

# SECTION ON AGING & THE LAW NEWSLETTER WINTER 2020-21

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## **MESSAGE FROM THE CHAIR –**

**Naomi Cahn**

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Dear Section Members,

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Hi everyone. It's been quite an eventful year. When we met last January, we were anticipating the roller-coaster ride of an election year, but not a pandemic. The pandemic prompted our first summer program, coordinated by Katie Liss (DePaul) and Section leadership, that featured Nina Kohn (Syracuse), on how to teach effectively online.

The tragic events highlighting the ongoing, and even more urgent need for attention to racial justice/injustice throughout society and in the curriculum, prompted a Section program that developed a list of resources set out later in the newsletter.

With all these and other developments, the topic of the Section's program at the annual meeting, aging and intersectionality, is timely. We are thrilled that the program has a number of other sections co-sponsoring it, as described below. Mark your calendars to attend this program, scheduled for Wednesday, Jan. 6, from 2:45-4:00 pm ET. It will be preceded by our Section's networking session, scheduled for Wednesday, Jan. 6, from 12:15-1:15 pm ET. Mary Helen McNeal will assume leadership of the Section following the meeting. The Section is also co-sponsoring another program with the Section on Poverty. Given the compressed AALS schedule, however, the first part of that program is in direct conflict with ours, but we can all "head over" (via Zoom) to that program when ours is done.

## Section on Aging & the Law Officers

Chair: Naomi Cahn  
Justice Anthony M. Kennedy Distinguished Professor of Law  
Nancy L. Buc '69 Research Professor in Democracy and Equity  
Director, Family Law Center  
University of Virginia School of Law  
[ncahn@law.virginia.edu](mailto:ncahn@law.virginia.edu)

Chair-Elect: Mary Helen McNeal  
Professor and Director, Elder and Health Law Clinic  
Syracuse University Law School  
[mhmcneal@law.syr.edu](mailto:mhmcneal@law.syr.edu)

Secretary/Newsletter Editor: Jalila Jefferson-Bullock  
Associate Professor  
Duquesne University School of Law  
[jeffersonbulloj@duq.edu](mailto:jeffersonbulloj@duq.edu)

Treasurer:  
Alexander A. Boni-Saenz  
Associate Professor  
Chicago-Kent College of Law  
Illinois Institute of Technology  
[abonisa@kentlaw.itt.edu](mailto:abonisa@kentlaw.itt.edu)

Executive Committee:  
Joan Foley  
Kermit Gitenstein Distinguished Professor of Health Law and Policy  
Professor of Legal Process  
Touro College Jacob D. Fuchsberg Law Center

Jessica Dixon Weaver  
Robert G. Storey Distinguished Faculty Fellow  
Gerald J. Ford Research Fellow  
Associate Professor of Law  
SMU Dedman School of Law

Richard Kaplan  
Guy Raymond Jones Chair in Law  
University of Illinois College of Law

Alicia Kelley  
Associate Dean for Academic Affairs  
Professor of Law  
Widener University Delaware Law School

Nina A. Kohn  
David M. Levy L'48 Professor of Law  
Faculty Director of Online Education  
Syracuse University College of Law

Browne C. Lewis  
Dean  
NC Central School of Law

Rebecca Morgan  
Boston Asset Management Chair in Elder Law  
Director, Master of Jurisprudence Health Care Compliance  
Professor of Law  
Stetson Law

Finally, we welcome the involvement of Section members. The programs on racial justice and pedagogy came into existence because of the initiative of Section members.

Thank you!

Happy grading and here's to a healthy, safe and just year!

## ANNUAL MEETING INFORMATION

### AGING & THE LAW PROGRAM

#### **Networking Session**

Wednesday, Jan. 6, 12:15  
p.m. – 1:15 p.m. EST

#### ***Intersectionality, Aging, and the Law***

Co-Sponsored by AALS  
Sections on Civil Rights,  
Disability Law, Family &  
Juvenile Law, Minority Groups,  
Poverty Law, Sexual  
Orientation & Gender Identity  
Issues, Trusts & Estates, and  
Women in Legal Education

Wednesday, Jan. 6, 2:45  
p.m. - 4:00 p.m. EST

The program focuses on  
intersectionality and aging.

Participants will address this subject from numerous perspectives. The topics include structural discrimination based on race and gender, demographic changes, age diversity, wealth inequality, and the impact of the pandemic on autonomy and rationing. The conception of the program is broad.

