Research Brochure
Introduction to the American Bar Foundation

The American Bar Foundation (ABF) is the nation’s leading research institute for the empirical and interdisciplinary study of law. An independent, nonprofit organization for over sixty-five years, the ABF has advanced the understanding and improvement of law through research projects of unmatched scale and quality on the most pressing issues facing the legal system in the United States and the world. The ABF is committed to broad dissemination of its research findings to the organized bar, scholars, and the public. The results are published in a wide range of forums, including leading academic journals, law reviews, and academic and commercial presses.

Mission
The American Bar Foundation seeks to expand knowledge and advance justice through innovative, interdisciplinary, and rigorous empirical research on law, legal processes, and legal institutions. To further this mission, the ABF will produce timely, cutting-edge research of the highest quality to inform and guide the legal profession, the academy, and society in the United States and internationally.

Research Faculty
The research program of the ABF is implemented through the projects designed and conducted by the members of the ABF’s residential research faculty. ABF Research Professors are among the leading scholars in their disciplines, which include anthropology, economics, history, law, political science, psychology, and sociology. A research project is undertaken only after completion of a very extensive review process. The internal review committee, an external review panel, the Research Committee of the ABF Board of Directors, and ultimately the full ABF Board must conclude that the proposed study will make a significant contribution to the field and that the research can be carried out with the appropriate standards of integrity, human subject protection, and scholarship.

Funding
The Foundation extends special thanks to the American Bar Endowment (ABE). The American Bar Endowment’s grant of $3,241,519.00 in fiscal year 2018-19 makes the Endowment the Foundation’s largest supporter. Founded in 1942, the ABE is a charitable organization dedicated to improving the quality of justice in the United States by funding research, educational, and public service projects in the field of law. American Bar Association (ABA) members who participate in the Endowment’s group insurance programs can contribute to these efforts. Those members who participate in the Endowment’s insurance plans and allow the ABE to retain dividends payable on the group insurance policies provide essential support for the ABE’s grant program. The Foundation would like to thank all ABA members who participate in ABE insurance plans and donate their dividends, along with the ABE, for the valuable funding they have provided.

Other sponsors include the Fellows of the American Bar Foundation and private foundations and government agencies that award grants to support specific research projects and other ABF programs. The ABF is recognized as a 501(c)(3) nonprofit organization.

The Fellows of the American Bar Foundation
The Fellows of the American Bar Foundation is an organization of lawyers, judges, law faculty, and legal scholars who have been elected by their peers to become members of the Fellows because of their outstanding achievements in the legal profession. The Fellows support the research work of the American Bar Foundation through their annual contributions and sponsor seminars and events of direct relevance to leaders of the legal profession.
Learning and Practicing Law

Portrait Project 2.0

Asian Americans are a growing presence in all sectors of the legal profession. They work in BigLaw and in smaller firms and solo practice, and as government attorneys, corporate counsel, prosecutors, public defenders, judges, and more. But they fall short in attaining leadership positions and have the highest attrition rates from major law firms. Research has not substantially studied the many ways in which Asian American lawyers and law students struggle and thrive, and the unique incentives and constraints that shape their career paths.

With pioneering support from National Asian Pacific American Bar Association (NAPABA) and Yale Law School, the first phase of the 2017 Portrait Project study resulted in a widely-circulated report that revealed that while Asian Americans have entered every facet of the legal profession, they are underrepresented in top leadership positions across all sectors.

Portrait Project 2.0 is a deeper exploration of the empirical underpinnings of the current challenges faced by the Asian American legal community. Using surveys, focus groups, and data from the ABF’s After the JD study and other existing studies, the research will focus initially on the following questions:

- What explains the recent decline in Asian-American enrollment at U.S. law schools?
- Why do minority law students fail to get clerkships in proportion to their numbers at top law schools?
- What accounts for the high attrition rates of Asian Americans at law firms?
- What challenges and opportunities do Asian American attorneys encounter within corporate legal departments?

This project is supported by the National Asian Pacific American Bar Association (NAPABA), Asian American Bar Association—Greater Bay Area, Asian Pacific American Bar Association—Silicon Valley, Northwestern Pritzker School of Law, Oscar M. Ruebhausen Fund at Yale Law School, Davis & Polk, Arnold & Porter, Latham and Watkins, Anonymous, Asian American Bar Association of New York, Silvia Chin, and the Asian American Law Fund of New York.

