA PROTECTION LAWS OF THE WORLD: FULL HANDBOOK* (Mar. 6, 2019), https://iapp.org/media/pdf/resource_center/Data-Protection-Full.pdf [<https://perma.cc/3P6K-HSC7>].

116. OECD, *Recommendation of the Council Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*, OECD/LEGAL/0188 (Sept. 22, 1980; amend. July 10, 2013); see also OECD, *THE OECD PRIVACY FRAMEWORK* (2013), https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf [<https://perma.cc/8U9U-HK3K>].

117. See OECD PRIVACY FRAMEWORK, *supra* note 116.

Personal Data Privacy and Access to Information.¹¹⁸ The OAS has been working on Principles for Privacy and Personal Data Protection in the Americas and made some national legislative advancements.¹¹⁹ The European Union's privacy regulations are embodied in the EU GDPR and implemented at the national level within member states, and the GDPR will drive privacy protections for data in the future.¹²⁰ Privacy laws and regulations will become only more of a hot topic with the backdrop of the pandemic and a more urgent need for access to legal information for the public.¹²¹

National Legislation—Advancements in AI Initiatives

¶18 National legislative efforts to regulate AI are already blossoming and becoming sophisticated.¹²² Brazil recently innovated a structure for AI regulation and trade through the partnership of ICC Brazil and UNCTAD to regulate technologies.¹²³ Brazil also enacted a Data Protection Law No. 13,709 in 2018 to give more security for consumers of emerging technologies.¹²⁴ Article 1 of the law provides for digital privacy and protection to protect personal fundamental rights.¹²⁵ Canada's approach, on the other hand, tends to be policy-based and nonlegislative.¹²⁶ Canada was the first country to

118. See *Policy & Procedure Framework: Personal Data Privacy*, WORLD BANK, <https://policies.worldbank.org/en/policies/all/ppfdetail/15176fac-233e-4482-8e47-d0d82754b703> [https://perma.cc/BJ66-WLF3]; see also Ethiopis Tafara, *The Importance of Protecting "Privacy" in the Age of Digital Data*, WORLD BANK BLOGS (Feb. 7, 2020), <https://blogs.worldbank.org/digital-development/importance-protect-ing-privacy-age-digital-data> [https://perma.cc/9ETL-DCEU].

119. OAS, Inter-Am. Juridical Comm., Privacy & Data Protection, *OAS Principles on Privacy and Personal Data Protection with Annotations*, OAS Doc. OEA/Ser.Q CJI/doc. 474/15 rev. 2 (Mar. 26, 2015), https://www.oas.org/en/sla/dil/docs/CJI-doc_474-15_rev2.pdf [https://perma.cc/UU8N-N26Z]; see also OAS, Comm. on Juridical & Pol. Affs, *Preliminary Principles and Recommendations on Data Protection (The Protection of Personal Data)*, OAS Doc. OEA/Ser.G CP/CAJP-2921/10 rev. 1 corr. 1 (Oct. 17, 2011), http://www.oas.org/dil/CP-CAJP-2921-10_rev1_corr1_eng.pdf [https://perma.cc/9Z8U-5YM8]; OAS, SECRETARIAT FOR LEGAL AFFAIRS, DEP'T INT'L L., MODEL INTERAMERICAN LAW ON ACCESS TO PUBLIC INFORMATION AND ITS IMPLEMENTATION GUIDELINES (2012), https://www.oas.org/en/sla/dil/docs/Access_Model_Law_Book_English.pdf [https://perma.cc/VD35-6MDZ].

120. See *Complete Guide to GDPR Compliance*, GDPR.EU, <https://gdpr.eu/> [https://perma.cc/Z5FX-LDWE].

121. See, e.g., HUM. RTS. WATCH, *Human Rights Dimensions of COVID-19 Response* (Mar. 19, 2020), <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> [https://perma.cc/5NAZ-5SE5]; see also Laurel S. Terry, *Global Networks and the Legal Profession*, 53 AKRON L. REV. 137 (2019).

122. See LAW LIBR. CONG., *supra* note 56.

123. ICC Brazil and UNCTAD *Sign Deal to Harness Technology in International Trade*, UNCTAD (Apr. 16, 2018), <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1722> [https://perma.cc/T7UJ-FXJD].

124. See Brazil Data Protection Law No. 13,709 (2018), [https://www.dlapiperdataprotection.com/index.html?t=law&c=BR#:~:text=Brazil%20enacted%20the%20Brazilian%20General,LGPD\)%2C%20Federal%20Law%20no.&text=Certain%20LGPLD%20provisions%20were%20already,Data%20Protection%20Authority%20\(ANPD\)](https://www.dlapiperdataprotection.com/index.html?t=law&c=BR#:~:text=Brazil%20enacted%20the%20Brazilian%20General,LGPD)%2C%20Federal%20Law%20no.&text=Certain%20LGPLD%20provisions%20were%20already,Data%20Protection%20Authority%20(ANPD)) [https://perma.cc/FS29-WV5Z].

125. *Id.* at art. 1, http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Lei/L13709.htm [https://perma.cc/35QR-6FTN].

126. See, e.g., *Canada's AI Imperative: Public Policy's Critical Moment*, DELOITTE, <https://www2.deloitte.com/ca/en/pages/deloitte-analytics/articles/public-policys-critical-moment.html> [https://perma

develop a national AI strategy and action plan in 2017.¹²⁷ Singapore followed Canada's lead shortly thereafter.¹²⁸ Canada, which is a recent technological hub for AI innovation,¹²⁹ also developed the Canada-France Statement on Artificial Intelligence in 2018 as a cross-border collaboration.¹³⁰ Australia is using AI-driven technologies in businesses at a rate of over 50 percent, and the Australian government negotiated a billion-dollar deal with IBM in 2018 to innovate the market.¹³¹ Indonesia is a leader for AI developments and strategies in Asia and recently revised the Governmental Regulation No. 71 in 2019 for data protection.¹³² Data protection standards and AI developments continue to evolve around the world during a time of great technological change.¹³³ Regional and national efforts are slow to keep up with the pace of evolving technologies, and the right to open access to regulations and laws in various contexts may be constantly evolving for many years.¹³⁴

Recommendations for Future Efforts: UN, OECD, and Regional Norms as Success Stories

¶19 There is a classic tension between machine-learning technologies, such as AI, and expansion of open access to legal materials.¹³⁵ On one hand, there is certainly tre-

.cc/TXR7-5LBF]; *Canada's AI Imperative: Start, Scale, Succeed*, DELOITTE, <https://www2.deloitte.com/ca/en/pages/deloitte-analytics/articles/start-scale-succeed.html> [https://perma.cc/Q7W4-EX2Y].

127. Tim Dutton et al., *Building an AI World: Report on National and Regional AI Strategies*, CIFAR (May 2020), https://cifar.ca/wp-content/uploads/2020/05/buildinganaiworld_eng.pdf [https://perma.cc/NT9W-KT5L].

128. See Dongwoo Kim & Jia Yuan Loke, *Singapore's National AI Strategy: A Springboard for Canadian Collaboration*, ASIA PAC. FOUND. CAN. (Dec. 23, 2019), <https://www.asiapacific.ca/publication/singapores-national-ai-strategy> [https://perma.cc/MS44-A64P].

129. See Rahul Kalvapalle, *AI Fuels Boom in Innovation, Investment, and Jobs: U of T Report*, U OF T NEWS (June 23, 2020), <https://www.utoronto.ca/news/ai-fuels-boom-innovation-investment-and-jobs-canada-report-says> [https://perma.cc/GAN8-P3M5].

130. See Canada-France Statement, *supra* note 37.

131. See Tom Burton, *Australian Government and IBM Sign \$1 Billion Deal for Blockchain and AI Technologies*, SMARTCOMPANY (July 9, 2018), <https://www.smartcompany.com.au/technology/emerging-technology/australian-government-ibm-1-billion-deal-blockchain-ai/> [https://perma.cc/J2UX-BMFP].

132. See, e.g., Made Anthony Iswarda, *Indonesia Sets Sights on Artificial Intelligence in New National Strategy*, JAKARTA POST (Aug. 14, 2020), <https://www.thejakartapost.com/news/2020/08/13/indonesia-sets-sights-on-artificial-intelligence-in-new-national-strategy.html> [https://perma.cc/Z4LB-BBTN]; see also Steffen Hadi et al., *Indonesia*, in DATA PROTECTION LAWS AND REGULATIONS (2022), <https://iclg.com/practice-areas/data-protection-laws-and-regulations/indonesia> [https://perma.cc/FR33-EAWA].

133. See DLA PIPER, *Indonesia, in DATA PROTECTION LAWS OF THE WORLD* (Dec. 17, 2021), <https://www.dlapiperdataprotection.com/?t=law&c=ID> [https://perma.cc/H34F-M592].

134. See Pamela Samuelson, *Freedom to Tinker*, 17 THEORETICAL INQUIRY L. 563 (2016); John O. McGinnis, *How Innovation Makes Us More Equal*, 39 HARV. J.L. & PUB. POL'Y 47 (2016); see also *Global Data Governance: Part Two: Evolving Government Data Collection Practices*, FOREIGN POL'Y (June 26, 2020), <https://foreignpolicy.com/2020/06/26/data-governance-privacy-surveillance-covid-ai-encryption-technology-internet-power-map/> [https://perma.cc/42XK-K4H9].

135. See, e.g., Scott Neuman, *The UN Warns That AI Can Pose a Threat to Human Rights*, NPR (Sept. 16, 2021), <https://www.npr.org/2021/09/16/1037902314/the-u-n-warns-that-ai-can-pose-a-threat-to-human-rights> [https://perma.cc/8ZFA-CZHQ].

mendous potential for informing, using, and promulgating essential information and access to legal materials.¹³⁶ On the other hand, though, are the competing concerns of data protection, privacy, and security. Several leading international and regional organizations have successfully navigated this historic challenge and provided guidance.¹³⁷ It is imperative for governments and leaders of organizations to develop a set of “best practices” tailored to each industry and setting to promote democratic access to legal information. This section discusses the successful initiatives of the UN, OECD, and several regional and national models as examples.

UN Overarching Norms: Fundamental Human Rights

¶20 The United Nations spearheaded the labeling of access to information and, eventually, laws and governmental information as a fundamental right for human rights and facilitating international development of the rule of law. As a beacon of organized committee work to implement the UN documentation stemming from this human rights norm, the UN recognized the early fundamental right to access information as a subset of freedom of expression as embodied in Article 19 of the Universal Declaration of Human Rights.¹³⁸ Later, other UN instruments, such as the International Covenant on Civil and Political Rights, also recognized access to information as a fundamental right.¹³⁹ UNESCO advocates for the right to access information and freedom of expression in the public international law sphere.¹⁴⁰ Freedom of expression and access to information also facilitates the rule of law in the UN bodies as a thematic area supported by UNESCO and OHCHR.¹⁴¹ Freedom of information and open access to governmental information promotes democracy and rule of law throughout the world.¹⁴²

136. See Steven D. Jamar, *The Human Right of Access to Legal Information: Using Technology to Advance Transparency and the Rule of Law*, 1 GLOBAL JURIST i (2001); see also Patrick Birkinshaw, *Freedom of Information and Openness: Fundamental Human Rights*, 58 ADMIN. L. REV. 177 (2006); Brittany Grasmick, *Recognizing Access to Information as a Basic Human Right: A Necessary Step in Enforcing Human Rights Provisions within Free Trade Agreements*, 12 LOY. U. CHI. INT'L L. REV. 215 (2015).

137. See, e.g., Ngozi J. Adombana & Kafayat Motilewa Quadri, *Institutional Framework on the Right to Information*, 11 BEIJING L. REV. 244 (2020); Kiffi Aggarwal, *Basic Elements of Right to Information Law*, 5 SUPREMO AMICUS 109 (2018).

138. See *Access to Information Laws*, UNESCO, <https://en.unesco.org/themes/access-information-laws> [<https://perma.cc/GS8Q-QNSL>]; see also *Universal Declaration of Human Rights-English*, U.N., <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english> [<https://perma.cc/WMJ7-FS4A>].

139. See *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967), https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf [<https://perma.cc/CHA3-ZRuz>].

140. *Access to Information Laws*, *supra* note 138.

141. *Freedom of Information*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/> [<https://perma.cc/W2V4-LTUD>].

142. See *Access to Information*, UNCAC COALITION, <https://uncaccoalition.org/learn-more/access-to-information/> [<https://perma.cc/GFV7-WJH6>]; see also *Freedom of Expression*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/freedom-of-expression/> [<https://perma.cc/F9M6-6K6T>].

Certain studies and country data reveal that UN efforts and initiatives have facilitated open access to information laws throughout the world.¹⁴³

¶21 UN conventions, such as the UN Convention Against Corruption (UNCAC), also include protections for freedom of information and transparency of information in the context of the conventions or treaties.¹⁴⁴ Many countries adhere to access to legal information norms within the landscape of treaties or conventions to which they are a party.¹⁴⁵ The United Nations also has contemplated the modern issues of AI and privacy in the context of access to information through its committee work. In 2021, UNESCO led the adoption by 193 countries of the first-ever AI agreement with an emphasis on worldwide AI ethics.¹⁴⁶ The goals of the agreement include transparency, open access, privacy protection, and accountability to facilitate AI opportunities and projects on an international scale.¹⁴⁷ The UN Special Rapporteur on Privacy is diligently monitoring privacy aspects of AI and access to information in this modern digital age and is a leader in the commentary on this important issue.¹⁴⁸ Finally, leading UN entities, such as the OHCHR and UNCTAD, are thoughtfully considering digital competencies, privacy, AI and legal aspects, and monitoring mechanisms through legislation.¹⁴⁹ Future UN initiatives seek to demystify AI and harness the good opportunities for open access to legal information in conjunction with other legal implications and worldwide regulations.¹⁵⁰

143. See, e.g., *By Country*, GLOBAL RIGHT TO INFO. RATING, <https://www.rti-rating.org/country-data/> [<https://perma.cc/TR9H-X9YL>].

144. See, e.g., *Stolen Asset Recovery Initiative: UNCAC*, WORLD BANK, <https://star.worldbank.org/focus-area/uncac> [<https://perma.cc/PY2T-29U2>].

145. See U4 Anti-Corruption Resource Centre, *UNCAC in a Nutshell*, U4 BRIEF, June 2010, at 1, <https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf> [<https://perma.cc/9GXU-L73T>].

146. See UNESCO, *Draft Text of the Recommendation on the Ethics of Artificial Intelligence* (2021), UNESCO Doc. SHS/IGM-AIETHICS/2021/JUN/3 Rev.2, <https://unesdoc.unesco.org/ark:/48223/pf0000377897> [<https://perma.cc/X3A6-TGJC>]; *193 Countries Adopt First-Ever Global Agreement on the Ethics of Artificial Intelligence*, U.N. News (Nov. 25, 2021), <https://news.un.org/en/story/2021/11/1106612> [<https://perma.cc/MEL8-BE3B>].

147. *193 Countries Adopt*, *supra* note 146.

148. *Digital Space and Human Rights*, OHCHR, <https://www.ohchr.org/en/topic/digital-space-and-human-rights> [<https://perma.cc/7XTH-RFZ7>]. The most recent work by the OHCHR, a collaboration with Berkeley, is quite substantive and impressive for this topic. See OHCHR, *THE BERKELEY PROTOCOL ON DIGITAL OPEN SOURCE INVESTIGATIONS* (2022), https://www.ohchr.org/sites/default/files/2022-04/OHCHR_BerkeleyProtocol.pdf [<https://perma.cc/4GLA-AVYB>].

149. See, e.g., U.N. High Comm'r for Hum. Rts., *The Right to Privacy in the Digital Age*, U.N. Doc. A/HRC/48/31 (Sept. 15, 2021); see also U.N. Econ. & Soc. Comm'n W. Asia [ESCWA], *Developing an Artificial Intelligence Strategy: National Guide*, U.N. Doc. E/ESCWA/CL4.SIT/2020/TP.8 (Oct. 15, 2020), <https://www.unescwa.org/sites/default/files/artificial-intelligence-strategy-national-guide-english.pdf> [<https://perma.cc/7D7V-R2BG>]; UNCTAD, *Building Digital Competencies to Benefit from Frontier Technologies*, U.N. Doc. UNCTAD/DTL/STICT/2019/3 (2019), https://unctad.org/system/files/official-document/dtlstict2019d3_en.pdf [<https://perma.cc/HC7Y-JWRP>].

150. U.N. Econ. & Soc. Council, *Artificial Intelligence Demystified*, ECE/TRADE/C/CEFACT/2021/19 (Apr. 13, 2021), https://unece.org/sites/default/files/2021-04/ECE_TRADE_C_CEFACT_2021_19E-AI_0.pdf [<https://perma.cc/X6LY-C2XB>]; see also U.N. Comm'n on Int'l Trade L., *Legal Issues Related to the Digital Economy—Artificial Intelligence*, U.N. Doc. A/CN.9/1012/Add.1 (May 7,

OECD Initiatives for International Business

¶22 The OECD has a similarly robust set of responses and governance mechanisms for AI and privacy in the digital age. The OECD and other regional models do not reach the scope, detailed discussion, and robust nature of the UN committee work, though. In the private international law realm, the OECD work in this area is well recognized and innovative for data governance and creating legal information protection and access by AI, combating misinformation, and enhancing access to OECD data.¹⁵¹ The OECD governance mechanisms include sophisticated public governance and combating misinformation in society to strengthen democracies around the world.¹⁵² The OECD has further refined a data-sharing and public governance network for private international law to meet current and future challenges.¹⁵³ These OECD structures are helpful for balancing the privacy aspects while safeguarding open access to accurate information in a digital landscape.

World Bank—Doing Business and Economic Guidelines

¶23 The World Bank has made significant progress with access to information standards and addressing governance issues like privacy and encryption.¹⁵⁴ The World Bank “Access to Information” standards and documentation provide a model to the world community since the access policy’s inception in 2010 to preserve knowledge.¹⁵⁵ This foundational document facilitated numerous projects, including the *Doing Business in* series, and private international law data with constant editing and refining of that data to eliminate bias.¹⁵⁶ Overall, the World Bank provides an excellent example of a diligent

2020); U.N. Comm’n on Int’l Trade L., *Legal Issues Related to the Digital Economy—Proposal for Legislative Work on Electronic Transactions and the Use of Artificial Intelligence and Automation*, U.N. Doc. A/CN.9/1065 (May 5, 2021).

151. See *Recommendations*, *supra* note 116; *OECD Work on Privacy*, OECD, <https://www.oecd.org/sti/ieconomy/privacy.htm> [<https://perma.cc/T5TZ-MBEG>].

152. See, e.g., *Public Governance*, OECD, <https://www.oecd.org/governance/> [<https://perma.cc/WG4C-37WQ>]; see also *Building Trust and Reinforcing Democracy*, OECD, <https://www.oecd.org/governance/reinforcing-democracy/> [<https://perma.cc/G92Q-KJ9U>]; *Public Governance Responses to Mis- and Disinformation*, OECD, <https://www.oecd.org/governance/reinforcing-democracy/responses-to-mis-disinformation/> [<https://perma.cc/G92Q-KJ9U>].

153. See Monica Brezzi et al., *An Updated Framework on Drivers of Trust in Public Institutions to Meet Current and Future Challenges*, OECD (Dec. 21, 2021).