Moderator: Jalila Jefferson-Bullock (Duquesne)

Panelists:

Alexander Boni-Saenz (Chicago-Kent), *Age Diversity*

Naomi Cahn (UVA) & Nina Kohn (Syracuse), *How Law and Sex Shape What It Means to Be Old*

Veronica C. Gonzales-Zamora (UNM), *The Triple Threat: Millennium Women of Color*

Jessica Mantel (Houston), *Allocating Scarce Medical Resources During a Pandemic: Rationing Based on Age is not the Same as Rationing Based on Disability*

Katherine Pearson (PSU), *Pandemic Protections: Where is the Line in Patient Autonomy?*

Tara Sklar (U Arizona), *Frailty, Vulnerability, and Big Data*

Ruqaiyah Yearby (SLU), *The Dark (Trinity): How Structural Discrimination, Wealth Inequalities, and Lack of Access to Health Care Cause Health Disparities for Elderly Women of Color*

Co-sponsored program:

### ***Civil Rights in a Time of Coronavirus***

Section on Civil Rights and Poverty Law Joint Program, Co-Sponsored AALS Sections on Aging & the Law and Comparative Law

Wed., Jan. 6, 2:45-5:30 pm

## **SECTION LEADERSHIP**

The Section on Aging and the Law held its elections for leadership positions for the 2021-2022 year via email. We are delighted to announce the following slate has been elected by acclamation:

Chair: Mary Helen McNeal (Syracuse)

Chair-Elect: Jalila Jefferson-Bullock (Duquesne)

Secretary: Alex Boni-Saenz (IIT-Chicago Kent Law)

Treasurer: Katie Liss (DePaul)

Exec. Comm.: Naomi Cahn (UVA), Joan Foley (Touro), Richard Kaplan (Illinois), Alicia Kelley (Widener-Delaware), Nina Kohn (Syracuse), Browne Lewis (NCCU), Rachel Lopez (Drexel), Rebecca Morgan (Stetson), and Jessica Dixon Weaver (SMU).

## **SECTION PROGRAM RESOURCES – Addressing Racial Justice Issues in Class**

compiled by Katie Liss, DePaul

### **Course Suggestions:**

- Update your syllabus to set clear expectations: create learning objectives on racial justice and/or add supplemental materials upfront, if necessary

- Suggest a new learning outcome on racial justice: (i.e. “Identify how current estate and disability planning furthers structural racism and inequity, strategies to address those inequities, why BIPOC clients are underserved by the profession, and how to effectively provide needed services to these client constituencies.”)
- Have students bring in current topics/articles to discuss on a weekly basis
- Bring in an elder law attorney of color to talk with your class
- Topics to generate discussions on racial justice: wealth gaps, home ownership, impact of redlining, retirement contributions, healthcare/Medicaid planning, disparities in the criminal justice system with respect to graying prisons

### **Clinic Suggestions:**

- Direct outreach to the community to build trust (i.e. network with legal aid organizations, churches)
- Develop modules on how to help students find their voice when microaggressions occur in the class

### **Case Law:**

*Chaney v. Plainfield Healthcare Center*, 612 F.3d 908 (7th Cir. 2010).

### **Articles:**

- *The Effect of Health and Penal Harm on Aging Female Prisoners' Views of Dying in Prison*, by Wahidin and others, published 2010 and available from Omega - Journal of Death and Dying
- *Let My People Go: A Call for the Swift Release of Elderly Prisoners in the Wake of COVID-19*, 32 FEDERAL SENTENCING REPORTER 286 (June 2020).
- *Consensus, Compassion, and Compromise?: The FIRST Step Act and Aging Out of Crime*, 32 FEDERAL SENTENCING REPORTER 70 (December 2019).
- *Quelling the Silver Tsunami: Compassionate Release of Elderly Offenders*, 79 OHIO ST. L. J. 937 (2018).
- Racial Disparities in nursing Homes:
  - <https://www.washingtonpost.com/business/2020/09/09/black-nursing-homes-coronavirus/>
  - <https://www.nytimes.com/2020/06/21/business/nursing-homes-evictions-discharges-coronavirus.html?fbclid=IwAR24Oyq2FVhjOuVYA4OWNTuslpM1x04O1e1W5xpfY5pqFJ1i1LKAi6yeJ5M>
  - <https://www.nytimes.com/article/coronavirus-nursing-homes-racial-disparity.html>
- Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment: <https://jle.aals.org/cgi/viewcontent.cgi?article=1562&context=home>
- 5 Ways Law Students Can Interrupt Implicit Bias: <https://abaforlawstudents.com/2018/05/29/5-ways-law-students-can-interrupt-implicit-bias/>
- How to Practice Anti-Racism in Law School: <https://lawschooltoolbox.com/how-to-practice-anti-racism-in-law-school/>

