

AALS

Disability Law Section Newsletter 2023



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Letter from the Chair

Dear Section Members,

Reflecting on another year filled with research, teaching, service, and advocacy, I am proud and astounded by how much traction disability law has gotten in law schools and legal academia. This long overdue recognition has been years in the making and the fruit of extensive, rigorous, work of legal academics, most of whom work with this Section. We truly do stand on the shoulders of giants.

The year 2023 is ending with a deep sigh of relief for disability rights advocates as the Supreme Court on December 5, dismissed *Acheson Hotels v. Laufer* after deciding that the case is moot. This case could have potentially undercut enforcement of accessibility standards for places of public accommodation under Title III of the ADA done by private litigants (or "testers"). As many disability rights scholars like Ruth Colker, Sam Bagenstos, Michael Waterstone, myself, and most recently Liz Emens and Jasmine Harris, have written, the ADA has been designed to rely on private enforcement. Over the years, this practice has been stigmatized as frivolous and the plaintiffs Maligned as scammers by certain interest group and political actors.

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Having the Court forego discussions that could undercut incentives for businesses to comply with the ADA and its regulations is a positive outcome for those who care about disability rights. Yet the concurring opinion by Justice Thomas who suggested that the ADA does not assert a “right for information” but only prohibit discrimination (as if not being able to access information on a webpage while non-disabled people can does not constitute discrimination) shows just how fragile and prone to backlash disability rights are.

This year was also packed with many accomplishments by our current and past Section leadership. Two of our former chairs have gone to take on key leadership role in institutions working to promote disability justice. Jamelia Morgan established the one-of-a-kind Center for Racial and Disability Justice at Northwestern Law and Kat Macfarlane became the director of the long-standing Syracuse University College of Law Disability Law and Policy Program (following the retirement of Arlene Kanter, one the Section's founders and a leading expert in international disability law). Our former chair Katie Eyer, together with Karen Tani, uncovered under researched connections between disability right litigation and federalism in a *Yale Law Journal* feature. And our current Section Secretary Sarah Lorr received honorable mention in the 2024 AALS Scholarly Papers Competition for her article “Disabling Families” (forthcoming in the *Stanford Law Review*).

Other fabulous accomplishments by our members include the *Oklahoma Law Review* symposium “Rewriting the Script: Challenging Ableism and Advancing Justice in Sexuality, Reproduction, and Parenting for Disabled People” organized by Robyn Powell; the publication of new Cambridge University Press book “The Workplace Reimagined: Accommodating Our Bodies and Our Lives” by Nicole Buonocore Porter; the selection of Britney Wilson as a Health Law Scholar by the American Society of Law, Medicine, and Ethics and the Saint Louis University Center for Health Law Studies; and Rabia Belt becoming the first Black woman to receive tenure at Stanford Law School.

Our Section leadership prepared a terrific program for this year's AALS annual meeting aimed at diving even deeper into two areas affecting the lives of individuals with disabilities: **Reproductive Rights Meets Disability Justice** featuring Sarah Lorr, Robyn Powell, Laura Appleman, Gemma Donofrio, and myself, and **Policing and Surveillance of People with Disabilities** featuring Prianka Nair, Jamelia Morgan, Jennifer Oliva, Lydia X.Z Brown, Nicole Tuchinda, and D'Andra Millsap Shu. We hope you will join us for those incredible conversations.

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I have been honored to serve in the AALS disability law section over the past three years. I can't thank our community enough for their encouragement and support. It is impossible not to mention the tragic war in Israel and Gaza. As we celebrate the holidays, I would like to send prayers for a meaningful resolution of the conflict and for better days to come soon.

With my warmest wishes,

Doron Dorfman

2024 Disability Law Section Main Programs

Reproductive Rights Meets Disability Justice

(January 5, 2024, 2:00-3:40 pm; Independence Salon A, Level M4)

The panel will discuss the intersections between reproductive rights and disability justice, exploring how and where these independent areas of law overlap; the effect of the changing reproductive rights landscape on people with disabilities and disability law; the potential tension between disability rights commitments and access to abortion; the extent to which the law acts as both barrier and an avenue to sexual freedom for disabled people; and the legal landscape facing people with disabilities who wish to become parents.

Panelists: Laura I. Appleman, Gemma Donofrio, Doron Dorfman, Sarah Lorr, Robyn M. Powell

Policing and Surveillance of People with Disabilities

(January 6, 2024, 10:00-11:40 am; Liberty Salon, Level M4)

Panelists will discuss how policing and surveillance intersect with disability. They will discuss topics such as how policing practices impact disabled people, emerging practices—including those related to increased surveillance—that will make the problem worse, and possible ways to combat these problems.