154. See, e.g., Jim Anderson, *Where to Go for Information on Access to Information*, WORLD BANK BLOGS (Sept. 28, 2018), <https://blogs.worldbank.org/governance/where-go-information-access-information> [<https://perma.cc/L3N2-X432>]; Press Release, World Bank, World Bank Announces Open Access Policy for Research and Knowledge (Apr. 10, 2012), <https://www.worldbank.org/en/news/press-release/2012/04/10/world-bank-announces-open-access-policy-for-research-and-knowledge-launches-open-knowledge-repository> [<https://perma.cc/6QYU-6KA2>].

155. *Access to Information*, *supra* note 14.

156. See, e.g., *Countries and Economies*, WORLD BANK, <https://data.worldbank.org/country> [<https://perma.cc/PJ7N-4QV9>]; *Business Enabling Environment (BEE)*, WORLD BANK, <https://www.worldbank.org/en/programs/business-enabling-environment> [<https://perma.cc/N8AK-8SWR>]. The World Bank reviewed its dataset for the *Doing Business in* series and decided to refine the future data project after biases were uncovered. See Statement, World Bank, World Bank Group to Discontinue Doing Business

and robust open business and legal information environs to facilitate healthy international information systems and projects.¹⁵⁷

EU/OAS—Access to Information Models

¶24 The EU and the OAS also provide access to information guidance and model laws. The OAS delineated clear standards for access to information for its members and region in 2009.¹⁵⁸ The OAS further developed a Model Inter-American Law on Access to Information with the goal of strengthening democracy.¹⁵⁹ A detailed guide proactively informs OAS members of the implementation process for the model law and provides guidance for common law and civil law jurisdictions.¹⁶⁰ The EU also provides substantial information and clear structure for freedom of information as embodied in the European Charter of Fundamental Rights.¹⁶¹ The European Court of Human Rights also reaffirmed the right of access to information while balancing privacy in juxtaposition to a national Freedom of Information Act in the *Case of Youth Initiative for Human Rights v. Serbia*.¹⁶² The right to access the information was granted by the Court in this unique case interpreting Article 10 of the Convention and the Joint Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression.¹⁶³ This holding by the European Court of Human Rights affirmed the Declaration of the Special Rapporteur that “the right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation.”¹⁶⁴ The *Handbook on European Law Related to Access to Justice* also includes the governing treaties and procedure in the EU that govern the

Report (Sept. 16, 2021), <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report> [<https://perma.cc/KQ4E-8TAR>].

157. See WORLD BANK, ACCESS TO INFORMATION ANNUAL REPORT FY 2020, <https://thedocs.worldbank.org/en/doc/d9f3b0bfe732902a12fdc904e7dae7fb-0090012021/original/Access-to-Information-FY20-annual-report-revA.pdf> [<https://perma.cc/FR6C-DG6W>]; *Policy & Procedure Framework, The World Bank Policy on Access to Information*, WORLD BANK (July 1, 2015), <https://policies.worldbank.org/en/policies/all/ppfdetail/3693> [<https://perma.cc/8PX2-77QN>].

158. See, e.g., OAS, Inter-Am. Comm'n on Hum. Rts., *The Right of Access to Information* (2009), https://www.oas.org/dil/access_to_information_iachr_guidelines.pdf [<https://perma.cc/6RGN-MW7Z>].

159. See *Model Inter-American Law on Access to Information*, OAS, https://www.oas.org/en/sla/dil/access_to_information_model_law.asp [<https://perma.cc/FY3S-B9AW>].

160. See OAS, Comm. on Juridical & Pol. Affs., *Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information*, OAS Doc. OEA/Ser.G CP/CAJP-2841/10 (Apr. 23, 2010), https://www.oas.org/en/sla/dil/docs/CP-CAJP-2841-10_eng.pdf [<https://perma.cc/962C-9AKJ>].

161. See, e.g., Pamela Bartlett Quintanilla et al., *Guide on Access to EU Documents*, ACCESS-INFO (Jan. 2013), https://www.access-info.org/wp-content/uploads/EN_ONLINE_Guide_on_access_to_EU_Documents.pdf [<https://perma.cc/3KDE-7FHZ>].

162. See Eur. Ct. Hum. Rts., Judgment, *Case of Youth Initiative for Human Rights v. Serbia*, App. No. 48135/06 (Sept. 25, 2013), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-120955%22%7D> [<https://perma.cc/73RP-K4EU>].

163. *Id.* at 3. The Special Rapporteur stated that “[a]ccess to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost. The right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy.” *Id.*

164. *Id.*

right to access information, including the principles and legal norms from the Council of Europe, EU, and UN standards.¹⁶⁵

United States—Extraterritorial Guidance After the CLOUD Act

¶25 The United States has long safeguarded the right to access information and has significant contributions to open access to legal information.¹⁶⁶ One of the most recent and fascinating examples of data privacy and access to information encrypted in the cloud occurred in the context of the *United States v. Ireland* case involving Microsoft Corporation's data and overseas storage.¹⁶⁷ This appeal to the Second Circuit and then to the Supreme Court is a contentious modern case involving the balance of privacy interests with access to data and online storage in our increasingly digital universe.¹⁶⁸ Ultimately, though, the CLOUD Act passed in 2018 and revised the Stored Communications Act to create an extraterritorial cause of action and right to information abroad that Microsoft had stored overseas in Ireland.¹⁶⁹ This legislative action was unique for storage of digital data and paved the way for modernization of U.S. lawsuits and enhanced access to data with international corporate actors involving digital stored communications anywhere in the world.¹⁷⁰ The United States also has advancements for regulation of AI while preserving the historic right of access to information.¹⁷¹

Conclusion: Hope for Future Open Access Innovations

¶26 Many laudable efforts toward open access to the law, legal information, and free governmental information exist and are continually expanding for a digital age. Future

165. See EU AGENCY FUNDAMENTAL RTS. & COUNCIL OF EUR., HANDBOOK ON EUROPEAN LAW RELATING TO ACCESS TO JUSTICE (2016), https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf [<https://perma.cc/CSG3-KJP6>].

166. See, e.g., *What Is FOIA?*, FOIA.GOV, <https://www.foia.gov/about.html> [<https://perma.cc/4JPH-X9B6>]; see also HARV. L. SCH., CASELAW ACCESS PROJECT, <https://case.law/> [<https://perma.cc/Q868-D3G3>].

167. See *Microsoft Ireland*, *supra* note 111; see also Jennifer Daskal, *Microsoft Ireland Argument Analysis: Data, Territoriality, and the Best Way Forward*, HARV. L. REV. BLOG (Feb. 28, 2018), <https://blog.harvardlawreview.org/microsoft-ireland-argument-analysis-data-territoriality-and-the-best-way-forward/> [<https://perma.cc/S9NA-SG2B>].

168. See *Matter of Warrant to Search a Certain E-Mail Account Controlled and Maintained by Microsoft Corp.*, 829 F.3d 197 (2d Cir. 2016).

169. The Second Circuit decision was then remanded and vacated and, thus, the Supreme Court writ of certiorari was moot because there was no longer a dispute for the appeal. See *Microsoft Ireland*, *supra* note 111.

170. See *CLOUD Act Resources*, U.S. DEP'T JUSTICE, <https://www.justice.gov/dag/cloudact> [<https://perma.cc/N22X-Q47Z>]; CLOUD Act, H.R. 4943, 115th Cong. (2018).

171. See, e.g., *Legislation Relating to Artificial Intelligence*, NAT'L CONF. STATE LEGISLATURES (Aug. 26, 2022), <https://www.ncsl.org/research/telecommunications-and-information-technology/2020-legislation-related-to-artificial-intelligence.aspx> [<https://perma.cc/W48K-QWX5>]; see also the laudable world AI legislative efforts impressively compiled by the Law Library of Congress: LAW LIBR. CONG., REGULATION OF ARTIFICIAL INTELLIGENCE IN SELECTED JURISDICTIONS: BRAZIL, CANADA, MEXICO, UNITED STATES (2019), <https://www.loc.gov/item/2019668143/> [<https://perma.cc/LEH6-DZJH>].

thought should be invested in cross-border cooperation and collaboration and procedural norms for ensuring access and discovery of information.¹⁷² Collaborations by law librarians and scholars, a Hague convention, a UN treaty conference effort, or a regional conference on the expansion of digital rights and privacy could better promote cross-border collaboration and the rule of law. More certainty and uniformity will be needed to better protect open access in the uncertain time of COVID-19 and its aftermath and the need for digital information. Governments and corporate actors are well poised to collaborate on open access and refine coordinated standards based on the overarching UN, OECD, and other regional initiatives. Law libraries, law schools, and global and national think tanks are also ready partners for open access initiatives in the law and expanding international access to justice in an uncertain epoch.

172. See Morgan Corley, *The Need for an International Convention on Data Privacy: Taking a Cue From the CISG*, 41 BROOKLYN J. INT'L L. 722 (2016).

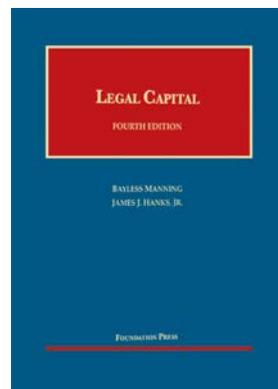


LEGAL CAPITAL, 4th Ed.

Bayless Manning, Late Former Dean, Stanford Law School
James J. Hanks, Jr., Partner, Venable LLP

Legal Capital is widely credited with pioneering the introduction of the balance sheet and equity solvency tests for corporate distributions, as well as other reforms in the Model Business Corporation Act and corporation statutes in over 30 states. This edition adds new historical material, updates the statutes and case law on dividends and other distributions in the U.S., and compares the evolution of legal capital in countries around the world.

Visit | westacademic.com
 Call | 800-782-1272
 email | inquiries@westacademic.com



ISBN: 9781599417721

**FOUNDATION
PRESS**

Bolstering the Asian American Law Library Collection: A Collection Development Guide*

Mari Cheney, ** Mandy Lee *** & Anna Lawless-Collins ****

An increase in Asian American hate crimes has compelled law librarians to consider their collection development decisions due to a gap in Asian American law library collections. Guidance for increasing Asian American–related materials, however, is sparse. This article aims to fill this gap by discussing the importance of representation, tips on how to perform a diversity audit, and suggestions for Asian American law-related titles.

Introduction	286
Representation Matters	288
Awareness Matters	291
Literature Review	294
Subject Headings	295
Steps Forward	296
Conclusion	299
Appendixes: Suggested Reading Lists	299
Appendix A: Nonfiction Books by or About Asian American Lawyers, Legal Issues, or Politicians.	299
Appendix B: Fiction Books by or About Asian American Lawyers.	301
Appendix C: Other Books for Your Popular Reads Collection About the Asian American Experience	301
Appendix D: Documentary Films by or About Asian American Lawyers, Legal Issues, or Politicians.	302

* © Mari Cheney, Mandy Lee & Anna Lawless-Collins, 2022. The authors thank the participants of the Thirteenth Annual Boulder Conference on Legal Information: Scholarship and Teaching for their feedback on a draft of this article, as well as Annalee Hickman Pierson for her invaluable assistance.

** Assistant Director, Research and Instruction, Boley Law Library, Lewis and Clark Law School, Portland, Oregon. Mari was raised in Hong Kong and taught sixth grade in Bangkok. As an Asian American ally and third-culture kid, this topic is very important to her.

*** Head of Research and Instruction, Chicago-Kent College of Law Library, Chicago, Illinois. Asian American Law Librarians Caucus Chair, 2020–2021.

**** Associate Director for Systems and Collection Services, Fineman and Pappas Law Libraries, Boston University School of Law, Boston, Massachusetts. Anna cares about this topic as an ally and advocate for better representation in library collections.

Introduction

¶1 When the news broke that six Asian American¹ women had been murdered as part of one man's shooting spree in Atlanta, it seemed that the media was finally recognizing the upswing in violence against another racial minority in the United States.² The Center for the Study of Hate and Extremism found that in America's largest cities anti-Asian hate crimes grew 145 percent between 2019 and 2020, while overall hate crimes dropped 6 percent in that same time.³

¶2 More than two years since the start of the COVID-19 pandemic in the United States, the upswing persists. Comparing the first quarter of 2020 to the first quarter of 2021, hate crimes against Asians in the United States increased 164 percent.⁴ Some geographic areas have experienced significantly more anti-Asian incidents than others. In San Francisco, anti-Asian American and Pacific Islander hate crimes rose 567 percent from 2020 to 2021, while the next largest uptick in hate crimes against a particular demographic group grew by 60 percent.⁵

¶3 A recent Pew Research Center survey reported that nearly two-thirds of adults of Asian descent in the United States believe that violence against Asian Americans in the country is increasing, and more than a third have changed their daily schedules or

1. Coined in 1968 by Yuji Ichioka, the phrase "Asian American" has been fraught with contention and encompasses a vast range of countries and cultures. Nina Wallace, *Yellow Power: The Origins of Asian America*, DENSHŌ (May 8, 2017), <https://densho.org/catalyst/asian-american-movement/> [https://perma.cc/5AR7-77GU].

The U.S. Census Bureau employs the definition of "Asian" as stated in the Office of Management and Budget Guide: "Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, India, China, the Philippine Islands, Japan, Korea, or Vietnam. It includes people who indicate their race as Asian India, Chinese, Filipino, Korean, Japanese, Vietnamese, and Other Asian, or provide other detailed Asian responses such as Pakistani, Cambodian, Hmong, Thai, Bengali, Mien, etc." *2020 Census State Redistricting Data (Public Law 94-171) Summary File*, U.S. CENSUS BUREAU (June 2021), https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/complete-tech-docs/summary-file/2020Census_PL94_171Redistricting_StatesTechDoc_English.pdf [https://perma.cc/M4WR-XC45]. Thus, it does not include Pacific Islanders. The Pew Research Center follows the U.S. Census Bureau's definition. Abby Budiman, *Methodology: Asian American Fact Sheets*, PEW RSCH. CTR. (Apr. 29, 2021), <https://pewresearch-org-preprod.go-vip.co/social-trends/2021/04/29/methodology-asian-american-fact-sheets/> [https://perma.cc/L846-N229].

2. Sabrina Tavernise, *The Growing Power of Asian-Americans in Georgia Now Comes with Fear*, N.Y. TIMES (Mar. 17, 2021), <https://www.nytimes.com/2021/03/17/us/georgia-asian-population.html>.

3. *Fact Sheet: Anti-Asian Prejudice March 2021*, CTR. FOR THE STUDY OF HATE & EXTREMISM, CAL. STATE UNIV., SAN BERNARDINO, <https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%20rev%203.21.21.pdf> [https://perma.cc/TK85-ESAY].

4. *Report to the Nation: Anti-Asian Prejudice & Hate Crime (New 2020-21 First Quarter Comparison Data)*, CTR. FOR THE STUDY OF HATE & EXTREMISM, CAL. STATE UNIV., SAN BERNARDINO (2021), <https://www.csusb.edu/sites/default/files/Report%20to%20the%20Nation%20-%20Anti-Asian%20Hate%202020%20Final%20Draft%20-%20As%20of%20Apr%2030%202021%206%20PM%20corrected.pdf> [https://perma.cc/Y82M-JP8T].

5. S.F. Police Dep't Media Relations Unit, *SFPD Victim Data: 2021 Preliminary Hate Crime Statistics in San Francisco* (Jan. 24, 2022), <https://cbsnews1.cbsstatic.com/i/cbslocal/wp-content/uploads/sites/15116056/2022/01/2021-Hate-Crime-Victim-Demographics-Final.pdf> [https://perma.cc/AC62-WFSD].

routines in the past 12 months due to worry that they may be attacked or threatened because of their race or ethnicity.⁶ Almost half of the general population (48 percent) believe that hate crimes against Asian Americans and Pacific Islanders have increased in the past year (2021–2022), whereas the general population believes that hate crimes against Black and Latino individuals have increased 29 percent and 20 percent, respectively.⁷

¶4 Noting the national tension in race relations and the increased hate crimes against Asian Americans, law librarians around the country considered what collection development decisions might better support their Asian American students, faculty, and staff. Many began looking for books and media about and for Asian American lawyers to bolster their libraries' collections.⁸ But often they were disappointed by what they found: first, that Asian Americans were underrepresented in legal literature; and second, that the few available resources had not been compiled into suggested reading lists or, if compiled, were not publicly available.⁹ These regrettable discoveries contrasted with how law libraries had responded to the Black Lives Matter (BLM) movement: many created LibGuides with comprehensive BLM-relevant reading lists.¹⁰ Such a proactive response to injustice and hate was needed again—this time for Asian Americans.

¶5 This article aims to jumpstart the conversation. It first reviews current statistics on Asian Americans' representation in legal settings, examines why representation matters, and discusses the role education plays in raising awareness about underrepresentation. It next discusses how to conduct a diversity audit for a library's current collection. Finally, it attempts to fill the current gap in guidance on developing robust collections of Asian American materials. While our list is not exhaustive, we hope it provides solid

6. Luis Noe-Bustamante, Neil G. Ruiz, Mark Hugo Lopez & Khadijah Edwards, *About a Third of Asian Americans Say They Have Changed Their Daily Routine Due to Concerns Over Threats, Attacks*, PEW RSCH. CTR. (May 9, 2022), <https://www.pewresearch.org/fact-tank/2022/05/09/about-a-third-of-asian-americans-say-they-have-changed-their-daily-routine-due-to-concerns-over-threats-attacks/> [<https://perma.cc/2FSL-A79Z>]. “[A] majority of those who perceived rising violence against Asian Americans attributed it to former President Donald Trump, racism, COVID-19 and its impact on the nation, and scapegoating and blaming Asian people for the pandemic.” *Id.*

7. *AAPIC Data|Momentive Poll: American Experiences with Discrimination 2022*, MOMENTIVE (Mar. 24, 2022), <https://www.momentive.ai/en/blog/aapi-data-2022/> [<https://perma.cc/LEG9-V2ZK>].

8. The Asian American Law Librarians Caucus issued a statement condemning the violence against the women killed in the Atlanta shootings, as well as the increased number of racially motivated hate crimes. The Caucus also listed resources for law librarians to consult to confront anti-Asian hate, at <https://community.aallnet.org/aallc/home> [<https://perma.cc/C4YV-XVR4>].

9. A starting point for a collection development list was provided by the Asian American Law Librarians Caucus. See *What Can I Add to My Reading List?*, developed by Mandy Lee, who was caucus chair at the time of the development of the list: <https://docs.google.com/document/d/19h6cy2UAYBj8XR54LFrvyAhdgzIqKneZIBZZHZNEkX8/edit> [<https://perma.cc/7QP7-3RD9>]. Taryn Marks, Immediate Past Caucus Chair, originated the list.

10. See, e.g., UNIV. OF IDAHO COLL. OF L., *Resources in Support of Black Lives Matter*, <https://libguides.law.uidaho.edu/c.php?g=1047513&p=7601801> [<https://perma.cc/ME4Q-AD8H>]; DREXEL UNIV., THOMAS R. KLINE SCH. OF L., LEGAL RSCH. CTR., *Black Lives Matter Resource Guide*, <https://drexellaw.libguides.com/BLMResources/Home> [<https://perma.cc/9PHA-YXDX>].

starting point for librarians who want to make sure their Asian American students, faculty, and staff feel seen and are fairly represented in their library's collection.