The Future of Latinos

Inaugural ABF Neukom Chair Rachel F. Moran and ABF Research Professor Robert L. Nelson co-direct the major research and planning initiative, The Future of Latinos in the United States: Law, Opportunity, and Mobility. The Future of Latinos is a nation-wide, interdisciplinary project dedicated to understanding and advancing research on:

- The current condition of Latinx communities in the United States.
- The structural barriers that impede full equality and integration for this emerging population.
- The sites of intervention that promise to be most effective in promoting opportunity and mobility through law and policy.

Since its launch in 2015, the initiative has convened leading national policy makers and experts for a series of national roundtable events focused on identifying existing research and resources, understanding social and legal barriers to opportunity, developing reform recommendations that support full integration and inclusion, and cultivating a new generation of young Latinx leaders. In 2019, the ABF convened leading members of the Latinx community at Duke University for a Southern Roundtable.

After the JD Study

The ABF long has been recognized as the leading source of research on legal education and the profession. One of the ABF’s hallmark projects in this area is After the JD (AJD), the first national study of legal careers. AJD is following a large national sample of lawyers admitted to the bar in 2000 over the first decade-plus of their careers, providing a unique source of information on the changing nature of legal careers. Data collection has been done in three waves, and analysis on this rich sample continues.

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In 2019, ABF Research Professor Robert Nelson, ABF-affiliated scholar Ioana Sendroiu, ABF Faculty Fellow Ronit Dinovitzer, and ABF Research Social Scientist Meghan Dawe published the article “Perceiving Discrimination: Race, Gender, and Sexual Orientation in the Legal Workplace” in Law & Social Inquiry. The article analyzed survey responses from the After the JD study and found that perceived discrimination on the basis of race, gender, and sexual orientation remains pervasive in the legal workplace despite efforts of bar leaders to eliminate discrimination from the legal profession. Findings from the article include:

- Attorneys of color, white women, and LGBTQ attorneys perceive high levels of workplace bias compared to white male attorneys and to respondents in other workplace studies.
- Female attorneys in every racial and ethnic group reported higher levels of discrimination than their male counterparts, ranging from 50% of African American women to 30% of white women.
- 42% of African American male attorneys reported workplace discrimination. Studies of African American workers across all occupations find that 28% report discrimination at work.
- LGBTQ men were nearly twice as likely as non-LGBTQ men to report discrimination at 29% vs. 16%.

The Rise of Lawyer Activism in China
ABF Research Professor Terence C. Halliday and ABF Faculty Fellow Sida Liu spent more than a decade researching the work of Chinese criminal defense lawyers and their struggle for basic legal rights under an authoritarian state. They found significant evidence that a small but critical proportion of China’s criminal defense lawyers are strongly critical of the country’s current illiberal political society and legal system. They are committed to values and practices that are intended to produce a moderate state and vibrant civil society which will produce and protect basic legal freedoms and political rights in China. Their present study turns from the earlier study of everyday lawyering to intensive research on leading activist lawyers. It asks: Are elite criminal defense and human rights lawyers part of a wider emerging network of lawyer-activists that has structural capacities for mobilizing domestically and internationally on behalf of legal change in China?

The Financing of Legal Education
The American Bar Association’s Task Force on Legal Education examined the student costs associated with legal education, specifically educational debt and financial aid and scholarships. The task force’s consultant and reporter, ABF Research Professor Stephen Daniels, has been continuing the work of the task force by analyzing existing data and collecting additional materials on the changing dynamics of legal education. The project’s objective has three main components:

- Explore questions on patterns and changes surrounding the financing of legal education over time, including enrollment, applications, tuition, and employment outcomes for graduates.
- Gather student-level data from the annual LSSSE (Law School Survey of Student Engagement) surveys and other sources to explore patterns and changes related to students and their views on legal education, key services provided by schools, and information on students themselves.
- Gather information from law school websites and other sources to explore recent changes and innovations in response to the changing law school environment.