Panelists: Lydia X.Z. Brown, Jamelia Morgan, Prianka Nair, Jennifer Oliva, D'Andra Shu, Nichole Tuchinda

2024 Disability Law Section Co-Sponsored Programs

Preparing for the Demands of an Aging Population

(January 3, 2024; 1:00-2:40 pm; Shaw, Level M3)

Panelists: Joan Foley, Barry R. Furrow, Ashvin Gandhi, Nina A. Kohn, Alison F. Lintal

The Role of Self-Narrative in Legal Scholarship

(January 4, 2024; 3:00-4:40 pm; Marquis Salon 13, Level M2)

Panelists: Katie Eyer, Rachel E. Lopez, Katherine Macfarlane, Maybell Romero, Catherine E. Smith, Etienne C. Toussaint, Terrell Woolfolk

The End of the COVID-19 Public Health Emergency: Lessons Learned and the Future of Pandemic Law

(January 5, 2024, 10:00-11:40 am; Independence Salon G, Level M4)

Panelists: Doron Dorfman, Kristin M. Madison, Medha D. Makhlof, Jordan Paradise, Ana Santos Rutschman, Tara Sklar

Best Practices for the Law Student with a Disability Experience

(January 5, 2024, 12:00-1:40 pm; Marquis Salon 15, Level M2)

Panelists: Liana Alston, Robert Dinerstein, Laura Hoffman, Susan Landrum, AJ Link, Nicole Porter

Happy Memories from 2023 AALS Disability Law Section Program



Four people sitting at a table smiling at the camera. Featuring (from left to right): Jamelia Morgan, Britney Wilson, Mark Weber, and Doron Dorfman.

More Happy Memories from 2023 AALS Disability Law Section



A group of people of different genders and races are standing in front of a screen where one person is shown on a Zoom screen. Group photo of the participants of the AALS 2022 panel “Section 504 at Fifty” featuring (from left to right): Bob Dinerstein, Jamelia Morgan, Doron Dorfman, Karen Tani (on screen), D’Andra Shu, Laura Rothstein, and Claudia Center (of DREDF).



Two women and one man in formal clothes wearing masks and looking at the camera. Featuring (from left to right): Arlene Kanter, Doron Dorfman, and Kat Macfarlane.

Disability Section Publications and Honors, 2023

Jeannette Cox

PUBLICATIONS

The "Essential Functions" Hurdle to Disability Justice, 84 OHIO ST. L.J. 493 (2023)

Doron Dorfman

PUBLICATIONS

Penalizing Prevention: The Paradoxical Legal Treatment of Preventive Medicine, 108 CORNELL L. REV. (forthcoming 2024)

Empirical Disability Legal Studies, ANN. REV. L. & SOC. SCI. (forthcoming 2024)

Mask Shaming: On Private Enforcement and Disability Politics in REGULATING THE BODY (Austin Sarat & Susanna Lee, NYU Press, forthcoming 2024)

Approving Workplace Accommodations for Patients with Long Covid — Advice for Clinicians, 388 NEW ENG. J. MED. 2115 (2023) (with Zackary D. Berger)

Physicians' Refusal to Wear Masks to Protect Vulnerable Patients – An Ethical Dilemma for the Medical Profession, JAMA HEALTH FORUM (2023) (with Mical Raz & Zackary D. Berger)

Doron Dorfman (continued)

HONORS

2023 Michael J. Zimmer Memorial Award (rising scholar who has made a significant contribution to the field of work law)

Katie Eyer

PUBLICATIONS

Transgender Constitutional Law, 171 U. PA. L. REV. 1 (2023)

Disability and the Ongoing Federalism Revolution, 133 YALE L. J. __ (forthcoming 2023) (with Karen Tani)

As-Applied Equal Protection, 58 HARV. C.R.-C.L. L. REV. __ (2024)

Anti-Transgender Constitutional Law, 77 VANDERBILT L. REV. __ (forthcoming 2024).

Sharona Hoffman

PUBLICATIONS

The Patient's Voice: Legal Implications of Patient-Reported Outcome Measures, 22 YALE J. HEALTH POL'Y, L. & ETHICS 1 (2023) (with Andy Podgurski)

Vulnerable Populations and Vaccine Injury Compensation: The Need for Legal Reform, in COVID-19 AND THE LAW: DISRUPTION, IMPACT, AND LEGACY (I. Glenn Cohen et al., eds. Cambridge University Press 2023) (with Katharine Van Tassel)

Sharona Hoffman (continued)

Key Considerations for Patient-Reported Outcome Measures, THE BILL OF HEALTH (Nov. 3, 2023)

Employers and the Future of Public Health, THE BILL OF HEALTH (Feb. 22, 2023)

HONORS

2023 Case Western Reserve University School of Law Distinguished Research Award

Katherine Macfarlane

PUBLICATIONS

Constitutional Case Assignment, 102 N.C. L. REV. (forthcoming 2024)

Teaching the Americans with Disabilities Act's Constitutionality without Othering Law Students with Disabilities in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION & EQUITY BEYOND THE FIRST YEAR (Carolina Academic Press forthcoming 2023)

Accommodation Discrimination, 72 AM. U. L. REV. (forthcoming 2023)

PROFESSIONAL NEWS

Katherine Macfarlane served as Special Counsel for Disability Rights in the U.S. Department of Education's Office for Civil Rights

Disability Section Publications and Honors, 2023

Katherine Macfarlane (continued)

Appointed Director of the Syracuse University College of Law Disability Law and Policy Program

Jamelia N. Morgan

PUBLICATIONS

On the Relationship Between Race and Disability, HARV. C.R.-C.L. L. 663 (2023)

Psychiatric Holds and the Fourth Amendment, COLUM. L. REV. (forthcoming 2024)

Elizabeth Pendo

PUBLICATIONS

Challenging Disability Discrimination in Clinical Algorithms, THE HASTINGS CENTER REPORT (invited commentary) (peer-reviewed) (with Jennifer D. Oliva)

What Can State Medical Boards Do to Effectively Address Serious Ethical Violations?, __ J. L. MED. & ETHICS __ (peer-reviewed) (forthcoming 2023) (with Tristan McIntosh et al.)