¶16 A note on terminology: Many varying definitions are found for the terms “Asian American” and “Asian American Pacific Islander (AAPI).”¹¹ While the U.S. Census Bureau's definition of “Asian American” does not include Pacific Islanders, for the sake of both inclusivity and brevity, we use the term “Asian American” to include Asian and Pacific Islander Americans, unless noted otherwise.

Representation Matters

¶17 In the June 2020 report titled “Who's Going to Law School?,” the authors note that between 2011 and 2019, the ABA reported a 28 percent decline in the number of first-year Asian American law students.¹² If this decline continues, there will be fewer mentors and leaders for Asian American law students to model, and the number of Asian American lawyers will “begin to stagnate” by 2030.¹³

¶18 What does this mean, then, for the 2,539 Asian American students who enrolled in law school in 2019 or the ones who followed in 2020 to 2022? These students need mentors to look up to and books to read that inspire by describing people like them, especially if they are not finding that representation in their law schools—and statistics certainly suggest they're not. Less than a decade ago, for example, 4.3 percent of full-time law professors were Asian American; in tenured or tenure-track positions, 4.5 percent were Asian American.¹⁴ Figures for law students weren't much better. In 2019, the percentage of Asian American law students was 6.3 percent of the total enrollment.¹⁵

¶19 When Asian American law students look at legal professionals, how many resemble them? Not enough, according to an American Bar Association report from 2022. Of all lawyers, 5.5% were Asian in 2022—up slightly from 1.7% 10 years earlier. The U.S. population is 6.1% Asian.¹⁶

¶10 Asian American representation among state court judges and justices is equally low. Asian Americans comprised 2% of judges at the appellate or trial court level,¹⁷ and

11. See, e.g., *About Asian/Pacific American Heritage Month*, <https://asianpacificheritage.gov/about/> [<https://perma.cc/Q7AJ-G5X9>].

12. Miranda Li, Phillip Yao & Goodwin Liu, *Who's Going to Law School?* 3, AM. BAR FOUND. (June 2020), <https://www.courthousenews.com/wp-content/uploads/2020/05/LawSchoolEnrollment-Study.pdf> [<https://perma.cc/75QZ-GGFT>].

13. *Id.*

14. ERIC CHUNG, SAMUEL DONG, XIAONAN APRIL HU, CHRISTINA KWON & GOODWIN LIU, A PORTRAIT OF ASIAN AMERICANS IN THE LAW 26 (2017), <https://www.apaportraitproject.org/> [<https://perma.cc/Q232-P455>].

15. Li et al., *supra* note 12, fig. 6.

16. *Demographics*, AM. BAR ASS'N PROFILE OF THE LEGAL PRO. (July 2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>. QUICKFACTS: UNITED STATES, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/PST045221>.

17. CHUNG ET AL., *supra* note 14, at 24.

only eight Asian Americans sat on the benches of the states' highest courts.¹⁸ A May 2022 Brennan Center for Justice report noted that 43 states had no Asian American supreme court justices.¹⁹ Equally surprising was that “**three of the four states** with the largest Asian American populations do not have any Asian American justices (New Jersey, New York, and Texas).”²⁰ At the time of the Brennan Center report, the only states with at least one Asian American justice were California, Georgia, Hawaii, Iowa, Oregon, Vermont, and Washington.²¹

¶11 In the federal court system Asian Americans are also underrepresented. In 2019, they comprised only 2.6 percent of sitting judges and 4 percent of active judges.²² Of Article III federal judges, in 2020, 38 were Asian American, one was Asian American/Pacific Islander, and one was Asian American/White.²³ These 45 judges (see table 1) represented only 5.2 percent of the 870 authorized Article III judgeships in 2020.²⁴ This percentage is less than the AAPI percentage of the U.S. population at large.

18. *Id.*

19. *State Supreme Court Diversity—May 2022 Update*, BRENNAN CTR. FOR JUST. (May 25, 2022), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2022-update> [<https://perma.cc/67SU-JMK9>].

20. *Id.* (emphasis in original).

21. *Id.*

22. For an explanation of “sitting” versus “active” judges, see endnote 5 in Danielle Root, *Asian American Judges in the Federal Judiciary: A Series of Fact Sheets on the Lack of Diversity on the Bench* (Oct. 17, 2019), <https://americanprogress.org/wp-content/uploads/2019/10/JudicialDiversityFactsheet-AsianAm-4-1.pdf> [<https://perma.cc/Q6FP-CVRJ>].

23. *Demography of Article III Judges, 1789–2020: Race and Ethnicity*, FED. JUD. CTR., <https://www.fjc.gov/history/exhibits/graphs-and-maps/race-and-ethnicity> [<https://perma.cc/5D3R-QYS3>].

24. *Demography of Article III Judges, 1789–2020: Composition of the Courts*, FED. JUD. CTR., <https://www.fjc.gov/history/exhibits/graphs-and-maps/composition-courts> [<https://perma.cc/GAL5-QMWQ>].

Federal Article III Snapshot

ARTICLE III JUDGESHIPS	AUTHORIZED	AAPI
Supreme Court	9	0
Court of Appeals	179	12
District Courts	673	32
Court of International Trade	9	1
Total	870	45

Table 1: Federal Article III Judgeships, 2020²⁵

¶12 Finally, among politicians at the federal level, as of July 1, 2017, 60 Asian Pacific Americans have served in the U.S. Congress,²⁶ beginning with Robert W. Wilcox of Hawaii at the turn of the 20th century.²⁷ The number of Asian Pacific Americans serving in the U.S. Congress has increased over the years, and, as of March 17, 2021, is at a record high, although the current number, 18, equates to only 3 percent of the total membership.²⁸ At the state level, 169 legislators from 33 states comprise the National Asian Pacific American Caucus of State Legislators, as of December 8, 2020.²⁹

¶13 These statistics only scratch the surface of Asian Americans' unequal representation in all legal settings, despite their status as the fastest-growing racial or ethnic

25. *Asian Pacific Americans and the Federal Judiciary*, NAT'L ASIAN PAC. AM. BAR ASS'N, <https://www.napaba.org/page/JudicialNom> (last visited June 9, 2022).

26. ASIAN AND PACIFIC ISLANDER AMERICANS IN CONGRESS, 1900–2017, H.R. DOC. 108-226 (2017), <https://www.govinfo.gov/content/pkg/GPO-CDOC-108hdoc226/pdf/GPO-CDOC-108hdoc226.pdf> [<https://perma.cc/4TMC-KJ2L>].

27. *Robert W. Wilcox*, U.S. HOUSE OF REPRESENTATIVES, HISTORY, ART & ARCHIVES, [https://history.house.gov/People/Listing/W/WILCOX,-Robert-W--\(W000459\)/](https://history.house.gov/People/Listing/W/WILCOX,-Robert-W--(W000459)/) [<https://perma.cc/42WX-V7LW>].

28. Sarah Mucha, *Asian American Representation in Congress at Record High*, AXIOS (Mar. 17, 2021), <https://www.axios.com/2021/03/18/asian-american-congress-representation> [<https://perma.cc/B86N-V552>].

29. *National Asian Pacific American Caucus of State Legislators*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/state-tribal-institute/national-asian-pacific-american-caucus-of-state-legislators.aspx> [<https://perma.cc/8L7D-49XM>].

group in the United States.³⁰ Law schools and law libraries must increase their efforts to support Asian American law students, to make existing resources readily available to all, and to expand library collections to better meet diversity, equity, and inclusion (DEI) goals. And yet, in February 2022, a Georgetown Law professor called on a student, who appeared to be of Asian ancestry, using a racial slur.³¹ The professor's defense of ignorance of the phrase's racist origins illustrates the dire need of Asian American awareness on law school campuses. Laments Professor Grace Pai, AAPIs "often remain an invisible minority in institutional policies, protocols and actions."³²

¶14 As training grounds for future leaders, law schools have a social responsibility to provide role models, both in person and on the page, from whom students can learn. Educational "case studies should emphasize positive ethical role models" and "provide information about the success of such leaders."³³ In addition, the law library must stand for the diverse and inclusive values of the law school and serve as a source of enlightenment for all members of the law school community and the law library's patrons. The law library, by collecting books by and about Asian American lawyers, judges, and politicians, can offer a range of role models. Deliberately collecting materials about Asian American legal professionals demonstrates the law library's support of Asian American law students. If the law library collects popular books and movies, the law library should ensure that the popular title collection includes diverse selections that include Asian American actors and authors. Selectors should consider casebooks written by Asian American professors and not shy away from the legal history titles that inform the Asian American experience in the United States.

Awareness Matters

¶15 The shootings in Atlanta generated momentum for the Asian American advocacy movement fighting for changes to laws and educational curricula to support Asian Americans and to increase awareness of Asian American history and issues among all Americans. The current climate reminds Frank Wu, president of Queens College, City University of New York, of the social atmosphere after the baseball bat-beating death of Chinese American Vincent Chin in 1982 Detroit by two autoworkers who were sentenced to probation and fined \$3,000. The consequent collective anger at Chin's death, while significant for unifying previously disparate social groups, eventually fizzled out.

30. Abby Budiman & Neil G. Ruiz, *Asian Americans Are the Fastest-Growing Racial or Ethnic Group in the U.S.*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/> [<https://perma.cc/J77F-9TEL>].

31. Susan Svrluga, *Students at Georgetown Law Call for Changes After Professor Used Slur in Class*, WASH. POST (Feb. 17, 2022), <https://www.washingtonpost.com/education/2022/02/17/georgetown-law-professor-video-slur/> [<https://perma.cc/8EAB-Q867>].

32. Grace Pai, *I'm Asian and Angry at Higher Education*, INSIDE HIGHER ED. (Apr. 30, 2021), <https://www.insidehighered.com/views/2021/04/30/many-colleges-have-come-short-their-responses-violence-against-asian-americans> [<https://perma.cc/WZE8-5HAX>].

33. Michael E. Brown & Linda K. Treviño, *Ethical Leadership: A Review and Future Directions*, 17 LEADERSHIP Q. 595, 608 (2006).

In 2021, nearing the fortieth anniversary of Chin's brutal, racially motivated murder and the subsequent injustice, Wu observed, "Chin has become iconic for experiencing in the fatal extreme what ordinary Asian Americans endure daily."³⁴ He continued, "Out of [the Atlanta] tragedy, there is something I always hoped for but hadn't seen until now: Real bridge-building intentions. We just need to follow through."³⁵

¶16 U.S. Representative Grace Meng sees public education as a way for Americans to gain insight into one another's contributions and histories. "Think about what we learned in school about the contributions of Asian Americans to American history," she said. "Just a paragraph. I think we can make the most of this moment to expand the curriculum we're teaching our kids."³⁶ Echoes Grace Bautista, a George Washington University senior and historian for the university's Asian American Students Association, "It's more important than ever to understand what Asian American studies is and to understand the history of violence and racism that we have experienced in this country."³⁷ Losinski et al.'s 2019 study concludes similarly that

there is much that schools can do, as change agents, to curb the negative experiences youth have with discrimination, hateful speech and actions, and harassment. Many schools are successfully addressing these issues through their use of positive behavioral interventions and supports, social and emotional learning programs, bullying prevention programs, and interventions, which are designed to positively influence discriminatory behaviors and biased attitudes. Schools should address issues like harassment, bullying, racism, and discrimination through the use of programs or interventions designed to reduce them, in order to provide more equitable schooling experiences and more equitable educational outcomes for all.³⁸

Seventy-three percent of AAPI adults support educating Americans on identifying anti-AAPI bias.³⁹

¶17 In response to the escalating violence against AAPIs during the COVID pandemic, Stop AAPI Hate formed in 2020. The group aligns with others who believe that

34. Frank H. Wu, *Foreword*, in *A RISING TIDE OF HATE AND VIOLENCE AGAINST ASIAN AMERICANS IN NEW YORK DURING COVID-19: IMPACT, CAUSES, SOLUTIONS* (2021), https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press_releases/2021/A_Rising_Tide_of_Hate_and_Vi.pdf [<https://perma.cc/U862-H5HL>].

35. N'dea Yancey-Bragg, "A Historic Surge": Anti-Asian American Hate Incidents Continue to Skyrocket Despite Public Awareness Campaign, *USA TODAY* (May 6, 2021), <https://www.usatoday.com/story/news/nation/2021/05/06/racism-us-anti-asian-hate-grows-despite-biden-speech-activism/4969692001/> [<https://perma.cc/Q79Z-GUG8>].

36. Marc Ramirez, *Asian American Activists Are Demanding Equal Civil Rights, Better Education in Schools After Asian Hate Attacks*, *USA TODAY* (Mar. 26, 2021), <https://www.usatoday.com/story/news/nation/2021/03/26/stop-asian-hate-asian-americans-across-us-demand-reforms/6990150002/> [<https://perma.cc/GHY6-SHS2>].

37. Elizabeth Redden, *Students Seek Tangible Changes in Face of Anti-Asian Hate*, *INSIDE HIGHER ED.* (Apr. 20, 2021), <https://www.insidehighered.com/news/2021/04/20/asian-and-asian-american-student-activists-call-changes-their-campus> [<https://perma.cc/29Z5-5GS5>].

38. Mickey Losinski, Robin Ennis, Antonis Katsiyannis & Luke J. Rapa, *Schools as Change Agents in Reducing Bias Discrimination: Shaping Behaviors and Attitudes*, 28 *J. CHILD & FAM. STUD.* 2718, 2724 (2019).

39. Morning Consult, *National Tracking Poll #210639*, *POLITICO* (June 7–22, 2021), <https://www.politico.com/f/?id=0000017c-27d8-dddc-a77e-27db16040000> [<https://perma.cc/YP9M-5S23>].

education plays a significant role in combating the rise in, and perpetuation of, race-based acts of aggression against people of Asian descent in the United States. Stop AAPI Hate

support[s] efforts around the country to address anti-AAPI hate through education. Education is one of the most effective tools against racism, and implicit bias is learned early. Asian American studies programs promote racial empathy and solidarity, while decreasing bullying and harassment in schools, helping AAPI students thrive. States around the country have passed legislation for Asian American studies, including Illinois and New Jersey, and Asian American studies bills have been introduced in nearly a dozen states.⁴⁰

Further, Stop AAPI Hate encourages advocates to

[s]upport Ethnic Studies in your local school districts and educational institutions. Asian Americans and Pacific Islanders have experienced centuries of violence in the U.S. We need to address the perpetual foreigner stereotype that frames Asian Americans as outsiders to this nation. Due to this Orientalist framing, we can be excluded, detained, deported, and attacked because we supposedly don't belong here. Ethnic Studies helps teach students the sources of this racism and promotes racial empathy and solidarity.⁴¹

¶18 Why does empathy matter in the fight against racism? Researcher Helen Riess asserts that “cognitive empathy must play a role when a lack of emotional empathy exists because of racial, ethnic, religious, or physical differences.”⁴² She continues, “Important research on empathy and altruism has demonstrated that enhancing perspective taking, the capacity to see a person’s situation from his or her point of view, coupled with enhanced value being placed on the welfare of those who are unfamiliar can override bias.”⁴³ Consequently, by collecting Asian American legal materials, “Asian American librarians [and their allies] serve as more than just a link between libraries and Asian American communities, they help the increasingly multi-cultural American population to better understand pluralism and globalization.”⁴⁴

¶19 Some law schools offer relevant courses, such as Harvard’s Asian Americans and the Law, taught by Judge Denny Chin in Spring 2018.⁴⁵ As the consciousness of Asian American issues continues to grow, Asian American law library collections would not only supplement course syllabi but also provide food for thought in the continually significant enlightenment of our patrons.

40. Aggie J. Yellow Horse, Russell Jeung & Ronae Matriano, *Stop AAPI Hate National Report (3/19/20–12/31/21)*, STOP AAPI HATE, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf> [<https://perma.cc/5N4G-SP2Z>].

41. *Act Now*, STOP AAPI HATE, <https://stopaapihate.org/actnow/> [<https://stopaapihate.org/actnow/>].

42. Helen Riess, *The Science of Empathy*, 4 J. PATIENT EXPERIENCE 74, 75 (2017).

43. *Id.* at 76.

44. Jian-Zhong (Joe) Zhou, *Asian American Librarians and Chinese American Librarians: Their Impact on the Profession and on U.S. Communities*, 29 TUSHUGUANXUE YU ZIXUN KEXUE 14, 19 (2003), <https://jllis.glis.ntnu.edu.tw/ojs./index.php/jllis/article/viewFile/417/417> [<https://perma.cc/78RR-MQS7>].

45. Yue Yuan, *Judicial Profile: Hon. Denny Chin*, FED. LAW., Mar. 2018, at 26, 26.

Literature Review

¶20 As noted in the introduction, collection development guidance is limited for librarians seeking materials that represent the Asian American experience and community in legal education and the legal profession. Sources range from Robert S. Chang's call for the creation of an "Asian American Legal Scholarship"⁴⁶ in the nascent stages of Asian American legal literary consciousness three decades ago, to a list of 15 titles on the topic of "Asian Americans and the Law," published before the turn of the 21st century.⁴⁷ Then, in the early 21st century, Frank H. Wu heralded the beginning of a new era in his article, "The Arrival of Asian Americans: An Agenda for Legal Scholarship."⁴⁸

¶21 One of the few, if not the only, book overtly about Asian American librarianship is *Asian American Librarians: Activism, Collaborations, and Strategies*,⁴⁹ which contains one chapter relevant to law librarianship, "Asian American Law Librarians Caucus: A Jewel in the Crown," by Alex Zhang.⁵⁰ The chapters relevant to Asian American collection development do not focus on law: "An Asian American Literary History" and "We Need Diverse Librarians and Libraries: The Asian/Pacific American Librarians Association's Past, Present, and Future."⁵¹ Only one chapter, "On Executive Order 9066: The Japanese American Voices from the Inside Exhibition at Fresno State," relates to the collection of Asian American legal resources.⁵² A May 7, 2021, search in the HeinOnline legal database for, "asian /5 american /5 law /5 library" yielded 20 results in all databases, none of which focused on Asian American collections in law libraries.

¶22 In addition to the few existing publications of relevance, Racism.org contains a searchable database, Asian Americans, Racism and Legal Scholarship, created by Vernellia Randall.⁵³ Published on January 10, 2022, it contains more than 450 law review articles on Asian Americans.⁵⁴ Ninety articles were added in 2022.⁵⁵ It describes its methodology this way: "Documents were gathered through a Westlaw database search using the following search terms in the title (Asian or Japanese or Chinese or

46. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241 (1993).

47. 8 J. AM-EAST ASIAN RELATIONS, Spring-Winter 1999 (a special volume entitled "Draft Bibliography of American-East Asian Relations").

48. Frank H. Wu, *The Arrival of Asian Americans: An Agenda for Legal Scholarship*, 10 ASIAN L.J. 1 (2003).

49. ASIAN AMERICAN LIBRARIANS: ACTIVISM, COLLABORATIONS, AND STRATEGIES (Janet Hyunju Clarke, Raymond Pun & Monnee Tong eds., 2018).

50. *Id.*

51. *Id.*

52. *Id.*

53. Vernellia Randall, *Asian Americans, Racism and Legal Scholarship (Searchable Database)*, RACE, RACISM & THE LAW ON THE WEB SINCE 1995, <https://racism.org/articles/law-and-justice/39-minority-group-interest-and-the-law/2585-asian-american-and-legal> [<https://perma.cc/YVM9-5ET4>].

