

# The Moritz Briefing

An occasional newsletter highlighting recent activities and achievements of the Moritz Faculty.



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## SHARING OUR RESEARCH

Harvard Law School publishes a bimonthly magazine called *The Practice*, which has more than ten thousand subscribers (mostly practicing attorneys). The lead article for January/February was entitled "[Practice-Ready Licensing](#)," in which **Debby Merritt** and her co-authors argued for replacing a bar exam with "supervised-practice pathways" to bar licensure. In case you don't want to take Debby at her word, the article included a study of thousands of students and supervisors who participated in such a program, comparing them with those who did not participate.

In his capacity as the reporter for the [Uniform Law Commission committee on election law](#), **Steve Huefner** spoke at the Joint Election Officials Liaison Conference in Alexandria to describe the work of the ULC. Steve (and joint History & Law Professor **David Stebenne**) also did some training at the [Ohio Association of Election Officials](#) here in Columbus.

Patients addicted to opioids can face enormous challenges in accessing methadone for treatment. During the COVID-19 crisis, the federal government changed the regulations allowing for expanded take-home dosing. This natural experiment provided an excellent opportunity for studies to evaluate how this policy change affects the patients---so **Bridget Dooling** and four of her co-authors did just that in [a report](#) entitled *Adoption of methadone take home policy by U.S. state opioid treatment authorities during COVID-19*. One important takeaway: state regulations still pose a significant obstacle to in-home treatment.

One of the more innovative responses to the renewed calls for racial justice has been for communities to create Truth and Reconciliation Commissions (TRCs). Our Divided Community Project reviewed over thirty TRC processes and then focused on four of them to conduct an in-depth study to analyze their methodology and effectiveness. **Ben Wilson** has just co-authored [a report](#) based on those studies, noting that a number of them have already produced legislative changes and have served as models for how communities can move forward in this challenging area.

## TO BE SEEN AND HEARD

On February 8<sup>th</sup>, the Supreme Court will hear arguments in *Trump v. Anderson*, in which the Trump campaign is appealing Colorado's decision to bar him from the ballot. Given the political nature of the case, some of the Justices may be tempted to try to duck the issue on procedural grounds. **Ned Foley** told [Newsweek](#) that such a course of action would be "attractive" to the Court. But they must resist this temptation, according to an [amicus brief](#) that Ned and his co-authors filed in the case, since it would "invite chaos while risking great damage to the Court's reputation and to the Nation as a whole."

Assuming the Court does rule on the merits, how should it rule? Ned does not take a position on that question in his brief. But **Peter Shane** shows no such restraint: although he believes that the correct legal position is to deny Trump a spot on the ballot, he believes that the current Court will not agree. So in a [Washington Monthly article](#), he helpfully provides the Justices with the most pragmatic argument for leaving Trump on the ballot: rule that Section 3 of the Fourteenth Amendment requires a national implementation statute for the offices of President and Vice-President only, because of the "complexities that arise in applying Section 3 to our multi-jurisdiction electoral process for choosing the president and vice president."

Federal law prohibits asylum seekers from receiving federal work authorization for 150 days after they file for asylum. Since it appears unlikely that Congress will change this provision (or do much of anything) anytime soon, the city of Denver is looking into options to hire them as city employees, under the theory that the federal work laws don't apply to state and local governments. Is this theory correct? **César García Hernández** told the [Denver Gazette](#) that it might be, since the federal law "does not actually say anything about applying to state or federal governments. César also spoke about the challenges and options for immigrants in Denver to [Channel 9 News](#) and [Channel 7 News](#). On a different topic, he was quoted in the [Texas Tribune](#) about the standoff between Texas authorities and federal authorities in the border town of Eagle Pass (which he noted was the first time he had ever heard of federal law enforcement officers facing off against state police over immigration policy). And to top it all off, he gave a [series of interviews](#) to the Russian news outlet RTVI about the growing crisis on the border.

Do you want to buy menthol cigarettes in Columbus? Then you're in luck! Even though the city banned the sale of menthol cigarettes at the beginning of the year, a few weeks later the state legislature voted to strip all Ohio cities of their ability to regulate any kind of flavored cigarette. So feel free to enjoy these products, and don't worry about all the experts who note that smoking kills over 20,000 Ohioans a year, and that Ohio now has one of the highest smoking rates in the country. One of those experts, **Micah Berman**, told [NBC News](#) that the state's decision is "beyond frustrating," since banning these products is "the most obvious thing that we can do to prevent people from getting cancer."

Decades ago, an 18-year old man in Seattle shot at a car and killed a passenger. He was convicted of aggravated murder and sentenced to life without parole. Then, a twist: In 2021, the Washington Supreme Court held that life sentences for 18-20 year olds are unconstitutional under the state constitution. The man was freed after 25 years, and now lives a productive life with a job and a girlfriend. Then, another twist: Prosecutors now argue that the judges lacked authority to re-sentence the man, especially for the other crimes he was convicted of for which he was originally lawfully sentenced. So, prosecutors are now seeking to put him back in prison. As sentencing expert **Doug Berman** [told the Seattle Times](#), this case raises the critical question as to whether "there are some special rights that a person ought to have once released."