PROFESSIONAL NEWS

Visiting Researcher, *Reconceptualizing Health Law Toward Health Equity*, supported by the Brocher Foundation program in Geneva, Switzerland (2023)

Elizabeth Pendo (continued)

Investigator, *Understanding the Impact of Medicaid Expansion on Health Equity in Missouri*, funded by the Missouri Foundation for Health (with Ellen Barnidge et al.)

HONORS

Public Health Law and Civil Rights Laws Must Work Together to Rise to the Challenge of Long COVID was selected for "The End of Public Health?", a digital symposium hosted by Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School (2023).

Nicole Buonocore Porter

PUBLICATIONS

THE WORKPLACE REIMAGINED: ACCOMMODATING OUR BODIES AND OUR LIVES (Cambridge Univ. Press) (2023)

Symposium, Mothers with Disabilities Post-Pandemic and Post-Dobbs, OKLA. L. REV. (forthcoming 2024)

Nicole Buonocore Porter, *Subordination Through Schedules*, ARIZ. L. REV. (forthcoming 2024)

Robyn M. Powell

PUBLICATIONS

Under the Watchful Eye of All: Disabled Parents and the Family Policing System's Web of Surveillance, 112 CAL. L. REV. (forthcoming 2024)

Forced to Bear, Denied to Rear: The Cruelty of Dobbs for Disabled People, 112 GEO. L.J. (forthcoming 2024)

Care Reimagined: Transforming Law by Embracing Interdependence, 122 MICH. L. REV. (forthcoming 2024)

Legal Ableism: A Systematic Review of State Termination of Parental Rights Laws, 101 WASH. U. L. REV. 423 (2023)

Including Disabled People in the Battle to Protect Abortion Rights: A Call-to-Action, 70 UCLA L. REV. 774 (2023)

Blake E. Reid

HONORS

Awarded 2023 H. Latham Breunig Humanitarian Award, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) (for clinical work)

Disability Section Publications and Honors, 2023

Jessica L. Roberts

PUBLICATIONS

Algorithmic Discrimination and Health Equity, in RESEARCH HANDBOOK IN HEALTH, AI, AND THE LAW (I. Glenn Cohen & Barry Solaiman, eds.) (Edward Elgar forthcoming 2023) (with Peter Salib)

Age and Disability Discrimination in the Pandemic, in COVID-19 AND THE LAW: DISRUPTION, IMPACT AND LEGACY (I. Glenn Cohen, Abbe Gluck, Katherine Kraschel & Carmel Shachar, eds.) (Cambridge University Press 2022) (with Govind Persad)

Polygenic Risk Scores in Child and Adolescent Psychiatry: Ethical, Clinical, and Legal Implications, NIH Grant, Co-Investigator (Head of Legal Aim), 2022-2026

Cases in Precision Medicine: Is There an Obligation to Return Reinterpreted Genetic Results to Former Patients? (with Paul S. Appelbaum, Sara M. Berger, Wylie Burke, Erik Parens, & Wendy K. Chung), *ANNALS INTER. MED.* (2023).

Jessica L. Roberts (continued)

Practical Considerations for Reinterpretation of Individual Genetic Variants (with Paul S. Appelbaum, et al.), *GENETIC MED.* (2023)

D'Andra Millsap Shu

PUBLICATIONS

DISABILITY LAW: CASES, MATERIALS, PROBLEMS (7th ed. 2023) (with Laura Rothstein and Ann C. McGinley).

Karen M. Tani

PUBLICATIONS

The Disability Docket, 72 *AM. U. L. REV.* 1709 (2023) (with Jasmine E. Harris & Shira Wakschlag)

After 504: Training the Citizen Enforcers of Disability Rights, 42 *DISABILITY STUD. Q.* (2023)

Britney R. Wilson

HONORS

Britney Wilson was selected as a Health Law Scholar by the American Society of Law, Medicine, and Ethics and the Saint Louis University Center for Health Law Studies.

Mark C. Weber

PUBLICATIONS

UNDERSTANDING DISABILITY LAW (Durham, N.C.: Carolina Academic Press 4th ed. forthcoming 2024)

Resolving the Paradox of Payroll-Tax-Based Social Insurance for Disability: Lessons from the Canada Disability Benefit Act, 61 *OSGOODE HALL L.J.* (forthcoming 2024)

Special Education Cause Lawyers, 74 *CASE WESTERN RESERVE LAW REV.* (forthcoming 2024)

Abandoning Metaphors and Reclaiming Impairment, *JOTWELL* (Nov. 7, 2023)