54. *Id.*

55. *Id.*

Korean or Southeast Asian’) in the same sentence with American and in the same sentence with (race or racism or racial) in the document.”⁵⁶

Subject Headings

¶23 A number of subject headings will help you identify materials created about Asian Americans that are relevant to your law library’s collection. Start broadly to see whether you have a baseline collection.

- Asian Americans -- Civil rights
- Asian Americans -- Legal status, laws, etc.
- Asian Americans -- Race identity
- Asian Americans -- Social conditions
- Immigrants -- United States -- History
- Minorities -- United States -- History
- Xenophobia -- United States -- History

¶24 After establishing a baseline, these categories can be narrowed further if you’re looking for a specific ethnicity, for example:

- Chinese Americans
- Filipino Americans
- Korean Americans
- Japanese Americans
- South Asian Americans
- Thai Americans

To specifically search for legal material related to these categories, add Legal status, laws, etc. to the subject, so your subject would look like this: Japanese Americans -- Legal status, laws, etc.

¶25 Or if you’re looking for history as it relates to a specific experience, you may use some of the examples below:

- China -- Emigration and immigration -- History
- Chinese Americans -- History -- 19th century
- Chinese Americans -- Legal status, laws, etc -- History -- 19th century
- Chinese Americans -- Legal status, laws, etc. -- History
- Chinese Americans -- Social conditions -- 19th century
- Chinese Americans -- Social conditions -- 20th century
- Immigrants -- United States -- History -- 19th century
- Immigrants -- United States -- History -- 20th century
- Japanese Americans -- Evacuation and relocation, 1942–1945
- United States -- Emigration and immigration -- History

56. *Id.*

Steps Forward

¶26 Besides a manual subject heading search to look for diverse materials, law librarians should look outside the field for more efficient ways to perform a diversity audit. Law libraries could find inspiration from Diverse BookFinder, a website that helps libraries select diverse picture book collections for children.⁵⁷ The Collection Analysis Tool (CAT), a newly released tool on the site, allows anyone to upload a file with ISBNs and titles for their book collection, which is then cross-referenced with the site's Diverse BookFinder collection.⁵⁸ The report generated shows gaps in the library's collection. A similar tool is available through TeachingBooks for children's and YA book titles.⁵⁹ An enterprising librarian could create a tool like this for law libraries.

¶27 Of course, a simple way to ensure the library has a diverse collection is to consult curated lists that celebrate the work of Asian American authors,⁶⁰ but it is our experience that very few lists exist that focus on the law. GOBI has a DEI "Asian American Studies List," which does not focus specifically on law but often contains law and law-adjacent books.⁶¹ Additionally, several available guides focus on DEI, including books focused on the Asian American experience. The Diversity, Equity, Inclusion, and Belonging in Library Collections Toolkit from NELLCO includes suggested lists to review.⁶² The Research, Instruction, & Patron Services Special Interest Section of the American Association of Law Libraries has also curated a collection of social justice resources, including antiracism and diversity, equity, and inclusion resources, which may be helpful.⁶³

¶28 Collection development librarians may also wish to weave DEI throughout their collection development documents. In addition to general antiracism statements, librarians may set benchmarks for annual collecting in specific subject areas. This process may include examining the current collection development policy's collection levels document, noting which areas have an impact on the Asian American experience, and increasing the level of collecting done in those specific areas. Librarians should be cautious about terminology used throughout their collection development policies and their profiles with their book jobbers to ensure all aspects of a subject area are included.

¶29 Collection development work should be done in collaboration with cataloging law librarians, who have already done a lot of work in the area of DEI. Catalogers have

57. DIVERSE BOOK FINDER, <https://diversebookfinder.org/> [<https://perma.cc/4PAA-K6RP>].

58. *Collection Analysis Tool*, DIVERSE BOOK FINDER, <https://cat.diversebookfinder.org/help> [<https://perma.cc/6QZN-C4YA>].

59. *Analysis Toolkit*, BOOK CONNECTIONS, https://www.bookconnections.org/show.cgi?f=analysis_tools [<https://perma.cc/3B96-K5LM>].

60. See, e.g., *Asian/Pacific American Literature Awards*, ASIAN/PAC. AM. LIBRARIANS ASS'N, <http://www.apalaweb.org/awards/literature-awards/> [<https://perma.cc/P8L2-9L9B>].

61. *GOBI Spotlight Lists*, GOBI, <https://www.gobi3.com/hx/Falcon.ashx?location=spotlightlists> (last visited June 9, 2022).

62. *Diversity, Equity, Inclusion, and Belonging in Library Collections Toolkit*, NELLCO L. LIBR. CONSORTIUM, <https://www.nellco.org/page/deibtoolkit> (last visited June 9, 2022).

63. *Antiracism, Diversity, Equity & Inclusion and Social Justice Resources*, AALL RIPS-SIS, <https://www.aallnet.org/rippsis/resources-publications/diversity-resources/> [<https://perma.cc/AN8B-ZS8R>].

identified government-protected classes, such as national origin, race, and disability, and made inclusive cataloging decisions based on their DEI work.⁶⁴ Catalogers may have drawn additional subject headings or changed subject headings based on other sources beyond the Library of Congress Subject Headings. Other sources include the ERIC Thesaurus, the Homosaurus (an International LGBTQ Linked Data Vocabulary),⁶⁵ and Medical Subject Headings. In addition, reference librarians and access services staff regularly interact with the community and can be a rich source of collection development information.

¶30 Conducting a diversity audit can help identify strengths and gaps in the collection. Collection development librarians may wish to run reports on specific subject areas to determine current holdings in that area. There are a few different options to run a diversity audit report, depending on the type of system your library uses. Boston University School of Law has created several diversity audit reports for libraries that use Ex Libris's Alma, including the East Asian and Pacific Islander Identity report.⁶⁶ This report runs specific subjects through the catalog to determine holdings in that area, and librarians can tailor it to be specifically about Asian American titles through the post-report work done on the ensuing title list. For libraries that use SQL to run reports, including Sierra libraries, there is a script in GitHub that can be run against the collection.⁶⁷ Additionally, a library may wish to focus on specific areas of the collection; review award lists to ensure that the library holds award winners in a specific area; compare to peers using a tool like OCLC's Collection Evaluation; and limit to specific publishers, publication dates, or usage data to keep the audit more manageable.⁶⁸ Other commercial services may also be useful; for example, Ingram provides a diversity audit service where libraries may submit their holdings to Ingram and Ingram will count the holdings against several diversity markers.⁶⁹

¶31 Once a title list is available, the librarian can use it to run numbers on specific subjects, look for trends, and identify areas that need filling out. The librarian may also be able to identify specific call number ranges based on the subjects in the curated title

64. Grace Lo, *Biases in Law Library Subject Headings*, 101 B.U. L. REV. ONLINE 26 (2021), <https://www.bu.edu/bulawreview/2021/04/06/biases-in-law-library-subject-headings/> [<https://perma.cc/7WWT-R3PN>].

65. Rich Murray, *Metadata for Everyone: Inclusive Description at the Duke University Libraries*, SIGNAL BOOST: TALES FROM TECHNICAL SERVICES (Nov. 23, 2020), <https://blogs.library.duke.edu/signalboost/2020/11/23/metadata-for-everyone-inclusive-description-at-the-duke-university-libraries/> [<https://perma.cc/79R4-2B9N>].

66. These reports are available in Alma Analytics under Shared Folders/Community/Reports/Shared Reports/Alma Law SIG/NELLCO DEI Toolkit.

67. Available at <https://github.com/jmgold/SQL-Queries/blob/master/Custom%20reports%20site/diversity%20analysis.sql> [<https://perma.cc/5LN5-MLLQ>]. Thanks to Scott Matheson for alerting the authors to this script.

68. Maria Evelia Emerson & Lauryn Grace Lehman, *Who Are We Missing? Conducting a Diversity Audit in a Liberal Arts College Library*, 48 J. ACAD. LIBRARIANSHIP 102517 (2022).

69. *Ingram Announces a New Service to Help Libraries Effectively Diversify Their Print Collection*, INGRAM CONTENT GRP., <https://www.ingramcontent.com/news/ingram-content-group-announces-a-new-service-to-help-libraries-effectively-diversify-their-print-col> [<https://perma.cc/F2AK-4SQG>].

list and use a tool like OCLC's Greenglass to view peer holdings on specific titles and determine title rarity within a subset of libraries.

¶132 Once a diversity audit has identified gaps in the collection, librarians can begin to fill them in by using title lists discussed above and by engaging with vendors directly, in addition to normal collection development practices. The librarian may also determine, based on the audit, that the collection development policy itself needs to be revised to continue to strengthen the collection, using the methods discussed above. The collection strengths may be highlighted to the community through book clubs, resource guides, displays, and other outreach like social media posts.

¶133 Diversity audits to identify gaps in collections are most helpful for libraries that are able to collect using the "just in case" model. For libraries that have moved to "just in time," one potential way to fill in collection gaps is through a demand-driven acquisitions (DDA) program, where records are added to a catalog and titles are purchased only when used by a patron.⁷⁰ Evidence-based acquisitions (EBA), where a library commits to a certain spend with a vendor, records are loaded into a catalog, and the library purchases titles based on usage at the end of a given period of time, may also help. Once the librarian has identified specific subject areas that need bolstering, those can be added to the DDA and EBA plans and purchased only when patrons need the titles. Programs like DDA and EBA can help mitigate the budget impact of filling in collection gaps by either only adding titles that are sure to be used (both DBA and EBA) or by controlling the amount of spend when budgeting (EBA). Just-in-time collection can also be performed through community engagement to determine what patrons would like to see in the collection.

¶134 Community engagement can help diversify the collection and identify gaps in services to particular groups. Engagement can take the form of surveys and focus groups on specific subjects. Libraries can take advantage of affinity groups in the community, including student groups in academic environments and professional affinity groups in firms and bar associations. This community engagement can help with identifying perceived strengths and weaknesses in the collection, desired authors and topics, and the community's perception of library support and services.

¶135 Finally, vendor advocacy is an important part of collection development. In addition to showing publishers that we value diversity and want to add materials by Asian American authors and about the Asian American legal experience to our collections, we can ask vendors specific questions about their policies for attracting and retaining Asian American authors. Librarians can also ask about diversity in the publisher's own management and board members.⁷¹ Advocacy can take many forms, including asking questions when renewing or ordering resources, engaging directly with publishers when identifying resources to purchase, and broader, more concerted

70. Ann Roll, *Both Just-in-Time and Just-in-Case: The Demand-Driven-Preferred Approval Plan*, 60 LIBR. RES. & TECH. SERVS. 4 (2016).

71. For more questions about diversity, equity, inclusion, and belonging to ask vendors, see *Diversity, Equity, Inclusion, and Belonging*, *supra* note 62.

advocacy campaigns across libraries. Vendor advocacy can help us drive home how important these topics are to libraries.

Conclusion

¶36 The thought of diversifying a collection in one particular area may seem daunting, especially given most libraries' budget constraints. But if you have prioritized staff time for a diversity audit of your collection, the next step is to slowly start to build a diverse collection. If there is not a budget to back-fill holes in your collection, make it a priority to purchase a few diverse titles in each purchasing cycle. It is important to prioritize the purchase of Asian American legal literature to demonstrate to our law library patrons that they are seen, valuable, and just as important as their counterparts.

Appendixes: Suggested Reading Lists

¶37 In the four appendixes that follow, we have compiled suggested nonfiction and fiction reading lists, whose books are written by Asian American lawyers, judges, scholars, and politicians. This list is not exhaustive but is culled from a number of sources. The sources include books we have read, best-of book lists, and subject heading searches on worldcat.org as well as browsing lists on Goodreads, Amazon, and Libro.fm.

Appendix A: Nonfiction Books by or About Asian American Lawyers, Legal Issues, or Politicians

- Angelo N. Ancheta, *Race, Rights, and the Asian American Experience* (2006).
- Lorraine K. Bannai, *Enduring Conviction: Fred Korematsu and His Quest for Justice* (2015).
- Robert Chang, *Disoriented: Asian Americans, Law, and the Nation-State* (2000).
- Gordon Chin, *Building Community, Chinatown Style: A Half Century of Leadership in San Francisco Chinatown* (2015).
- Rene Ciria Cruz et al., eds., *A Time to Rise: Collective Memoirs of the Union of Democratic Filipinos (KDP)* (2017).
- Tammy Duckworth, *Every Day Is a Gift: A Memoir* (2021).
- Lora Jo Foo, *Asian American Women: Issues, Concerns, and Responsive Human and Civil Rights Advocacy* (2003).
- Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (2000).
- Kamala Harris, *Smart on Crime: A Career Prosecutor's Plan to Make Us Safer* (2008).
- Kamala Harris, *The Truths We Hold* (2020).
- Stephanie Hinnershitz, *A Different Shade of Justice* (2017).
- Mazie K. Hirono, *Heart of Fire: An Immigrant Daughters Story* (2021).
- Madeline Yuan-Yin Hsu, *The Good Immigrants: How the Yellow Peril Became the*

Model Minority (2015).

- Daniel K. Inouye, *Journey to Washington* (1967).
- Deepa Iyer, *We Too Sing America: South Asian, Arab, Muslim and Sikh Immigrants Shape Our Multiracial Future* (2017).
- Ed Lee, *The Ed Lee Story: An Unexpected Mayor* (2011).
- Erika Lee, *America for Americans: A History of Xenophobia in the United States* (2019).
- Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882–1942* (2004).
- Erika Lee, *The Making of Asian America: A History* (2016).
- Erika Lee & Judy Young, *Angel Island: Immigrant Gateway to America* (2012).
- James G. Ling, *Shanghai Occupied: A Boy's Tale of World War II* (2017).
- Daryl J. Maeda, *Chains of Babylon: The Rise of Asian America* (2009).
- Daryl J. Maeda, *Rethinking the Asian American Movement* (2011).
- Mari J. Matsuda, *Where Is Your Body? And Other Essays on Race, Gender, and the Law* (1997).
- Mari J. Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (1993).
- Michael W. McCann & George Lovell, *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Radical Capitalism* (2020).
- Susan Oki Mollway, *The First Fifteen: How Asian American Women Became Federal Judges* (2021).
- Angela Oh, *Open: One Woman's Journey* (2003).
- Yung-Yi Diana Pan, *Incidental Racialization: Performative Assimilation in Law School* (2017).
- Theary C. Seng, *Daughter of the Killing Fields: Asrei's Story* (2005).
- Rajini Srikanth, *Constructing the Enemy: Empathy/Antipathy in U.S. Literature and Law* (2012).
- Simon Tan, *Slanted: How an Asian American Troublemaker Took on the Supreme Court* (2020).
- Maeley Tom, *I'm Not Who You Think I Am: An Asian American Woman's Political Journey* (2020).
- Andrea Warren, *Enemy Child: The Story of Norman Mineta, a Boy Imprisoned in a Japanese American Internment Camp During World War II* (2019).
- Frank H. Wu, *Yellow: Race in America Beyond Black and White* (2003).
- Eric K. Yamamoto, *In the Shadow of Korematsu: Democratic Liberties and National Security* (2018).
- Eric K. Yamamoto et al., *Race, Rights, and Reparation: Law and the Japanese American Internment* (2d ed. 2013).
- Andrew Yang, *Smart People Should Build Things: How to Restore Our Culture of Achievement, Build a Path for Entrepreneurs, and Create New Jobs in America* (2014).
- Andrew Yang, *The War on Normal People: The Truth About America's Disappearing Jobs and Why Universal Basic Income Is Our Future* (2018).

- Julie Yip-Williams, *The Unwinding of the Miracle: A Memoir of Life, Death, and Everything That Comes After* (2019).
- Eddy Zheng and Ben Wang, eds., *Other: An Asian and Pacific Islander Prisoners' Anthology* (2007).

Appendix B: Fiction Books by or About Asian American Lawyers

- Angela S. Choi, *Hello Kitty Must Die* (2012).
- Uyen Nicole Duong, *Mimi and Her Mirror* (2011).
- Uyen Nicole Duong, *Postcards from Nam* (2011).
- Anita Felicelli, *Chimerica* (2019).
- A.H. Kim, *A Good Family* (2020).
- Angie Kim, *Miracle Creek* (2020).
- Nancy Kim, *Chinhominey's Secret* (2001).
- David Lat, *Supreme Ambitions* (2015).
- Gus Lee, *No Physical Evidence* (2000).
- Min Jin Lee, *Free Food for Lawyers* (2007).
- Min Jin Lee, *Pachinko* (2017).
- Kathryn Ma, *The Year She Left Us* (2015).
- Monique Truong, *The Book of Salt* (2004).
- Helen Wan, *The Partner Track* (2014).
- Charles Yu, *Interior Chinatown* (2020).

Appendix C: Other Books for Your Popular Reads Collection About the Asian American Experience

- Ayad Akhtar, *Homeland Elegies* (2020).
- Indran Amirthanayagam, *The Elephants of Reckoning* (1993).
- Gina Apostol, *Insurrecto* (2018).
- Anuk Arudpragasam, *A Passage North* (2022).
- Rina Ayuyang, *Blame This on the Boogie* (2018).
- Thi Bui, *The Best We Could Do* (2017).
- Carlos Bulosan, *America Is in the Heart* (2019).
- K-Ming Chang, *Bestiary* (2020).
- Nicole Chung, *All You Can Ever Know: A Memoir* (2019).
- Anne Fadiman, *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures* (2012).
- V. V. Ganeshanathan, *Love Marriage* (2008).
- Cathy Park Hong, *Minor Feelings: An Asian American Reckoning* (2020).
- Tanwi Nandini Islam, *Bright Lines* (2015).
- Mira Jacob, *Good Talk: A Memoir in Conversations* (2018).
- Maxine Hong Kingston, *The Woman Warrior* (1989).
- Lisa Ko, *The Leavers* (2017).
- R.O. Kwon, *The Incendiaries* (2018).
- Jhumpa Lahiri, *Interpreter of Maladies* (1999).

- Jhumpa Lahiri, *The Namesake* (2003).
- Jhumpa Lahiri, *Unaccustomed Earth* (2008).
- Peter Nathaniel Malae, *What We Are* (2010).
- Kevin Nguyen, *New Waves* (2020).
- Tung Nguyen et al., *Mango and Peppercorns: A Memoir of Food, an Unlikely Family, and the American Dream* (2021).
- Viet Thanh Nguyen, *The Sympathizer* (2015).
- John Okada, *No-No Boy* (the first Japanese American novel) (1957).
- Ruth Ozeki, *A Tale for the Time Being* (2013).
- Joanne Ramos, *The Farm* (2020).
- Shyam Selvadurai, *Funny Boy* (1994).
- Ira Sukrungruang, *Talk Thai: The Adventures of Buddhist Boy* (2011).
- Meredith Talusan, *Fairest: A Memoir* (2020).
- Amy Tan, *The Joy Luck Club* (2006).
- Shaun Tan, *The Arrival* (2007).
- Phuc Tran, *Sigh, Gone: A Misfit's Memoir of Great Books, Punk Rock, and the Fight to Fit In* (2020).
- Ocean Vuong, *On Earth We're Briefly Gorgeous* (2019).
- Ali Wong, *Dear Girls: Intimate Tales, Untold Secrets and Advice for Living Your Best Life* (2019).
- Michelle Zauner, *Crying in H Mart* (2021).