After Tenure
This research, led by ABF Research Professor Elizabeth Mertz in collaboration with colleagues Frances Tung and Katharine Barnes, is the first in-depth examination of the lives of post-tenure law professors in the United States. Post-tenure law professors play an important role in the American legal system by directing the initial screening and training of lawyers. Legal academics can also directly affect the conceptualization of national and local legal issues through their scholarship, or through their own personal involvement as advocates, judges, or government officials. In addition to its contribution to our knowledge of law professors, the study also speaks to a larger body of literature on both the legal profession and the academy. The study involved a national survey of over 1,000 of these professors and follow-up interviews with 100 of the survey participants.

In their analysis of the experiences of these tenured law professors, Mertz and her colleagues have found that:

- Nearly 39% of U.S. tenured law professors teach in the 50 top-ranked law schools in the country, as compared to the remaining three tiers (comprising 129 additional schools). Most law professors (60%) teach in private institutions.
- Educational levels of the mothers of professors of color and white women tended to be higher than those of white men.
The vast majority of professors reported feeling respected and comfortable in their teaching positions, with 96% feeling respected by students and 98% feeling comfortable in the classroom.

Despite the fact that most tenured law professors expressed overall satisfaction with their work lives, female professors and professors of color reported differentially negative experiences.

Protecting Rights, Accessing Justice

Science and the Legal System
ABF Research Professor Shari Seidman Diamond’s research with Richard O. Lempert considers the relationship between scientists and engineers and the legal system. More specifically, this project seeks to understand how scientists have experienced their interactions with the legal system. Surveys and in-depth interviews have yielded a wealth of findings, including the following:

- Most of the scientists and engineers surveyed agreed to participate in lawsuits when asked, more often for educational and moral reasons than financial.
- If the scientists and engineers refused to participate in lawsuits when asked, it was mainly because they lacked the time or relevant expertise.
- Some of the scientists and engineers reported being uncomfortable with adversarial legal proceedings and would be more likely to participate in the future if procedural changes were made.

—These changes include having the opportunity to meet with an opposing trial expert and write a mutual report and being able to serve as an expert appointed by the judge instead of on behalf of a certain legal party.

Conceptualizing Property Takings
ABF Research Professor Bernadette Atuahene links the unconsented taking of property with the deprivation of dignity. Among other things, the research aims to further understand the relationship between property and dignity and extends the earlier analysis to the case of squatting. Among other things, the research will help illuminate why some populations choose to squat instead of pursuing alternative accommodations, and how these risky and illegal actions may enhance or degrade their dignity.

In 2019, Atuahene received a Soros Equality Fellowship for her work. She also took part in a congressional field hearing in Detroit centered on affordable housing, hosted by U.S. Representative Rashida Tlaib. During the meeting, Atuahene noted, “This is a Detroit problem. This is a Michigan problem. This is a national problem.”

Legal Tech for Non-Lawyers
ABF Faculty Fellow Rebecca Sandefur leads the ABF’s Access to Justice research initiative. Her latest report, Legal Tech for Non-Lawyers: Report of the Survey of U.S. Legal Technologies, examines an expansive list of digital tools that help a range of users to act on a legal problem. Legal Tech for Non-Lawyers assesses how legal technology tools can assist people who do not practice law in dealing with legal challenges, with a focus on bridging the access to justice gap for low-income communities and others who have restricted access to law and legal services. Her findings reveal:
• Over 320 digital legal tools for nonlawyer users exist for US jurisdictions, offering assistance with a range of both criminal (e.g., arrest, police stops, expungement) and civil (e.g., family, housing, health, employment) justice problems.
• Just over half of tools (52%) assist the user in taking some action on a justice problem, such as producing a legal document, compiling evidence, diagnosing a legal problem, or resolving a dispute.
• Using many of the tools requires resources or capabilities that some groups and communities are unlikely to have. The same groups often unable to access traditional lawyer assistance—such as people with low incomes, racial minorities, and people with lower levels of education—are also less likely to be able to use digital tools.

Sandefur conducted the study with the assistance of Alice Chang, Taemesha Hyder, Sajid Khurram, Elizabeth Prete, Matthew Schneider, and Noah Tate. Funding for the Survey came from the Open Society Foundations.