### Sharing Our Research Continued...

Mexico has some of the most impressive transparency laws in the world, centered around the Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales ("INAI"), a commission that has strong powers to compel the government to release information. The system is impressive enough that it attracts Fulbright Scholars like **Margaret Kwoka**, who spent a year in Mexico studying the legal processes there. Last month Margaret gave a lecture to the Reporters Committee for Freedom of the Press in Washington, DC about the INAI and the lessons we can learn from it.

#### Ruqaiyah Yearby

participated in "[A Conversation on Racial Disparities in Healthcare](#)" at Northwestern Law School, discussing the impacts of structural racism and discrimination on the healthcare system, as well as the ways in which they are working to promote health equity and the elimination of health disparities for historically and disenfranchised groups.

**Dan Chow** participated in a symposium for the Vanderbilt Journal of Transnational Law in Nashville.

On TortsProf Blog, **Martha Chamallas** [shared her recent paper](#) "Trauma Damages," which examines the difficulties that trauma victims have in qualifying for a post-traumatic stress disorder diagnosis.

## To Be Seen and Heard Continued...

Doug made a habit of commenting on (and criticizing) cases of re-prosecution this month. [Bloomberg Law](#) reported on a case in which Donald Trump commuted the sentence of a man who was convicted of a billion-dollar Medicaid fraud scheme. The Biden Department of Justice then decided to re-try the man on charges that had deadlocked the original jury. In written testimony provided to a House Judiciary subcommittee, Doug commented that “[e]ven a single re-prosecution [of a person who has been commuted] risks creating a life-altering chill for thousands of individuals who received pardons and commutations from past presidents.”

[L’Humanité](#) interviewed international law expert **John Quigley** on the International Court of Justice case against Israel (the article is in French, but Google translator can lend a helping hand). John argues that South Africa has made a compelling argument that genocide is taking place, and talks about the effect the case will have on the war.

**Amy Schmitz** has had her usual busy month—she dropped [a new episode of her podcast](#) (entitled “Arbitration as a Tool for Problem-Solving”); she was interviewed [in another podcast](#) on the future of international arbitration, covering such topics as the potential of iterative AI and digital proceedings; she was [quoted in WalletHub](#) on the legalities of car insurance rates (warning: this post will be hard to read unless you are a member of WalletHub); and she was selected as a Specialist for the [Fulbright Specialist Project](#) at both the Universidad de Granada in Spain and the Facultad Libre de Derecho de Monterrey in Mexico. (The Specialist Program gives American academics the chance to engage in a two- to six-week exchange at international host institutions). Since it would be impossible for Amy to participate in both Specialist Projects, she had to choose between the two (she chose Spain).

Last month **Olwyn Conway** critiqued the prosecutor in a case in which a woman in Ohio was charged with abuse of a corpse based on her treatment of a fetus after she miscarried. This month **Joshua Dressler** came to the same conclusion in a [New York Times article](#), arguing that the prosecutor is using “an entirely different way of understanding the term corpse” than what the drafters of the law originally meant. Update: the grand jury seemed to agree with both Kim and Joshua, and ultimately refused to indict the defendant.



## CONGRATULATIONS AND KUDOS

The AALS Section for the Empirical Study of Legal Education and the Legal Profession selected **Debby Merritt** as their Chair-Elect. As we all know, Debby has been working with this Section for a long time and has dedicated her post-retirement career to these issues. Congratulations to Debby and keep up the good work in this important area!

As most of you know, **César García Hernández** just published a new book, *Welcome the Wretched: In Defense of the Criminal Alien*, and Moritz hosted his book launch event in advance of his book tour. César has been doing a lot of press events around the book as well, including this powerful [essay in Time](#) and this interview on [Here and Now](#). Congratulations on this terrific accomplishment.

It has been officially announced that **Ruqaiyah Yearby** is joining two committees for the [National Academies of Sciences, Engineering and Medicine](#), an organization that was created by Congress in 1863 and is the pre-eminent scientific advisory body in the country. First, she is on an ad hoc committee planning [Health Disparities in the Medical Record and Disability: A Workshop](#), which will host a host a public workshop that will facilitate a discussion focused on the variety of different experiences with our healthcare system common to people facing barriers and members of racial or ethnic minorities and the consequences of those different experiences on an individual's health status and medical record. Second, she is a member of the [Use of Race and Ethnicity in Biomedical Research](#) committee, which will assess the use of the social constructs of race and ethnicity in biomedical research. Congratulations to Ruqaiyah—serving on these committees is a great honor and will be yet another opportunity for her to use her expertise to shape the debate and improve health care equity in this country.

*We are thrilled to highlight the impressive accomplishments of our colleagues, but we know there are other impressive accomplishments that we have not yet heard about. So if we missed a newsworthy item or achievement of yours, please send an e-mail to Ric Simmons and Anne Flanery. And moving forward, please make sure you keep us in the loop for any future conferences, events, media appearances, awards, or any other success that you experience.*