Appendix D: Documentary Films by or About Asian American Lawyers, Legal Issues, or Politicians

- Kimberlee Bassford, *Patsy Mink: Ahead of the Majority* (2008), <https://www.wmm.com/catalog/film/patsy-mink-ahead-of-the-majority/> [<https://perma.cc/UN2S-J43B>].
- Bridge Media, *Day of Remembrance: The First National Ceremony*, <http://bridgemeadiainc.com/catalog.html> [<https://perma.cc/GBL2-T3U8>].
- Bridge Media, *Fighting for Justice: The Coram Nobis Cases* (1999), *id.*
- Yi Chen, *First Vote: Asian American Voters in Battleground States* (2021), <https://www.firstvotefilm.com/> [<https://perma.cc/2W8W-J428>].
- S. Leo Chiang, *Mr. Cao Goes to Washington* (2013), <https://vimeo.com/ondemand/mrcaofilm> [<https://perma.cc/VM3H-HQ7B>].
- Chinese Historical Society of America & Rick Quan, *Mayor Ed Lee* (2019), <https://vimeo.com/306902100> [<https://perma.cc/JK6Z-9BDX>].
- Christine Choy & Renee Tajima-Peña, *Who Killed Vincent Chin?* (1987), https://search.alexanderstreet.com/preview/work/bibliographic_entity%7Cvideo_work%7C1785304 [<https://perma.cc/8N9P-5DBK>].
- Steve James, *Abacus: Small Enough to Jail* (2016), <https://www.pbs.org/wgbh/frontline/film/abacus/> [<https://perma.cc/FG4L-EZNM>].
- Tony Lam, *Vincent Who?* (2009), <https://www.vincentwhofilm.com/> [<https://perma.cc/Q7WZ-NJF7>].

- Grace Lee, *American Revolutionary: The Evolution of Grace Lee Boggs* (2014), <https://americanrevolutionaryfilm.com/> [<https://perma.cc/P5S2-JJR7>].
- *Never Give Up! Minoru Yasui and the Fight for Justice* (2018), <https://www.minoruyasuifilm.org/> [<https://perma.cc/L3DP-XDQ9>].
- Duc Nguyen, *Stateless* (2018), <https://www.facebook.com/philippinestateless> [<https://perma.cc/T3YQ-DUXD>].
- Stephen Okazaki, *Unfinished Business* (1985), <https://vimeo.com/ondemand/unfinishedbusiness/300594094> [<https://perma.cc/STG2-9Q7C>].
- Jon Osaki, *Alternative Facts: The Lies of Executive Order 9066* (2019), <https://www.newday.com/film/alternative-facts-lies-executive-order-9066> [<https://perma.cc/UUM2-THUE>].
- PBS, *Asian Americans*, <https://www.pbs.org/weta/asian-americans/> [<https://perma.cc/V4SW-SCPX>].
- PBS, *Norman Mineta and His Legacy: An American Story* (2019), <https://www.pbs.org/show/norman-mineta-and-his-legacy-american-story/> [<https://perma.cc/8VB9-A4C4>].
- Gayle Yamada, *Uncommon Courage: Patriotism and Civil Liberties* (2011), https://search.alexanderstreet.com/preview/work/bibliographic_entity%7Cvideo_work%7C4036499 [<https://perma.cc/53H2-P74C>].

Organized for Service: The Hicks Classification System and the Evolution of Law School Curriculum*

John L. Moreland**

This article traces the origins and development of the Hicks Classification System, an in-house organizational scheme used by the Yale Law Library from the late 1930s to the 1990s. It explores the relationship between the Hicks Classification System and the changing pedagogical methods of the law school curriculum during the early part of the 20th century. It provides a brief biographical sketch of Frederick C. Hicks, creator of the scheme, the need for a legal classification system, a detailed analysis of Hicks's scheme, its finding aids, and a discussion of the inherent cultural biases in the system.

Introduction	305
Frederick Charles Hicks	306
Contemporary Need for Legal Classification.	309
Yale Law Library Manual	310
Hicks's Tiered System	311
Cultural Biases Inherent in the System.	315
The Utility of Hicks's System	316
Conclusion	317

A law library is a collection of books, properly housed, and organized for service.

—Yale Law Library's slogan

Introduction

¶1 Beginning with Callimachus's *Pinakes* describing the holdings of the Library of Alexandria, there have been many attempts to organize and describe human knowledge

* © John L. Moreland, 2022.

** Student Services Librarian, Indiana University Maurer School of Law, Bloomington, Indiana. Winner, AALL/LexisNexis Call for Papers Award, Student Division, 2021.

to make information more accessible.¹ In 1605, Francis Bacon created a taxonomy of learning, commonly known as *The Advancement of Learning*.² In 1876, Melvil Dewey, using Bacon's taxonomic structure, published the first modern classification scheme with his Dewey Decimal System.³ In the early part of the 20th century, Librarian of Congress Herbert Putnam reclassified that collection, not adopting Dewey's popularly used decimal system but creating an ordinal system utilizing numbers and letters.⁴ Although other organizational systems appeared throughout the previous century (e.g., the Bliss System⁵ and Ranganathan's Colon Classification System⁶), today most academic libraries organize their materials using the Library of Congress (LC) Classification System.

¶2 However, the LC system was not without its faults. The primary criticism during its early years was that it was not as comprehensive as it should have been to meet the contemporary cataloguing needs, and as late as 1930, it still lacked classifications for languages and law.⁷ Most glaring was its inadequacy in classifying legal materials at the breadth and depth needed to effectively organize U.S. law school collections, which were expanding rapidly in response to schools adopting the Langdell model of "library as laboratory" teaching method. Frederick Hicks attempted to fill this information need with his own classification system.

¶3 While more than a dozen articles have been written about Hicks,⁸ no scholar has examined in detail the development of his classification system or its efficacy for the end user. This article fills that scholarly void by showing that as the Yale Law Library expanded its collections to include treatises, form books, legal encyclopedias, and other secondary sources, the Hicks Classification System organized these materials to effectively meet the curricular and research needs of law students, faculty, and librarians. By doing so, Hicks became a forerunner in supporting the changing pedagogical methods and needs of the contemporary law school.

Frederick Charles Hicks

¶4 Born in Auburn, New York, on October 14, 1875, Frederick Charles Hicks was a giant in the development of modern-day law librarianship. Most notably, he was instrumental in developing and expanding the collections of both Yale's and Columbia's law

1. Francis J. Witty, *The Pinakes of Callimachus*, 28 *LIBR. Q.: INFO., CMTY., POL'Y* 132, 136 (1958).

2. FRANCIS BACON, *THE TWO BOOKS OF FRANCIS BACON: OF THE PROFICIENCE AND ADVANCEMENT OF LEARNING, DIVINE AND HUMAN* (1633).

3. WAYNE A. WIEGAND, *IRREPRESSIBLE REFORMER: A BIOGRAPHY OF MELVIL DEWEY* 23 (1996).

4. LIBRARY OF CONGRESS, *HERBERT PUTNAM, 1861-1955: A MEMORIAL TRIBUTE* 13 (1956).

5. HENRY EVELYN BLISS, *A SYSTEM OF BIBLIOGRAPHIC CLASSIFICATION* (1935).

6. S.R. RANGANATHAN, *THE COLON CLASSIFICATION* (1933); S.R. RANGANATHAN, *PROLEGOMENA TO LIBRARY CLASSIFICATION* (1937).

7. Library of Congress, *Order of Publication of the Original Editions of the LC Classification Schedules*, in *HISTORICAL NOTES* 3-4 (2020).

8. DOUGLAS W. LIND & STACIA STEIN, *THE LEAVEN OF SYMPATHY: A BIO-BIBLIOGRAPHY OF FREDERICK C. HICKS* app'x II (2020).

libraries. His magnum opus, *Material and Methods of Legal Research*, became a landmark in the field of Anglo-American legal bibliography and remains an indispensable supplement in today's law libraries.⁹ While the Hicks Classification System came to fruition nearly 32 years into his career, the system itself did not appear in a vacuum. The trajectory of Hicks's professional life provides a glimpse into its creation and the abiding passion he had for organizing information for the service and use of others.

¶5 After earning a Ph.B. from Colgate University in 1898, Hicks worked as a librarian in the Map Division at the Library of Congress. Simultaneously, he attended law school at Georgetown University, receiving his LL.B. in 1901. Three years later, he returned to his hometown to take up the practice of law but quickly realized that this particular line of work did not suit him.¹⁰ In 1905, Hicks once again left Auburn and accepted a position as the first professionally trained librarian at the U.S. Naval War College in Newport, Rhode Island. Furthermore, while serving as librarian in Newport, Hicks earned his A.M. in political science and international law from Brown University.¹¹

¶6 During his tenure at the War College, he wrote an article for the *Library Journal* describing that school's library and its "distressing problem," lamenting the fact that "[u]ntil July of last year the care of these books had devolved upon naval officers connected with the War College, who had little time or training to devote to such a task."¹² Moreover, the cataloging system that Hicks inherited had been designed for a singular fixed location, so upon the collection's relocation to a new building the previous year, the card catalog suddenly had outlived its usefulness. Hicks immediately went to work recataloging and reclassifying the library's books. In doing so, he partnered with the Library of Congress to revise its classification system and adapt it to the educational and scholarly needs of the War College.¹³ It was here, then, that Hicks's zeal for classification began to take root.

¶7 In 1909, after three years at the Naval War College and a brief nonacademic interlude at the Brooklyn Public Library, Hicks became the superintendent of reading rooms at Columbia University's Low Memorial Library. He was quickly promoted to assistant librarian in 1911. Over the course of his employment at the university's main library, Hicks interacted with the law school on a frequent basis and, on February 1, 1915, was appointed as law librarian.¹⁴ Columbia's collection possessed sufficient Anglo-American legal materials but was significantly deficient in foreign and international resources. Hicks's development and expansion of the collection was astounding. When he was appointed Columbia University's first law librarian in 1915, the law

9. *Id.* at 76.

10. Stacy Etheredge, *Frederick C. Hicks: The Dean of Law Librarians*, 98 *LAW LIBR. J.* 349, 350, 2006 *LAW LIBR. J.* 18, ¶ 4.

11. LIND & STEIN, *supra* note 8, at 5–6.

12. Frederick C. Hicks, *The Library of Congress Classification and Its Printed Catalog Cards*, 31 *LIBR. J.* 255, 255 (1906).

13. *Id.*

14. Etheredge, *supra* note 10, at 350, ¶ 5.

library housed 56,427 volumes. By the time Hicks left Columbia, thirteen years later in 1928, the collection had grown to 142,268 volumes. Hicks had expanded the law library collection at an average rate of more than 6,000 volumes per year.¹⁵ While on a 1924 trip to Europe, Hicks acquired 10,000 books for Columbia, and the excursion was such a success that, in 1925, Columbia sent him again to Europe to acquire 10,000 more.¹⁶

¹⁸ Despite this accomplishment, Hicks was refused a law faculty position. Due to this unfortunate development, he subsequently resigned from Columbia University in 1928 and joined the law faculty at Yale Law School with the title of Professor of Legal Bibliography and Law Librarian.¹⁷ It was here that Hicks created the Hicks Classification System in the late 1920s. As Hicks explained, “Since no generally accepted scheme for law libraries exists, it was necessary to make our own scheme. This was done by the librarian, assisted by the chief of the cataloguing department, members of the department, and the assistant librarian.”¹⁸ The extent of a law library’s holdings were largely case reporters and codified statutes, which were typically organized alphabetically by state or jurisdiction.¹⁹ To fully understand the development of the Hicks Classification System and its completeness, adequacy, functionality, and fairness, a brief background in the evolution of law school education is warranted.

¹⁹ Before going any further, however, it is imperative to discuss the role that Yale Chief Catalog and Classification Librarian Katherine Warren played in the genesis and construction of the Hicks Classification System. Warren was hired by Hicks in 1930 to replace Yale cataloger Agnes Spencer.²⁰ In creating his system, Hicks was extensively assisted by Warren, who was later appointed chair of the committee to create the classification manual.²¹ After Hicks retired in 1945, Warren continued to revise and update the classification system until her less-than-amicable resignation in 1953.²² Additionally, Hicks successfully advocated for her faculty status at a time when female professors were few.²³ After Hicks’s retirement and a subsequent debilitating stroke, Warren became his closest companion. Whether their relationship was purely platonic or more intimate is unknown. However, when Hicks died in 1956, he left his estate, including his two houses in Hamden, Connecticut, and Cape Cod, to Warren.²⁴

15. Butler Hays, *Frederick Hicks’ Strategic Vision for Law Librarianship*, 98 LAW LIBR. J. 367, 368, 2006 LAW LIBR. J. 19, ¶ 4.

16. LIND & STEIN, *supra* note 8, at 10.

17. *Id.* at 9.

18. Frederick C. Hicks, *Remarks on Law Library Classification*, 30 LAW LIBR. J. 402, 402 (1937).

19. YALE LAW LIBRARY MANUAL: THE BUILDING, THE BOOKS, AND THEIR AVAILABILITY FOR USE 46 (1937) [hereinafter MANUAL].

20. LIND & STEIN, *supra* note 8, at 5.

21. MANUAL, *supra* note 19, at ii.

22. Following an outburst by Warren, she left the library taking armfuls of files with her. *Membership News* (compiled by Frances Farmer), 47 LAW LIBR. J. 45, 47 (1954).

23. In 1934, Warren was promoted to research assistant in bibliography with the rank of assistant professor. *Report of the Librarian of the School of Law, 1934–1935*, Bulletin of Yale University, Supplement. Report of the Dean and of the Librarian of the School of Law for the Academic Year 1934–1935, at 24.

24. LIND & STEIN, *supra* note 8, at 15.

Contemporary Need for Legal Classification

¶10 Prior to the turn of the 20th century, the American law school curriculum was centered around the lecture-based Blackstone method, wherein faculty taught from the 18th century English jurist's writings and students then committed these lectures to memory. Starting in the 1890s, legal education began to experience a shift toward the case method, originally developed by Christopher Columbus Langdell, Professor of Law, at Harvard Law School in 1870.²⁵ Although the case method is the primary method of teaching law today, the migration of legal education from lecture-based classes to the case method did not happen overnight. In fact, by the beginning of World War I, almost 45 years after Langdell's first contracts case method class, only 40 percent of American law schools had adopted the case method.²⁶

¶11 Langdell's case method called for the professor to assign several cases to read, and students were then asked questions about the assigned cases in class to determine whether they identified and understood the principles of law from each case. Through this Socratic-style method of asking and answering questions to stimulate critical thinking and to draw out theories and underlying ideas, the students learned how to think like a lawyer. Langdell's case method also led to several academic reforms, including "transforming the library from a textbook repository into a scholarly resource..."²⁷ As more law schools adopted this new pedagogical method, law libraries expanded their scope and depth to supplement classroom teaching, and by necessity, a new information organizational and retrieval system was required.

¶12 In a 1915 annual report for Columbia University's alumni newsletter, Hicks noted this shift to the case method for teaching law, writing that "the library is to a law student what a laboratory is to a chemistry student."²⁸ For Hicks, the law library was central to the law school curriculum and the changing teaching methods of the day:

The modern law school library, then, is a working institution in which law students learn how to use law books. Its function is equally important with that of the class room and, just as instructors teach legal principles in the class room, so the law librarian must teach the mechanics of book-use in the library. This fact has been recognized in the curricula of many law schools where lectures on legal bibliography and the use of law books are given by the librarian with practice work in the library.²⁹

¶13 Hicks was among those first law librarians who also taught legal bibliography in addition to their administrative duties. Starting in the fall semester of 1915, Hicks delivered six lectures on the practical use of case reports, statutes, digests, citators, indexes, tables of cases, and complications.³⁰ The series was an immense success, as about 129

25. See Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890-1915*, 46 HIST. EDUC. Q. 192 (2006).

26. *Id.* at 192.

27. Kimball, *supra* note 25, at 194-95.

28. Frederick C. Hicks, *The Columbia Law Library and Its Work* (pts. 1-4), 5 COLUM. ALUMNI NEWS 295 (1914).

29. *Id.* at 296.

30. Frederick C. Hicks, *Instruction in Legal Bibliography at Columbia University Law School*, 9 LAW

students attended each lecture over the course of one week.³¹ These lectures were highly approved by the dean and future U.S. Supreme Court Justice Harlan Stone and continued to be offered as elective courses until they eventually became required in 1921.³²

Yale Law Library Manual

¶14 Yale Law School was one such American law school that adopted Langdell's case method. In response to the changing pedagogical practices and an increasing reliance by students on the library, Hicks expanded the collection greatly and created his own classification system to meet the organizational and retrieval needs of the growing Yale Law School collection. To assist library patrons, Hicks created the *Yale Law Library Manual* in 1937, which was designed to describe the law library's physical space and equipment, the collection of books, the catalog and classification system, and the location of books in the library.³³

¶15 As stated previously, Hicks created his classification system to fill a void in the LC scheme that had not yet addressed law. The schedules for the classification system were first outlined in January 1930 and were nearly completed by August 1937.³⁴ Over the course of several years, pieces of the LC scheme were published section by section, until by 1939 it was thought by many to be complete.³⁵ This was not the case, however. As of 1939, there was yet to be a classification for law. It would not be until March 1968 that the first draft copy of the first section, Class KF, the law of the United States, became available.³⁶

¶16 There were a variety of reasons why Class K (law) was intentionally ignored for so long. Some officials at the Law Library of Congress felt that a fully developed subject classification for law was neither necessary nor desirable because early generations of catalogers thought of the law as simply an aspect of other areas of knowledge.³⁷ Lack of funding, personnel, and space also consistently delayed progress. The American Association of Law Libraries, however, was genuinely concerned about the classification of law. At its first meeting in 1906, classification was discussed extensively. At the second AALL meeting in 1907, four papers on classification for law libraries were presented, debating whether to use author classification or subject classification for law.³⁸

¶17 By 1914, preparation for a law classification scheme was finally initiated at the Library of Congress. As noted above, however, lack of space, staff, and funds drastically slowed the process, in addition to America's intervention in World War I. For the next

LIBR. J. 121, 121 (1916).

31. *Id.* at 122.

32. Etheredge, *supra* note 10, at 361, ¶ 33.

33. MANUAL, *supra* note 19, at vi.

34. *Id.* at 46.

35. Martha M. Evans, *A History of the Development of Classification K (Law) at the Library of Congress*,

62 LAW LIBR. J. 25, 25 (1969).

36. *Id.*

37. *Id.* at 26.