Parental Incarceration
Research is being carried out at the ABF examining the effects of mass incarceration on individuals, families and communities. With funding from the National Science Foundation, ABF Research Professor John Hagan is engaged in a multi-phase research project examining the social effects of mass incarceration and the impact of parental incarceration on children. According to Hagan’s research, approximately 700,000 inmates return to their families and communities from prison and half of these former prison inmates reentering society are parents. The project has revealed:
• More than 3 million American children have an incarcerated parent.
• The overall U.S. college graduation rate of 40% drops to 1-2% among children of mothers who are imprisoned and to about 15% for children of imprisoned fathers.
• Even if their own parents are not imprisoned, when children go to schools where 10-20% of other parents are imprisoned, the college graduation rate drops by half.

Employment Discrimination
Research conducted by ABF Research Professors Laura Beth Nielsen and Robert L. Nelson, with ABF Affiliated Scholar and University of Toronto Sociologist Ellen Berrey, illustrates how employment civil rights litigation entrenches patterns of discrimination in and out of the workplace. Though significant legislative and judicial progress has been made, workplace discrimination based on race, gender, age, and disability persists. The research reveals the ways that employment civil rights litigation can underscore existing systems of privilege. The research exposes how many plaintiffs struggle to obtain a lawyer as a result of structural inequalities and lawyer biases. The investigators found:
• 23% of workplace discrimination cases are filed without a lawyer, or pro se. Cases filed pro se are dismissed at a rate of 40%, compared to 11% for cases with attorneys.
• African Americans are 2.5 times more likely than white plaintiffs to file employment discrimination cases pro se. Other racial minorities, including Hispanics and Asians, are 1.9 times more likely to file pro se than their white counterparts.
• Lack of information about the legal system, lack of trust in lawyers and their motives, and lack of time and resources to go through the arduous process of searching for a lawyer are all “bottom up” factors that contribute to the disparity in representation.

Policing and Political Participation
Policing and police misconduct have been important topics in the news as well as for legal scholars and social scientists over the past few years. However, despite the prominence of policing on the national agenda, scholars still know very little about the extent to which police act in ways that are contrary to the public good and public safety. Primarily, this lack of information stems from a lack of data and analytical techniques that can be used to examine policing. This project is designed to address this important dearth of information. ABF Research Professor and political scientist Traci Burch has begun to identify and collect existing data on policing in order to develop measures of “problem policing.” This project is the first to attempt to measure multiple forms of problematic policing and to examine their effects both separately and simultaneously on political participation.

Preliminary results from St. Louis, Missouri indicate that voting precincts that experience higher rates of police stops vote at lower rates, even after accounting for precinct differences in socioeconomic status, race, and crime.

The Probative Versus Prejudicial Effect of Gruesome Photographs in Court
Lawyers, judges, and juries are faced with a barrage of evidence and arguments displayed in visual form—
sometimes gruesome in nature. Advances in hand-held video technology have made it commonplace for accidents and crimes to be visually recorded. In the past decade, the use of visual evidence and arguments during legal proceedings has exploded, but empirical research on the effects of these tools for visual meaning making has barely begun. Trials have always been battles over competing stories, but now these stories are being told through displays on courtroom screens. Courtroom images can influence beliefs, emotions, and judgments in ways that have never been empirically examined. This project will investigate how these emotionally evocative modes of visual evidence can affect the psychology of jurors’ decision-making processes, through influence on emotions, attention to evidence, and legal judgments at the individual and group level.

ABF Research Professor Janice Nadler and her colleagues are undertaking a set of experiments that represents a theoretically driven and nuanced evaluation of how and why emotionally evocative photographs affect guilt and punishment judgments. Nadler and her team will:

- Examine the extent to which gruesome photographs (as opposed to verbal descriptions or neutral photographs) rouse negative emotion, causing jurors to pay more selective attention to case evidence that is consistent with their emotions and away from evidence that is not consistent with them.
- Test legal safeguards such as substituting black and white photographs.
- Examine the practice of instructing the jury on the potentially prejudicial influence of photographs.
- Examine the dynamic of group deliberation.

Making and Implementing Law

Surrogate Decision Making

ABF Research Professor Susan Shapiro, using unprecedented data from two years of observation in two intensive care units at a diverse urban hospital, examined how surrogate decision makers make medical—often end of life—decisions for patients unable to speak for themselves.