38. *Id.*

decade and a half, the Law Library of Congress was also preoccupied with its acquisitions program and not so much the organization of those acquisitions. It was not until 1941 that the law librarian of Congress appointed a committee to investigate the problems of classifying Anglo-American, European, and Roman law. World War II again brought funding and staffing issues to Congress, and progress on law's classification came to a halt.³⁹

¶18 World War II became a force of change for Class K, however. Rapid growth in administrative law and demand for foreign materials increased the overall size of law collections, thus making a classification system for law even more necessary. In May 1949, AALL and the Library of Congress held a joint meeting where the scope and general outline for Class K was agreed on.⁴⁰ Unfortunately, within a year, lack of adequate staff once again halted any further progress on the development of a classification for law. In January 1952, law librarian Werner B. Ellinger was given the task of drafting working papers for developing the classification for law. Eleven years and nine working papers later, the first of the K numbers appeared on the printed Library of Congress cards in March 1967.⁴¹

¶19 It is important to note that as other law schools adopted the LC system, the Hicks system was used by Yale for its entire law collection until the 1990s when the collection was reclassified according to the Library of Congress K class for law materials, in part, to make cataloging more efficient.⁴² Despite Yale joining the rest of the academic law library community in shifting to the LC system, the Hicks Classification System continues to be used in the rare books collection at the Yale Law School where today over 50,000 books and manuscripts are held.⁴³

Hicks's Tiered System

¶20 The collection development goals of the Yale Law Library of the 1930s and 1940s were to have in its collection all of the statutes, law reports, legal periodicals, and important treaties published in every English-speaking jurisdiction, and the same groups of legal publications for foreign jurisdictions.⁴⁴ This was commensurate with the changing nature of content of academic law libraries and teaching methods, in that Yale law students were able to use these materials to expand on the legal knowledge they received in class as envisioned under Langdell's case method.

¶21 Although Hicks's classification system filled a vacant niche in the LC classification scheme, Hicks modeled it after Library of Congress's overall scheme. Organizationally, Hicks looks more like LC than Dewey in that it has a tiered system of letters and

39. *Id.* at 27.

40. *Id.* at 29.

41. *Id.* at 62.

42. A GUIDE TO THE LILLIAN GOLDMAN LAW LIBRARY 1998–1999, at 16 [hereinafter GUIDE].

43. *Rare Book Collection*, YALE L. SCH. LILLIAN GOLDMAN L. LIBR., <https://library.law.yale.edu/rare-books> [https://perma.cc/ZV9H-QCAH].

44. MANUAL, *supra* note 19 at 7–9.

numbers. The first important aspect of the Hicks Classification System was its scope and breadth. Unlike the Dewey Decimal Classification System, which was created in 1876 to broadly classify the entire universe of knowledge, the Hicks system was designed to classify the specific categories in Yale's law library only. Furthermore, because it was designed solely to serve the organizational and retrieval needs of Yale Law School users, no thought was given to whether other libraries would use it.⁴⁵ It is unknown whether any other school actually adopted the Hicks Classification System. It is interesting that despite this isolationist view and the stated intention, several law libraries currently record holding the Hicks *Manual* in their collections.⁴⁶

¶22 As mentioned earlier, the Yale scheme is not wholly different in structure from the LC classification scheme. Hicks's breaking down of a single subject into many sub-parts, which in turn are subdivided, is similar to that of the LC Classification System. The enumerative taxonomy of Hicks's system consists of about 60 main classes with an alphabetical base, designating each class by a single capital letter, a combination of two or three capital letters, an abbreviation, or simply the name of the class. For example:

AG . . . Attorney Generals' Reports
 Bibl . . . Bibliography
 Blackstone . . . Blackstone
 D . . . Dictionaries⁴⁷

¶23 Arabic numbers are then used to denote subdivisions of these upper-tier classes, running from 01–581. The following example is taken from the R class, which represents *United States Court Reports*:

11 United States Supreme Court Reporter (Official edition).
 111 Lawyer's Edition.
 112 Supreme Court Reporter.
 113 Curtis Edition.
 114 Miller Edition.⁴⁸

¶24 Some of these subdivisions are further divided, depending on the depth of Yale's collection on that class. For example:

ANCIENT, PRIMITIVE AND MEDIEVAL LAW—"AL"
 12 Primitive Law.
 British Isles.
 13 General.

45. *Id.* at 46.

46. A search on WorldCat revealed that 29 law libraries in the United States possess a copy of Hicks's manual.

47. FREDERICK C. HICKS, *YALE LAW LIBRARY CLASSIFICATION 1* (1939).

48. *Id.* at 124.

- 131 Special.
- A5 Anglo-Saxon.
- C3 Celtic.
- C31 Irish.
- C32 Scotch.⁴⁹

¶25 The above examples illustrate the multitier enumerative classification nature of the Hicks system. It makes use of a hierarchy of classes in successive subordination according to certain characteristics and thus enumerates complex subjects, such as “Primitive Irish Law” (AL 131 C31), which comprises an area of law (Primitive Law) and an ethnicity (Irish).

¶26 Unlike the LC scheme, which breaks down knowledge A through Z, the Hicks classification scheme utilizes a mnemonic device for the classes. In other words, Hicks uses a memory aid in which the notational symbol is the same as the first letter of the concept.⁵⁰ For example, Social Science books are marked “SS,” Roman Law “RL,” Jewish Law “JL,” History “H,” Business Documents “BD,” Mohammedan Law “MohamL,” and general works of Foreign Law “FLG.” FLG applies only to general works on jurisprudence and to works not limited to the law of a single country. The symbols for individual foreign countries are the names of the countries (e.g., Ireland, Germany, or France); but for long or cumbersome names, an obvious and easily understood abbreviation is used, such as “Neth” or “Switz.” An abbreviated symbol is also used for the British Colonies (BrCol) and Latin America (LA). Within these classes, an additional symbol is used to indicate any one of the various states included in the larger group. Haitian law books would be marked “LA Haiti” and those for Cyprus would be marked “BrCol Cyprus.”⁵¹

¶27 Another tier of classification uses the type of legal material, such as dictionaries, reports, statutes, periodicals, form books, and treatises. In the case of Anglo-American works, these classes are given the symbols D, R, S, P, Forms, and T, respectively. This works well for statutes and codes, which are then arranged by jurisdiction, but not so well for treatises, which are arranged solely by author.⁵² LC classes dictionaries, reports, statutes, and treatises under K and then gives a general number by jurisdiction. Periodicals are given a general number under each country, while form books are classified by topic.

¶28 With any classification scheme, whether it be Dewey, LC, or Hicks, all suffer from the fact that the ways to organize information are limited. The ways of doing so can only be by (1) category, (2) time, (3) location, (4) alphabet, or (5) continuum.⁵³ In

49. *Id.* at 39.

50. ERIC J. HUNTER, CLASSIFICATION MADE SIMPLE: AN INTRODUCTION TO KNOWLEDGE ORGANIZATION AND INFORMATION RETRIEVAL 20 (2009).

51. MANUAL, *supra* note 19, at 47.

52. *Id.*

53. RICHARD S. WURMAN, INFORMATION ANXIETY: WHAT TO DO WHEN INFORMATION DOESN'T TELL YOU WHAT YOU NEED TO KNOW 59 (1989).

addition to its categorical organization, the Hicks Classification System employs geographical location. Specifically, there are 148 country symbols for the Foreign Law section, one for each of the foreign states and political divisions, and for each of the British colonies whose law is represented in the Yale Law Library.⁵⁴ Foreign countries and subdivisions are indicated by numerical symbols. The latter usually appear either alone or in combination with letters on the second lines of call numbers in which they are used. Some of these same numbers indicate subdivisions of the classes S (American and British statute law) and RL (Roman Law).⁵⁵ The rules to guide the catalogers in constructing call numbers, as set forth in the classification schedule known as the Black Book, specify how these numbers are to be employed. For example:

France—Symbol for France
222—Codes of civil procedure
1918—Date of publication⁵⁶

¶29 Efficacious classification systems have the ability to accommodate new items and their subjects. Ideally, there is enough space in a notational scheme to incorporate subordinate and coordinate subjects as well as emerging areas. This was the biggest problem associated with Dewey. It was successful at describing broad collections but not deep collections. For example, subordinate subjects can be served by decimal numbers, while coordinate subjects can be provided for by leaving gaps in the subject entries. However, the gaps may not be in appropriate places and could interfere with the required order.⁵⁷ The Hicks Classification System makes use of the latter as illustrated by the following:

ROMAN LAW—“RL”
01 . . . Bibliography
05 . . . Periodicals
10 . . . Collected Works
14 . . . Collected Texts⁵⁸

¶30 The same level of hospitality can be said of the system's superordinate letter scheme, in that it provides space for future additions to the classification system. For example, sources on congressional hearings are given the class symbol “CH,” Ancient Law is classified as “AncientL,” and Blackstone is classified simply as “Blackstone.” This flexibility of assigning letter symbols or an entire name allows new items and even whole classes to be added to the system at any time. Over time, however, one of the failures of the Hicks Classification System began to emerge. It became unwieldy and

54. MANUAL, *supra* note 19, at 46.

55. *Id.* at 60.

56. *Id.* at 50.

57. HUNTER, *supra* note 50 at 74–75.

58. HICKS, *supra* note 47, at 130.

unable to adequately accommodate the growing size and breadth of legal literature, especially in treatises, international law, and jurisprudence, and in the collection's increasingly interdisciplinary character (e.g., social science).⁵⁹

Cultural Biases Inherent in the System

¶131 Because classification systems are created by humans, hidden biases and prejudices naturally become part of these systems. The emphasis attributed to words, subject headings, and indexes within what is considered “normal” demonstrates how the limits of categories reflect our own biases and prejudices. Classification, as a power structure, becomes a tool of oppression among those users who are not represented in the library's organization of information.⁶⁰ For example, Geoffrey Bowker and Susan Leigh Star note, “Classifications are powerful technologies. Embedded in working infrastructures they become relatively invisible without losing any of that power.”⁶¹

¶132 To understand the biases in the Hicks Classification System, we must analyze it within the cultural context from which it was created. Through this lens, we can begin to see that the Hicks Classification System was created at a time in which both the United States and Great Britain were nearly at the height of their superpower status. This fact, and the biases that it nonetheless produced, was well represented in the system. First, there was no separate class symbol for U.S. legal sources. If a cataloger were classifying a book on Anglo-American treatises, the assigned symbol would have simply been “T,” whereas if the cataloger was classifying a book on German legal dictionaries, the assigned symbol would have been “Germany 50.”⁶² In other words, by not having a separate class symbol for U.S. legal sources, the system assumed that any given source was American. However, this representational failure is best explained by the fact that the system was designed for a single collection, whose users were American and did not require a separate “American” designation.

¶133 Bias in the Hicks Classification System can also be viewed from Britain's particular cultural context of the era. At the time Hicks created this classification system, Britain was still an expansive colonial power.⁶³ Many of the countries listed under “British Colonies” in the scheme are now independent states, such as Cyprus, Kenya, and Zanzibar. More benign, but no less culturally contextual, many of the foreign jurisdictions classified in the Hicks system simply no longer exist, such as the Czechoslovak Republic, Yugoslavia, and French Indochina.⁶⁴ As it stands today, the system does not

59. GUIDE, *supra* note 42, at 16.

60. MELISSA ADLER, *CRUISING THE LIBRARY: PERVERSITIES IN THE ORGANIZATION OF KNOWLEDGE* 5 (2017).

61. GEOFFREY BOWKER & SUSAN LEIGH STAR, *SORTING THINGS OUT: CLASSIFICATION AND ITS CONSEQUENCES* 319 (1999).

62. HICKS, *supra* note 47, at 2, 4, 15.

63. JOHN DARWIN, *THE EMPIRE PROJECT: THE RISE AND FALL OF THE BRITISH WORLD-SYSTEM 1830–1970*, at 474–75 (2009).

64. CENT. INTEL. AGENCY, *The World Fact Book*, <https://www.cia.gov/the-world-factbook/countries/> [<https://perma.cc/3QYN-75H9>].

account for the vast geopolitical changes that would require reclassification. It is unknown whether Hicks anticipated these changes.

The Utility of Hicks's System

¶34 An analysis of the retrieval aspects of the Hicks Classification System should be conducted from the perspective of how well it served its intended function and audience. Overall, it appears to have effectively facilitated access to the holdings by students and faculty who were conducting curricular and scholarly research. However, retrieval of information in any classification system is only as good as its finding aids. In 1937, the card catalog for the Yale Law School occupied 440 trays, which contained approximately 280,000 cards.⁶⁵ For each book, there were as many cards as needed to represent author, joint author, editor, title, series, and the subject or subjects treated in the book. In other words, a single item could have several separate cards, each providing access points. All cards, whether they represented author, subject, or title, were interfiled into a single alphabetized collection, much like a dictionary (i.e., there was no separate subject catalog). Each tray contained guide cards to aid and cross-reference to and from related subjects. Additionally, for current sets of periodicals, annual reports, and series of various kinds, there were cards in the form of tables that showed what volumes the library owned and the period covered by each.⁶⁶

¶35 While Hicks's system largely facilitated access to the collection, via the card catalog, the physical grouping of books was by type rather than subject as in a Library of Congress arranged library. Because similar subjects were not necessarily arranged on the shelf next to each other, users could not browse to find similar items and were forced to employ the card catalog as their primary means of creating a subject list.

¶36 The efficacy of the Hicks Classification System, then, can be found in its contribution to the field of library science, information systems, and human learning. It filled a void where there previously was no classification system at any law school and supported the changing nature of legal education. If emerging pedagogical methods called for law libraries to supplement and cultivate classroom learning, then Hicks successfully created the classroom's laboratory of legal information. Although Hicks created his classification system to address the needs of a growing law library, as the practice and the study of law became more diverse and interdisciplinary, it rendered much of Hicks's classification obsolete and created gaps in the scheme. Nonetheless, it remains an effective information retrieval system for Yale's rare book and manuscript collection of over 50,000 legal volumes to this day.

65. MANUAL, *supra* note 19, at 51.

66. *Id.* at 51–52.

Conclusion

¶37 In 1956, Samuel Thorne, Hicks's successor at Yale, noted, "Under his direction, the Yale Law Library rose to the first rank among the law libraries of the world, whether that statement be tested by the criterion of size, richness of collection, adequacy of catalogue and classification, or physical facilities for convenient use."⁶⁷ Yale's status, as described by Thorne, can be directly attributed to Hicks's passion for the organization and accessibility of information and the fruits of his labor. To be sure, this passion was so central to his life that Hicks embarked on the daunting task of creating his own classification system.

¶38 Hicks was truly a pioneer in the evolution of law librarianship. The legacy he left our profession can be viewed from multiple perspectives as demonstrated by the more than dozen publications on his life and career. Not only does this article fill a void in the literature regarding Hicks and his classification system, but it also helps to illustrate the various organizational issues that large academic libraries were struggling with to meet the changing nature of legal education at the beginning of the 20th century.

¶39 Above anyone else, Hicks understood the symbiotic relationship between the law library and legal education. In the introduction to the *Yale Law Library Manual*, he wrote:

A Reeve, a Story, a Kent, a Baldwin, or some lesser preceptor, facing a group of students, note-books in hands, may once have constituted a satisfactory law school. If so, we are far from that simplicity and time. Around students and professors of today, shelves must be erected, filled with books elaborately indexed and catalogued. One can say only that every tendency of legal education today emphasizes the demand for more books, better organized for use.⁶⁸

¶40 For Hicks, a vital step in forging this symbiotic relationship was for all the books in the law library's collection to be readily accessible to readers, and for this to occur a practical classification system and a card catalog providing multiple access points to the collection was required. As a 21st century digital world continues to change the nature of legal research, coupled with user preference and expectations, let us look to Frederick Hicks as a source of inspiration as we strive to ensure the law collections under our care are properly housed and organized for service.

67. Samuel E. Thorne, *In Memory of Frederick Charles Hicks*, 49 LAW LIBR. J. 277, 278 (1956).

68. MANUAL, *supra* note 19, at v.

Keeping Up with New Legal Titles*

Compiled by Susan Azyndar** and Susan David deMaine***

Contents

<i>While Justice Sleeps</i> by Stacey Abrams	Mari Cheney	320
<i>The Decline of Natural Law: How Americans Once Used Natural Law and Why They Stopped</i> by Stuart Banner	Brian Quigley	321
<i>Diversity, Equity, and Inclusion in Action: Planning, Leadership, and Programming</i> by Christine Bombaro	Hannah Plotkin	322
<i>LIS Interrupted: Intersections of Mental Illness and Library Work</i> by Miranda Dube and Carrie Wade	Francesco N. Fasano	324
<i>Judging Inequality: State Supreme Courts and the Inequality Crisis</i> by James L. Gibson and Michael J. Nelson	Justin O. Abbasi	325
<i>Impeccable Research: A Concise Guide to Mastering Legal Research Skills, Third Edition</i> by Mark K. Osbeck	Sabrina Sondhi	327
<i>The Library: A Fragile History</i> by Andrew Pettegree and Arthur der Weduwen	Iantha Haight	328

* If you would like to review books for “Keeping Up with New Legal Titles” please send an email to Chava Spivak-Bindorf at cys28@drexel.edu and Matt Timko at mtimko@niu.edu.

** Associate Director, Kresge Law Library, University of Notre Dame, Notre Dame, Indiana.

*** Director and Senior Lecturer in Law, Jerome Hall Law Library, Indiana University Maurer School of Law, Bloomington, Indiana.

<i>War and Peace in Outer Space: Law, Policy, and Ethics</i> by Cassandra Steer and Matthew Hersch, eds.	Colleen Williams	330
<i>Legal Data and Information in Practice: How Data and the Law Interact</i> by Sarah A. Sutherland	Genevieve B. Tung	332
<i>The Right of Access to Environmental Information</i> by Sean Whittaker	Deborah L. Heller	333
<i>Rebalancing Copyright: Considering Technology's Impact on Libraries and the Public Interest</i> by Michelle M. Wu	Christopher B. Anderson	335

Abrams, Stacey. *While Justice Sleeps*. New York: Doubleday, 2021. 366p. \$28.

*Reviewed by Mari Cheney**

¶1 Stacey Abrams is famous for many roles: a Georgia state representative, a gubernatorial candidate, guest star on *Star Trek: Discovery*, and author. In her 2021 novel, *While Justice Sleeps*, Abrams puts her Yale Law School degree to use to pen a fast-paced but far-fetched legal thriller involving a Supreme Court Justice, his law clerk, and the President. Justice Wynn, a U.S. Supreme Court Justice, has a disease that eventually will render him unable to serve on the bench. Before it does, he ends up in a coma, unable to warn his fellow Justices about presidential corruption related to a case before them that involves biotech and genetics firms. Luckily, Justice Wynn has had the foresight to leave clues for his law clerk, Avery Keene. In addition, he has taken the unprecedented step of assigning Keene as his power of attorney. This makes her the number one suspect for why Justice Wynn is in a coma, as well as an enemy of both Justice Wynn's wife and the President.

¶2 A number of Keene's abilities help in unraveling the clues set out by Justice Wynn: besides being an exceptionally brilliant law clerk, she has an eidetic memory, is a decent chess player, and knows how to pick locks. The Justice's son, Jared, arrives on the scene with a set of complementary skills from his mysterious military background and cybersecurity training. The plot progresses a little too easily, but nevertheless it takes the reader on an elaborate hunt that builds some suspense.

¶3 A couple of shortcomings made me a skeptical reader. First, the dialogue is stilted in a way that begs the question, did anyone read it aloud? It carries the plot

* © Mari Cheney, 2022. Associate Director of Research and Instruction, Paul L. Boley Law Library, Lewis and Clark Law School, Portland, Oregon.

forward but does not read like actual conversation. Second, I had a hard time getting into the story because the reader must suspend what they know about the Supreme Court, the cases it hears, and the type of research the Justices and their clerks do about cases before the court. However, if you can suspend this reality, including the extraordinary level of presidential corruption, the book is extremely readable. I can see this book being made into a movie, probably one starring Tom Hanks as the only likable FBI agent.

¶4 I wanted to love this book because I admire Abrams, but perhaps it is a book written for people who can suspend judgment about how the Court works and what happens behind the scenes between Justices and their law clerks. *While Justice Sleeps* is fast-paced and extremely readable. I recommend it for public libraries.

Banner, Stuart. *The Decline of Natural Law: How Americans Once Used Natural Law and Why They Stopped*. New York: Oxford University Press, 2021. \$42.21.

*Reviewed by Brian Quigley**

¶5 While it once played a central role in American legal thought, natural law is now treated as little more than an anachronism. Stuart Banner's *The Decline of Natural Law* is a thorough, clear, and thought-provoking work that recounts this transition. Early American lawyers recognized two types of law: positive and natural. In this framework, positive laws are those created by humans. Natural laws are preexisting principles created by God as an integral part of human nature. Natural laws are seen as universally applicable and able to be understood by all. By their very nature, they are open ended but generally presumed to include rights of self-defense and to personal property. While natural law was considered superior to positive law, it was more often used to interpret legislation than to overturn it. During this era, judges saw their role as finding law using the higher principles of natural law and the customs of common law.

¶6 Over the course of the 19th century, judges came to be seen as creating rather than finding the law. Banner identifies a few reasons for this shift. He effectively explains these factors through the era's treatises, articles, and case law. The adoption of written constitutions provided judges a standard for evaluating statutes that did not require the use of natural law. In addition, belief in the existence of natural law became seen as a personal religious view with limited relevance to the positive law. Most fatal to the continuing use of natural law reasoning was that its principles were regularly deployed on both sides of political and legal debates. As a result, natural law failed to provide enough guidance in the resolution of contentious issues.

¶7 Of particular interest to law librarians is the role legal publishing played in this shift. Case reports were scarce during the period of natural law's prominence. The subsequent exponential growth in legal publishing made it increasingly hard to find relevant cases and understand them in context. A system designed around adherence to precedent would cease to function without some imposition of structure. Increased use

* © Brian Quigley, 2022. Reference and Technical Services Librarian, Shepard Broad College of Law, Nova Southeastern University, Fort Lauderdale, Florida.

of treatises and the rise of John West's indexing system ameliorated this issue. Newly accessible precedents increasingly came to replace the broad principles of natural law. Some lawyers looked back with nostalgia to the earlier era and speculated that the mass of decisions could become so overwhelming that attempts to sort and classify them would end in failure, leading to a resurgence of natural law.

¶18 The most intriguing section of the book concerns attempts to find substitutes for natural law. Lawyers looked for alternatives in the study of the history of common law, in economic principles, through attempts to understand common law as a closed logical system, and through the substantive due process approach of the *Lochner* era. The longest-lasting response to the decline of natural law was through a reconceptualization of the role of a judge. If judges created rather than found the law, policy considerations could replace natural law principles. That said, natural law has not entirely disappeared from American legal culture. It has been subject to several academic revivals, most notably in the wake of the horrors of World War II. Natural law proponents saw a link between the rise of totalitarianism and the turn away from universal legal principles.

¶19 Banner admirably navigates the inherent challenges in writing the history of this complex and far-reaching change. This review only briefly touches on topics Banner treats with nuance and depth. An important contribution to the history of American legal thought, this book is a valuable resource for anyone interested in how natural law functioned in practice. Many contemporary works in this area, such as R.H. Helmholz's *Natural Law in Court*,¹ cover several different legal systems over an extended period of time. By limiting his discussion to the United States, Banner is able to tell an effective and interesting story. As law librarians, we are familiar with the impact legal research technologies have had on the practice of law. Banner's consideration of the role the expansion in legal publishing had in the transition away from natural law adds to our understanding and serves as an impetus for future scholarship. It is recommended for academic law libraries.

Bombaro, Christine. *Diversity, Equity, and Inclusion in Action: Planning, Leadership, and Programming*. Chicago: ALA Editions, 2020. 186p. \$67.99.

*Reviewed by Hannah Plotkin**

¶10 To some people, such as me, libraries have long represented egalitarian, welcoming environments that harbor learning and self-development. However, there are people who have a quite different relationship with libraries. For BIPOC, disabled, or other marginalized individuals in the United States, the library may feel like an exclusionary or even hostile place due to a long-standing institutional history of discrimination or simply a lack of access or representation. This issue should be addressed with dynamic practices. *Diversity, Equity, and Inclusion in Action*, edited by Christine Bombaro, explores a variety of topics on the titular subject matter, specifically focusing

1. R.H. HELMHOLZ, *NATURAL LAW IN COURT: A HISTORY OF LEGAL THEORY IN PRACTICE* (2015).

* © Hannah Plotkin, 2022. Library Associate, Senior, Daniel F. Cracchiolo Law Library, University of Arizona, Tucson, Arizona.

on the direct implementation of diversity, equity, and inclusion (DEI) practices in a library setting.

¶11 In the book's introduction, Bombaro explicitly states that academic institutions have been slow to take any substantial action to increase diversity, that DEI is "still mostly an ideal" in academia, and that "liberalism in librarianship . . . is something of a myth" (pp.ix-x). I found this frankness refreshing. It supports a strong argument that it is time for library professionals to act on, rather than merely continue to discuss, DEI. While it thoroughly covers multiple practices and viewpoints, this book should not necessarily be approached as a how-to guide to DEI or an introductory primer to the basic concepts and principles. Nor does it exhaustively cover the history of DEI. Rather, each chapter can be read as a stand-alone article discussing individual institutions and the direct actions leaders took to improve one or many DEI principles. The first chapter, "Moving from Diversity to Equity and Inclusion with Social Justice as a Goal" by Matthew P. Ciszek, covers a general history of DEI in libraries with a focus on terminology and institutional practices. Ciszek also includes some legal context around DEI practices. This section of the text alone would be useful for an individual or institution just beginning to research diversity practices.

¶12 The approaches outlined in each chapter vary as much as the subject matter itself, as two examples illustrate. "Designing a Collective DEI Strategy with Library Staff" by Pamela Espinosa de los Monteros and Sandra Enmil is extremely specific and detailed. Espinosa de los Monteros and Enmil provide a strategic five-week reading list and reflection questions that intentionally exclude discussions of identity politics in order to more quickly implement self-assessment practices. In "Diversity from the Inside Out," Orolando A. Duffus and coauthors, on the other hand, discuss more practice-based DEI development in a library setting, such as "environmental scanning," forming committees, and creating diversity resident programs. This combination of immediate and long-term practices is a well-balanced approach to DEI.

¶13 It is important to read DEI material that is written recently, since even a matter of a few years can render information about DEI outdated, and timely perspectives are necessary to designing effective DEI programs. *Diversity, Equity, and Inclusion in Action* is, as the title states, focused on action. It is a good supplement to theory, which, while vital, can often leave the reader uncertain about how to proceed. I strongly recommend this book for anyone curious about a modern view of DEI. I would even more fervently recommend this book to those who want to implement a DEI program in their own library. With the number of practices and perspectives represented in the book, the reader is likely to find a plan or program that resonates with them and their institution.

Dube, Miranda, and Carrie Wade. *LIS Interrupted: Intersections of Mental Illness and Library Work*. Sacramento: Library Juice Press, 2021. 352p. \$35.

*Reviewed by Francesco N. Fasano**

¶14 *LIS Interrupted* provides an eye-opening, raw collection of narratives about and criticisms of navigating the library and information science field through the lens of mental illness. While the focus of this work is on librarianship, these firsthand accounts resonate across disciplines, offering comfort to readers with the knowledge that others, too, are facing similar challenges in their education and work.

¶15 The editors organize these narratives and critiques into three sections: “The Process of Becoming,” “Critical Perspectives and Narratives,” and “The Situated Experience.” In the first section, a variety of authors address mental illness with radical vulnerability as they navigate their careers, from library schools to professional workplaces. In the second section, the focus shifts from personal narratives to critiques of how the profession deals with mental illness, underscoring structural issues that pervade the profession. The final section of the book returns to firsthand narratives, with authors who are established in their careers confronting the impact of mental illness on their experiences in the field. Thoughtful content warnings precede certain chapters that confront difficult topics.

¶16 All 15 narratives exploring personal experiences of mental illness and the library world are worth reading, but I want to highlight three chapters that exemplify the variety of voices included in this book.

¶17 In Kaelyn Leonard’s chapter on their experience pursuing an MLIS degree as a person with ADHD, they write of how higher education fails neurodivergent individuals and relies on textbook definitions of illnesses when deciding who merits assistance. Leonard offers candid advice on how to advocate for yourself when selecting and pursuing a graduate degree and reinforces that “[y]our voice, your perspective, your passion, and your insight belong in the field of Library and Information Science” (p.14) regardless of the institutional support you receive.

¶18 In her chapter, tenured librarian Nina Clements focuses on disclosure of her diagnosis with colleagues and supervisors, including ramifications such as her fear of being stigmatized. The way her symptoms manifest, suddenly and unpredictably, made advanced notice of absence difficult, and she found working from home during an episode impossible. Because she was a tenured member of the faculty, she had the flexibility of having unlimited sick time. This negatively impacted her annual reviews and tenure status, and some colleagues saw her unplanned absences as an inconvenience in a small library. One colleague refused to speak to Clements, which she attributes to either the stigma of her depression or her absences. This hurtful and isolating experience shaped the way Clements disclosed her depression to future colleagues.

¶19 Avery Adams’s chapter, “Fog,” chronicles their experience as a middle manager in an academic library working through depression that manifests as pseudodementia.

* © Francesco N. Fasano, 2022. Law Library Fellow, 2021–2022, Daniel F. Cracchiolo Law Library, University of Arizona, Tucson, Arizona.

Symptoms include loss of memory, inability to locate words, speech-processing difficulties, and physical disorientation. They write of the anxieties they had while providing reference services and teaching under the constraints of these symptoms, including the fear of their mind dissolving in front of a group of people. Avery describes coping mechanisms they utilized, such as radical acceptance, decoupling their emotional response, and accepting things at face value, particularly difficult in complex, multilayered environments like academia.

¶20 *LIS Interrupted* is a unique book that helps address the dearth of literature and discussion on mental illness in library work. It offers readers a powerful glimpse into the lives of those in the profession who struggle with mental illness, and some chapters include a helpful bibliography. This book is an important read for LIS students and library professionals, and it will benefit any library looking to expand its resources on managing mental health in the workplace.

Gibson, James L., and Michael J. Nelson. *Judging Inequality: State Supreme Courts and the Inequality Crisis*. New York: Russell Sage Foundation, 2021. 356p. \$35.

*Reviewed by Justin O. Abbasi**

¶21 State supreme courts are generally believed to be protectors of “the little guy,” but in *Judging Inequality*, political science professors James Gibson and Michael Nelson explore the possibility that these institutions privilege the claims of society’s overprivileged. The authors use their “State High Court Inequality Database” to investigate the role of state courts in the creation and maintenance of public policies. To create this database, their team coded about 6,000 state supreme court rulings as either favoring or limiting political, legal, economic, and social inequality from all 50 states between approximately 1990 and 2015. The authors carefully describe and validate the empirical measures used throughout this book, and anyone embarking on similar research will likely find interesting the manner in which they selected and coded the rulings.

¶22 These rulings stem from three major litigation issue domains: the rights of minorities, including poor people (e.g., school finance funding equality, gay rights, and election law cases); the rights of workers and employees (e.g., collective bargaining rights and employment-at-will cases); and access to the state’s justice institutions (e.g., mandatory arbitration, class action, attorneys’ fee, and civil litigation damage cap cases). Their database captured all state supreme court rulings within these domains, and the analysis of the data showed about half of these rulings favored equality. Notably, the professors excluded two substantive case categories, criminal and workers’ compensation cases, because they found unique aspects of these categories made them not workable or helpful; this book also does not assess the impact of state supreme court policymaking.

¶23 Much of this book is devoted to accounting for the variation in pro-equality outcomes by focusing on the litigants in the cases, the justices who decided the cases, the courts in which those justices worked, and the larger state political context in which

* © Justin O. Abbasi, 2022. Independent scholar.

the judiciary is embedded. The authors attempt to link litigants' resources to their substantive positions in cases and found that, contrary to an implicit assumption in most previous research, the overprivileged party sometimes seeks to promote equality. For example, large businesses favor a pro-equality outcome in about one-fifth of their cases, and governments seek equality in about one-third of their cases. The authors also evaluate the relationship between justices' educational and professional experiences and their attitudes, as measured by their ideology and partisanship. As some may suspect, the authors found that conservative and Republican justices tend to vote in favor of inequality, while liberal and Democratic justices tend to vote in favor of greater equality. Further, class matters: those from less privileged backgrounds tend to be more liberal, but interestingly, Republicans from more privileged social classes tend to be less conservative.

¶24 *Judging Inequality* also explores the methods by which justices reach the bench and keep their seats; notably, nearly a majority of "elected" justices were initially appointed to their position. Based on this analysis, the ideological configuration of state supreme courts rarely strays from the makeup of the dominant political regime in a state, and ideology plays a statistically significant role in shaping the votes of state high court justices. Particularly in both partisan and nonpartisan election systems, as opposed to appointment systems, justices are more likely to cast pro-equality votes when the public in their state possesses more liberal opinions. In other words, judicial elections do not result in the independence necessary to reduce inequality by rejecting the policies of the majority. This book ends on a depressing note, dispelling the myth that state supreme courts will protect "the little guy" and ultimately concluding that "courts are not the solution" (p.283).

¶25 Professors Gibson and Nelson make a meaningful contribution to the literature on policymaking by centering their research on the often-overlooked role of state supreme courts and finding that ideological similarity between justices and the overprivileged is the best explanation for unequal success in state supreme courts. While *Judging Inequality* is a scholarly work, the authors present their findings in an accessible, reader-friendly manner. Their thorough discussion is supported with many charts that the statistically inclined will relish, and the authors consulted a wide range of works cited in several pages of references. Unfortunately, researchers studying the relationship between justice ideology and voting records for specific state supreme courts will not gain much insight from this book, which seldom strays from its 50-state perspective (as of this writing, the State High Court Inequality Database does not appear to be a publicly accessible resource). Recommended for academic and court law libraries.

Osbeck, Mark K. *Impeccable Research: A Concise Guide to Mastering Legal Research Skills, Third Edition*. St. Paul, Minn.: West Academic Publishing, 2022. 210p. \$63.00.

*Reviewed by Sabrina Sondhi**

¶26 The third edition of *Impeccable Research* comes 6 years after its predecessor and 12 years after the first edition. This is an excellent release strategy, allowing Osbeck to update the material as resources evolve and making the purchase of subsequent editions very much worth the money.

¶27 As with earlier editions, Osbeck begins with a traditional Rombauer-style process: plan your research, consult secondary sources, identify primary sources, update your research, and analyze your results. Each of these five chapters starts with a brief outline and breaks up the dense text with subchapter headings, bullet points, and bolded key terms. Each chapter ends with a bulleted list of takeaways, which should help students reassure themselves that they are absorbing what they need to know. These takeaways are new to the third edition and add significant value to the book overall.

¶28 Osbeck has made the sound decision to move the chapters describing the types of secondary and primary legal sources to earlier in the volume. Here, he devotes an average of two to three pages to various types of materials. Some of these categories could easily have been expanded on, but they serve their intended purpose of being a brief overview of, for example, legal encyclopedias, digests, constitutions, or court rules. The one thing this new edition could have benefited from—although it is perfectly fine without—are more examples. The two pages on legal periodicals, for instance, describe both law review articles and bar journal articles but do not list any exemplar titles. Students today tend to be unfamiliar with print research, and because Westlaw and Lexis often lump these types of resources together, it can be difficult for students to recognize and differentiate them. This minor fault is not present throughout the textbook; the section on cases does an excellent job listing exemplar West Regional Reporters and federal reporters to help familiarize students with those naming practices.

¶29 Osbeck's intended audience appears to be first-year law students. More complex areas of law such as administrative law, legislative history, or foreign and international law are covered *very* briefly, primarily in those above-mentioned descriptions of types of material. If you were teaching a class that included these areas of law, you might be better off using a textbook with more detailed and expanded coverage, such as the most recent edition of Armstrong, Knott, & Witt's *Where the Law Is: An Introduction to Advanced Legal Research*.²

¶30 This limitation does not lessen the value of *Impeccable Research*. Osbeck devotes the last quarter of his book to what his chosen audience genuinely wants and needs: tips

* © Sabrina Sondhi, 2022. Director, H. Laddie Montague, Jr. Law Library, and Assistant Professor, Penn State Dickinson Law, Carlisle, Pennsylvania.

2. J.D.S. ARMSTRONG, CHRISTOPHER A. KNOTT & R. MARTIN WITT, *WHERE THE LAW IS: AN INTRODUCTION TO ADVANCED LEGAL RESEARCH* (5th ed. 2017).

for beginning lawyers and troubleshooting for common research mistakes. These pages include valuable basics, such as “take good notes” and “don’t reinvent the wheel” (pp.148–49, 159–61), but also address common student concerns like how much time to spend on research, when and how to use persuasive authorities, and how to deal with too many results. Frankly, even though these same tips (with minimal updating) have appeared in all three editions, they elevate a *good* book for 1L students to a *great* one.

¶31 Overall, this book is a recommended title for reference collections and legal research instructors. If it aligns with your institution’s legal research curriculum, then it would make an excellent textbook for a basic legal research or first-year LRW class. As an assigned textbook, the tips and troubleshooting sections could also be used to prepare 1Ls (and refresh 2Ls) for their summer internships.

Pettegree, Andrew, and Arthur der Weduwen. *The Library: A Fragile History*. New York: Basic Books, 2021. 528p. \$35.

*Reviewed by Iantha Haight**

¶32 “Throughout the history of libraries, from Alexandria to the present, one essential problem has remained: no one cares about a library collection as much as the person who has assembled it” (p.140).

¶33 *The Library: A Fragile History* examines the illusion of library permanence in collections ranging from the royal libraries of cuneiform tablets in the Assyrian capital of Nineveh to Google Books. Countless bibliophiles and institutions have compiled fantastic libraries they imagined would endure as permanent legacies only for their collections to be lost to disinterest, decay, plunder, and even shipwreck. Early manuscripts and books generally contained religious, legal, or government content and were destroyed or hidden away depending on who held power; similar attempts are by no means unheard of today.

¶34 This fragility may surprise people. After all, our libraries feel so established, so permanent. Modern U.S. library buildings often look and feel like bomb shelters. It might be easy for people who have grown up visiting libraries—from childhood into adulthood—to take them for granted. We have forgotten about the perils of fire, mice, water, bugs, and bombs. Librarians, however, understand fragility. Librarians know that the organized shelves and cute story times hide the library’s tenuous grasp on resources: the never-ending budget battles; inflation that outpaces funding; the need for more space; lost and torn books; and the pressure to change, chameleon-like, in response to the ever-growing needs of the community and priorities of the people in charge. Andrew Carnegie’s campaign to establish public libraries was successful only because he required cities to commit a predefined amount of annual funding for library operations before he donated a building. Establishing a library is the easy part. Keeping it going requires an enormous level of human time and funding.

* © Iantha Haight, 2022. Electronic Resources and Research Librarian, Howard W. Hunter Law Library, Brigham Young University Law School, Provo, Utah.