In 2019, Shapiro published a book based on these findings. Speaking for the Dying: Life-and-Death Decisions in Intensive Care used real-time observations of medical decision making to offer a very different perspective on the effectiveness of advance medical directives than that suggested in previous research based on retrospective accounts. In particular, Shapiro finds:

- Medical advance directives are of limited value as few people have them, and those that exist are often ignored by decision makers and physicians.
- Advanced directives are not followed for a variety of reasons, including:
  - the directive not being in the patient’s chart.
  - the directive not accurately reflecting the patient’s wishes.
  - the directive being too abstract to provide meaningful guidance.
  - the surrogate decision makers not following the directive.
- At present, given the limitations of advance directives, the best protection for potential patients is to hold ongoing conversations with a family member who is designated to be aware of the patient’s wishes and to honor them.
Legal Defenses Against Democratic Decline

ABF Research Professor Tom Ginsburg and his University of Chicago Law School colleague Aziz Huq explore how democracies erode and how to better uphold democratic values by drawing on historic lessons and recent experiences of democratic decline worldwide. Their co-authored book, *How to Save a Constitutional Democracy*, investigates the two main pathways that can lead a nation away from democracy:

- Authoritarian collapse, which is defined as the sudden and complete collapse into an authoritarian form of government, and
- Democratic erosion, which occurs when the rule of law, individual rights and competitive elections decay slowly over time.

The book offers a wealth of examples from around the world to demonstrate how, in practice, constitutional rules can both deter and accelerate decline. From Latin America to Eastern Europe, democracies have been susceptible to a single political party that eliminates political competition or would-be autocrats who have found ways to manipulate the system by undermining the checks and balances of the federal government, a robust civil society and media and individual rights.

Using these examples, the authors mount an urgent argument against complacency and for constitutional reform. They make the case that while the U.S. Constitution has endured for centuries, it does not contain the necessary provisions to slow down any potential autocrat or eroding political competition that is bent on dismantling the republic.

Economics of Human Potential

ABF Research Professor James J. Heckman is engaged in a multi-year study of the economics of human potential. His research has shown that investments in early education and healthcare for disadvantaged children from birth to age 5 helps increase the likelihood of healthier lifestyles. Heckman has shown that disadvantaged children who receive quality early healthcare and education are more likely to demonstrate self-control, follow doctors’ instructions and lead healthier lives as adults.

Heckman has also demonstrated that early childhood education helps lower the crime rate, reduce the achievement gap, and reduce the need for special education.

In late 2019, Heckman released a new co-authored paper, *The Life-Cycle Benefits of an Influential Early Childhood Program*, which compared two pre-kindergarten education programs aimed at disadvantaged children and provided the long-term cost-benefit analysis of investing in these programs over 35 years. The findings from this paper show:

- High-quality birth-to-five programs for disadvantaged children can deliver a 13% per year return on investment—a rate substantially higher than the 7-10% return previously established for preschool programs serving 3- to 4-year-olds.
- Significant gains are realized through better outcomes in education, health, social behaviors, and employment.

A Comparative History of U.S. Resistance to the Value-added Tax

This project, led by ABF Executive Director and Research Professor Ajay K. Mehrotra, seeks to explore how and why the United States has historically rejected national consumption taxes. Nearly all developed, industrialized countries, and many in the developing world, have a national consumption tax in the form of a Value-added Tax (VAT), except for the United States. This project focuses on the research question: why no VAT in the United States?

In addressing this question, this project explores three key historical periods:

- The 1920s, when tax theorists in the United States and Germany first began to conceptualize, formulate and propose crude forms of value-added taxes.
- The decades of the mid-twentieth century when the United States seriously considered but rejected national consumption taxes aimed at raising revenue for World War II. Similarly, after the war, during the U.S. occupation of Japan, American economic experts designed and implemented a proto-VAT for Japan that was adopted for a short period.
- During the 1970s and ‘80s American lawmakers considered and even supported a U.S. VAT, but eventually withdrew their support or were ousted from political office for recommending a VAT. At the same time, other developed countries, such as Japan and Canada, began to move towards a national VAT.

By focusing on these three key historical periods from a comparative perspective, this project seeks to study how and why the U.S. has failed to adopt national consumption taxes, like the VAT.