¶135 *The Library: A Fragile History* focuses heavily on European libraries during the Renaissance and Middle Ages, when libraries were a labor of love and signal of status for royalty, aristocrats, and successful professionals. It covers fascinating early collectors and book thieves, including Christopher Columbus's son Fernando, Sweden's intellectual Queen Christina, and Christina's acquisitive librarian Isaac Vossius, who picked off some of her best volumes in lieu of his salary. Institutional libraries, vulnerable to the seismic shifts in political, religious, and financial power common to that age, took longer to gain their stride. It was during the early 18th century that books became valuable as objects—and not just for the information they contain—when old books could be sold as collectibles for more than their value as scrap paper for wrapping up fish in the market.

¶136 The authors, historians Andrew Pettegree and Arthur der Weduwen of the University of St. Andrews in Scotland, are very much bibliophiles, in love with books and manuscripts and the obscure information in card catalogs. Pettegree and der Weduwen view the library as a repository of books, concluding that “the health of the library will remain connected to the health of the [print] book” (p.413). They believe the print book to be the most stable and enduring format for recording information and argue that libraries are foolish to abandon their books in favor of the “community hub” model and to provide digital services that cater only to the technologically adept. For these historians, books are better suited to leisurely contemplation, while digital access aggravates the speed and stress of modern life.

¶137 But Pettegree and der Weduwen are very much historians, not librarians or average users of libraries (if such people exist). They have the luxuries of time, geography, and funding to visit special collections throughout Europe. They see the development of libraries in the past but skip over the roles libraries play in the present, including the roles of special libraries such as law libraries. They are aware of the funding and space shortages that libraries face, but those struggles do not guide their analysis. As librarians know, libraries have come to mean more than just collections of books, and librarians are more than just people who buy and care for books.

¶138 The authors link the survival of the library to the survival of the print book, but *The Library: A Fragile History* reveals that the survival and health of the library actually depends on the survival of librarians. Institutional libraries struggled for centuries without skilled librarians dedicated to their growth and care. Aristocrats built magnificent collections that were broken up or lost to decay when inherited by a younger generation with different priorities. Books are important, but books cannot endure without skilled librarians and stable funding. Unlike the aristocrats of centuries past who bought books to please themselves, librarians today assemble collections that go beyond books, keeping their patrons' needs in mind. With programs, digital resources, and community spaces, librarians strive to ensure that someone still cares about books and knows how to use them so that the information and stories in those books will endure and be given new meaning by the next generation.

¶139 *The Library: A Fragile History* is not a relevant purchase for most law library collections, but law librarians who are interested in the past and care about libraries'

future will find something thought-provoking in its pages. Recommended primarily for general academic libraries.

Steer, Cassandra, and Matthew Hersch, eds. *War and Peace in Outer Space: Law, Policy, and Ethics*. New York: Oxford University Press, 2021. 313p. \$99.

*Reviewed by Colleen Williams**

¶40 *War and Peace in Outer Space: Law, Policy, and Ethics* is a collection of essays stemming from a 2018 interdisciplinary conference sponsored by the Center for Ethics and the Rule of Law at the University of Pennsylvania Carey Law School. As the introduction announces, “[t]his volume examines the legal, policy, and ethical issues animating current concerns regarding the growing weaponization of outer space and the potential for a space-based conflict in the very near future” (p.1). The essays’ authors, who hail from various nations, approach these issues from the perspectives of their space-related expertise in law, policy, cybersecurity, military weaponry and other technologies, and ethics. The issues are divided into four parts: the law of war and peace in space, the ethics of space security, current and future threats to space security, and recommendations for the future.

¶41 The first part identifies the important international agreements and principles related to outer space and considers how these agreements can be analogized to those on non-space-specific weaponry and humanitarian issues. One treaty in particular, known as the Outer Space Treaty of 1967,³ is discussed throughout the book. It prohibits the Earth orbit of weapons of mass destruction as well as the placement of weapons on the moon and other bodies, which are designated for peaceful purposes. While somewhat dry, this section lays important groundwork by introducing the international agreements and agencies discussed throughout the book, as well as describing the contentious relationships between certain space-faring nations.

¶42 The second part, addressing the ethics of space security, advances two main arguments: that the language of the Outer Space Treaty incorporates ethics into space law, and that the current motivation of fear and self-interest arising from U.S. space dominance should be replaced by an ethical approach in order to act with honor and self-interest. The first argument is based on language in the Outer Space Treaty, such as “benefit and interest of all countries,” and an absence of language such as “hard rules” (p.110). The essay on this topic analyzes the ethics of space through humanism and multilateralism. The second argument is based on statements by U.S. military and government officials that space warfare is inevitable, and therefore the United States must maintain dominance. This argument discusses various ethical concepts such as virtue ethics and the common good that would support a better approach for those who want continued U.S. dominance. These two essays complement each other in that they cover

* © Colleen Williams, 2022. Head of Technical Services, Young Law Library, University of Arkansas School of Law, Fayetteville, Arkansas.

3. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.

different ethical ground, and one essay focuses more on the international community and the other on the United States.

¶43 The next part, discussing current and future threats to space security, covers regulation of weapons, environmental concerns (such as debris clouds caused from blown-up satellites), and security. Perhaps surprisingly, the newest branch of the U.S. military, the Space Force, is taken seriously. While many laypersons have mocked its derivative logo and ill-fitting uniforms, one author here describes it as “a momentous change” and “a significant shift in U.S. strategic thinking about the military utility of space” (p.153).

¶44 The final part presents various ideas for future cooperation between space-faring nations, which authors throughout the volume declare imperative. In this part, the authors’ different perspectives provide many thought-provoking approaches to establishing norms, from nonbinding transparency and confidence-building measures to working through the United Nations to create an international code of conduct. One idea discussed in the third essay in part one, “The Rule of Law in Outer Space: A Call for an International Outer Space Authority,” proposes establishing an independent International Outer Space Authority, an idea more appropriate to this final section.

¶45 This book is not suitable as an introductory text on space law. It is highly technical—the writing is seldom engaging—and not only assumes familiarity with the concepts of international law but also uses many abbreviations throughout the essays, such as ASAT (anti-satellite weapon), GGE (Group of Government Experts, at the United Nations Office for Disarmament Affairs, or UNODA), and PAROS (Prevention of an Arms Race in Outer Space). This approach reduces the accessibility of the content; this collection of essays would have benefited from a table of abbreviations. The readers most likely to benefit from this book would come to it with previous exposure to the subjects of international agreements, military-grade weapons, and security. The most accessible essay for me was chapter five’s “U.S. Space Dominance: An Ethics Lens,” which defines the various philosophical analyses (utilitarian, common good, etc.) generally before applying them to the topic at issue.

¶46 While *War and Peace in Outer Space: Law, Policy and Ethics* has some faults, it is a worthy addition to collections that focus on international, military, or security law. It would also be an interesting choice for a philosophy collection. It is unlikely that it would duplicate other materials, for, as the editors write, “[u]nique to this collection is the emphasis on questions of ethical conduct and legal standards applicable to military use of outer space. No other existing publication . . . includes such a range of interdisciplinary expertise. . . .” (p.11). Recommended especially for academic law library collections with an appropriate focus.

Sutherland, Sarah A. *Legal Data and Information in Practice: How Data and the Law Interact*. New York: Routledge, 2022. 148p. \$39.95.

*Reviewed by Genevieve B. Tung**

¶147 Technological savvy has become a mainstream part of legal research instruction. Law librarians teach students about how and whether to use algorithmically mediated search tools. Several of our most prominent vendors have been early leaders in the deployment of analytics and knowledge management. Many of our law schools are launching or expanding programs on legal innovation, legal design, and legal technology incubation. Attorneys can now solve problems not only as advocates and counselors but also as technologists.

¶148 This is what drew me to *Legal Data and Information in Practice*—how should information professionals and attorneys think holistically about the role of data in understanding and using legal information? This title is well timed to capture the attention of anyone who has ever wondered why the legal field seems to be such a late adapter of data-driven technology or insights. Author Sarah Sutherland, who leads the Canadian Legal Information Institute, explains the peculiarities of legal information sources and conventions, politics, and/or technical limitations that have long held developers back from unleashing these sources' potential as data. She considers the challenges posed by both proprietary information, such as internal law firm records, and public law, including case law, dockets, and statutory content, using examples from multiple civil and common law systems.

¶149 To readers without a background in data analytics, the chapters on data formats and data analysis techniques may be particularly informative. Sutherland explains how adopting data standards and shifting to using machine readable formats such as XML for legal publishing could improve the functionality and interoperability of legal data from the moment of its creation. The concluding chapter makes near-, medium-, and long-term predictions for how data-based innovations could transform legal systems, such as the publication of statutory law as computer code. Sutherland's explanation of the varieties of machine learning technologies helped me understand *why* so many existing AI tools produce unexplainable results—a widespread concern among lawyers and librarians alike.

¶150 To accommodate such a broad scope, the book's descriptions of both the function of legal authorities and fundamental data analysis techniques are introductory. The book does not discuss or evaluate many of the existing data-based products already introduced in the U.S. legal market. Although the foundational data vocabulary provided here is helpful, the reader will need to look beyond this book to critique or assess the tools we already use and to understand how these products are situated in today's larger legal technology marketplace.

¶151 Sutherland also takes an outside-the-box view of why law is not fully represented by data. To illustrate, chapter 5 (“Interpreting Legal Data”) posits that controlled

* © Genevieve B. Tung, 2022. Associate Director for Educational Programs, Biddle Law Library, Penn Carey Law School, Philadelphia, Pennsylvania.

experiments are an excellent means for developing data, but that legal systems “lack a culture of experimentation” (p.66). For example,

there has been resistance to doing things like taking a random sample of people in particular jurisdictions and assigning them to be governed by different laws and comparing the results. The primary argument against this is that the best governance model should apply to everyone, but currently laws are changed for everyone in a jurisdiction with no validation that the change is beneficial. (p.66)

Sutherland also identifies the lack of counterfactual litigation data (e.g., what would have happened in a court case if the parties had different lawyers) as a “missing” dataset that hampers meaningful evaluation. These are interesting thought experiments, but the book only skims the surface of questioning whether prioritizing data collection and validation ought to be considered with the same gravity as, say, equal protection and due process of law.

¶52 *Legal Data and Information in Practice* is not without flaws. Like much science writing, this work makes liberal use of the passive voice, which, combined with a stylistic tendency to hedge and qualify anodyne statements, makes for slow reading. The text has multiple typographical and grammatical errors. Each chapter features a list of references, but some citations could be much stronger. For example, a summary of strictures on publishing English parliamentary proceedings is supported with a cite to Wikipedia. Similarly, the introduction notes that “[a]pproximately 80% of people with legal problems internationally do not get help from a lawyer” (p.xvi), citing a conversation with Fastcase CEO Ed Walters. Walters is an expert—he recently edited a book on the use of data in legal practice⁴—but failing to cite or attribute the statistics informing his statement seems a significant unforced error.

¶53 This book is strongest for its comparison of international approaches to legal information creation and data sharing and for its focus on initiatives that prioritize open access in the public interest rather than proprietary data brokerages. It is exhilarating to think about what the legal profession could accomplish by prioritizing the use of law as data, not just by manipulating the source we already have but by thoughtfully developing new sources and alternative publishing models. This book is a thought-provoking first step for those who want to play a role in building that future, but the next edition would benefit from more assertive editing.

Whittaker, Sean. *The Right of Access to Environmental Information*. New York: Cambridge University Press, 2021. 254p. \$110.

*Reviewed by Deborah L. Heller**

¶54 Public participation and inquiry are important elements in the arsenal of climate protection response. *The Right of Access to Environmental Information* examines

4. DATA-DRIVEN LAW: DATA ANALYTICS AND THE NEW LEGAL SERVICES (Edward J. Walters ed., 2019).

* © Deborah L. Heller, 2022. Assistant Dean of the Law Library and Adjunct Professor, Pace University Elisabeth Haub School of Law, White Plains, New York.

different governmental approaches to the provision of environmental information in England, the United States, and China. In this examination, Sean Whittaker uses legal transplant theory, which posits that the laws and procedures of one jurisdiction can be copied and adopted by another. He also reviews the Aarhus Convention in concert with each of the country's laws, as it includes a right to environmental information within its terms.

¶155 Whittaker very consciously chose to focus on England (although the author says this also includes Wales) and not Scotland or Northern Ireland because provision of public utilities is privatized in England but controlled by the state in Scotland and Northern Ireland. England was also selected because it is a party to the Aarhus Convention, a 1998 agreement that provides a right of access to environmental information. Further, England's previous membership in the European Union (EU) permits attention to the Environmental Information Regulations of 2004. The United States was chosen as a Western country not a party to the Aarhus Convention. The book reviews federal U.S. law, namely the Freedom of Information Act, and not the related laws of individual states. The inclusion of the United States allows for review of a jurisdiction that has a wider right to information not limited to purely environmental information. China was chosen because it has a different form of government controlled by the single Chinese Communist Party and holds unique views on the right to environmental information. The Open Government Information 2019 and the Measures on Open Environmental Information 2007 acts are covered. Although all three countries aim to ensure the right to environmental information, they have each established different environmental information regimes, a reality that influences the likelihood of successfully transplanting elements of policy across borders.

¶156 The Aarhus Convention serves as the fulcrum for the discussion of the right of access to environmental information. This agreement focuses on providing environmental information, public participation in environmental decision making, and access to justice in environmental concerns. These three aspects form the "three pillars" of the Convention discussed throughout the text. As a document whose goal is the provision of environmental information, the Aarhus Convention provides a baseline from which to compare the three selected jurisdictions, even though only England is bound by its terms. The fact that two of the three countries have not ratified the Aarhus Convention allows for a comparison of the impact of the Convention on the legislation in a jurisdiction bound by its terms and those that lie outside it.

¶157 For each of the three jurisdictions, the reader is introduced to the key piece(s) of legislation in which the right of access to environmental information is enshrined. The book specifically focuses on the right to obtain information on request. The right of proactive disclosure is excluded owing to the breadth of legislation at issue. The full scope of the legislation in each jurisdiction is discussed, including the governmental bodies responsible for providing information, the specific environmental information that may be disclosed, who can request the information, the form of the request, response time, format of response, fees that may be charged, conditions under which information may be withheld, and limits of the legislation. Citations in the footnotes to

sections of legislation, case law, and other material support the information provided for each country and provide the reader with the means to consult those sources separately. The book includes prefatory material including tables of cases, international instruments, Aarhus Convention Compliance Committee information, EU legislation, national legislation, official documents, and a list of abbreviations, as well as a bibliography at the end.

¶58 I found myself engaged in the chapters that detailed the environmental information regime in each country as well as how they compared to each other. Because each chapter was laid out in the same manner, it was easy to follow and glean the similarities and differences between the three countries. Although a legal background may add to your understanding of some concepts, it is by no means necessary. Anyone interested in the right to environmental information would benefit from reading this text. *Right of Access to Environmental Information* makes a great addition to academic libraries, particularly those with strong collections and interest in the environment and environmental law.

Wu, Michelle M. *Rebalancing Copyright: Considering Technology's Impact on Libraries and the Public Interest*. Getzville, N.Y.: William S. Hein & Co., AALL Publications Series No. 85, 2021. 308p. \$99.

*Reviewed by Christopher B. Anderson**

¶59 Copyright issues impact the daily operation of most libraries, making copyright one of the most important legal frameworks for librarians to understand in both law and non-law library settings. Copyright may be, however, one of the more complex and lesser understood components of a librarian's day-to-day duties. Although the examination of copyright law may conjure thoughts of complex statutes and legal minutia, it also offers a fascinating historical study and an opportunity to consider ways to change current copyright laws to better benefit all members of society, in part by helping libraries better meet their constituents' needs.

¶60 In her book, *Rebalancing Copyright*, Michelle M. Wu takes the reader on a three-part journey through copyright law. The book focuses on the historical development of copyright laws in the United States, the current American copyright structure with proposed revisions to current laws, and ways to make copyright law more responsive to current technology and user preferences. Wu provides a helpful historical context of copyright development and an overview of current copyright laws, but she does not purport to cover these matters exhaustively, so it will be helpful for the reader to have some prior familiarity with the topic. Furthermore, while copyright is international in scope, Wu focuses on U.S. copyright laws and issues.

¶61 The first section provides an overview of the development of copyright law in the United States from the American colonies and the Constitutional Convention through major developments that led to the current framework. Wu offers a fascinating

* © Christopher B. Anderson, Collection Services and Digital Initiatives Librarian, and Adjunct Professor, Rittenberg Law Library, St. John's University School of Law, Queens, New York.

insight to the competing interests and parties that shaped debates around copyright law: authors, publishers, Congress, the public, and libraries. Throughout copyright debates, librarians have been advocates for the public interest. Librarians have worked to ensure the American public has access to educational resources and that copyright does not create a barrier to information. I particularly enjoyed reading the excerpts of congressional testimony given by library representatives arguing against restrictions on access to resources. Libraries and librarians played—and continue to play—key roles as counterweights to the more restrictive copyright terms sought by authors and publishers; it is heartening to see the positive historical impact librarians have made on behalf of the public interest.

¶62 The second section offers the reader an overview of current copyright laws. Topics in this section include materials covered by copyright; day-to-day library and archives activities such as interlibrary loan, fair use, preservation, and open-access repositories affected by copyright law; and the damages provided under copyright law. Wu does an excellent job highlighting the ineffectiveness of current copyright laws when dealing with emerging technologies, user preferences, and daily library operations. A prime example of copyright law's limitations is the statutory definition of "copies," which focuses on material objects and neglects the ongoing shift to a digital environment. In this section, Wu proposes revisions to existing copyright law such as allowing libraries, archives, or museums to reproduce a "reasonable number" rather than a statutorily proscribed number of copies of a work under specified circumstances, permitting statutory damages only for willful infringement, and expanding the fair use defense to all potential infringers. Furthermore, Wu explores prospective changes outside of the legislative framework, including nonprofit licenses (such as Creative Commons), controlled digital lending, and crowdsourcing.

¶63 The historical and structural frameworks explored in the first two sections of the book are both insightful and helpful, but I found the third section of the book the most interesting. Wu evaluates ongoing copyright reform proposals and suggests several of her own proposals to transform copyright in a manner that more equitably promotes and protects the rights of creators and users. The proposals in this section consider more comprehensive overhauls of copyright laws than mere revisions to existing laws. The proposals I found particularly compelling include allowing free use of works for noncommercial purposes 20 years after publication; recognizing format shifting as a statutorily protected legitimate use for libraries, museums, and archives; and removing statutory damages. Finally, the book has several helpful appendixes, including the text of the Statute of Anne (appendix 1); major legislative acts of copyright (appendix 2); and selected copyright statutes (appendix 3). These resources are useful references for readers.

¶64 Wu does a commendable job highlighting the varied interests of parties on all sides of the copyright debate and presents thought-provoking, workable solutions that seek to both promote the creation of new works and protect the public's ability to access and benefit from those works. Wu has contributed an insightful, welcome, and useful addition to the copyright law conversation. I encourage all librarians with an interest in

copyright law and its evolving impact on libraries to seek out *Rebalancing Copyright* and add it to their library's collection. Recommended for academic law libraries and for all libraries that collect in copyright law.