### **Resource Guide:**

- <https://lawlibguides.seattleu.edu/estate>

## ANNOUNCEMENTS

### Stetson's JOURNAL OF AGING LAW & POLICY Call for Papers

Stetson's Journal of Aging Law & Policy, the preeminent journal for cutting-edge issues of national and international aging law and policy, is seeking articles for its Volume 13, which will be published in May 2022. Stetson's Journal of Aging Law & Policy is a unique journal with an elder law emphasis that also focuses on both law and policy. If you are interested in submitting an article for publication, please email Nicholas Marler, Managing Editor, at [nmarler@law.stetson.edu](mailto:nmarler@law.stetson.edu). Submission requirements: Articles must be in 12-point font and double spaced. Citations should be in accordance with either the ALWD or BlueBook citation manuals and the article must be related to a relevant elder law topic. Submission preferences: The Journal seeks articles that are between 10,000 and 20,000 words. However, consideration may be given to articles that fall outside of this word requirement. Questions should be directed to Nicholas Marler, Managing Editor, at [nmarler@law.stetson.edu](mailto:nmarler@law.stetson.edu).

### University of Arizona

The Health Law & Policy Program has launched a fully online, multidisciplinary **Graduate Certificate in Aging Law & Policy**. We welcome speakers to present on hot topics and emerging issues in the field as part of this new program. Visit <https://law.arizona.edu/aging-law-and-policy-graduate-certificate> for more information. If interested in being a speaker, then email [law-healthcare@arizona.edu](mailto:law-healthcare@arizona.edu).

## NEWS AND NEWSWORTHY

### Alexander A. Boni-Saenz:

#### Publications:

Alexander A. Boni-Saenz, *Age Diversity*, 94 SOUTHERN CALIFORNIA L. REV. \_\_ (forthcoming 2021).

Alexander A. Boni-Saenz, *Empirical Inheritance Law*, 53 U.C. DAVIS L. REV. 2641 (2020).

Alexander A. Boni-Saenz, *Age, Equality, and Vulnerability*, 21 THEOR. INQ. LAW 161 (2020).

Alexander A. Boni-Saenz, *Are Sex Robots Enough?*, \_\_ J. MED. ETHICS \_\_ (2020) (Commentary on Nancy S. Jecker, *Nothing to be Ashamed of: Sex Robots for Older Adults with Disabilities*, \_\_ J. MED. ETHICS \_\_ (2020)).

### Naomi Cahn:

#### Publication:

*Changing Demographics, Elder Law, and Trusts and Estates*, \_\_ ACTEC L.J. \_\_ (forthcoming 2021).

## Media:

“Returning to Work, Disability, and Covid-19,” Forbes (May 7, 2020),

<https://www.forbes.com/sites/naomicahn/2020/05/07/three-lessons-on-work-disability-and-covid-19/?sh=2ee483b37045>.

“Five Tips to Decrease Social Isolation for Older People During COVID-19,” Forbes (Mar. 18, 2020),

<https://www.forbes.com/sites/naomicahn/2020/03/18/five-tips-to-decrease-social-isolation-for-older-people-during-covid-19/?sh=3c3d67b64095>.

## Blog:

“Loving Our Elderly Neighbor During the Coronavirus” (with Amy Zietlow), Inst. Fam. Stud. Blog (Mar. 16, 2020).

## **Lawrence Frolik:**

### Publications/Books:

WHY DID I WALK INTO THIS ROOM: A THINKING PERSON’S GUIDE TO GROWING OLDER (2020 Carolina Academic Press) (with Kenney Hegland).

WISE MOVES: CHECKLIST FOR WHERE TO LIVE, WHAT TO CONSIDER, AND WHETHER TO STAY OR GO (2020 joint publication by AARP and ABA) (with Sally Balch Hurme).

## **Jalila Jefferson-Bullock:**

### Publications:

*A Little Child Shall Lead Them: Juvenile Justice, Aging Out, and the FIRST Step Act*, \_\_ TENN. L. REV \_\_ (2020).

*Let My People Go: A Call for the Swift Release of Elderly Prisoners in the Wake of COVID-19*, 32 FEDERAL SENTENCING REPORTER 286 (June 2020).

### Presentations:

*The Impact of Covid-19 on Congregate Facilities*, ABA Section of State and Local Government Law, virtual.

*Let My People Go: A Call for the Swift Release Offenders in the Wake of COVID-19*, University of Miami School of Law, virtual.

## **Richard Kaplan**

### **Presentations:**

*Compensating Family Caregivers: Why, When, and How*, 46th Annual Midwest Estate, Tax & Business Planning Institute, Indianapolis; Annual Family Law Symposium, DePaul University College of Law, Chicago.

*When Cities Compete for Employers: A Policy Analysis of Tax Incentives*, 6th International and Comparative Urban Law Conference, Sydney.

*What the Income Tax Debate in Illinois is All About*, League of Women Voters, Champaign.

*Income Tax Responses to the COVID-19 Pandemic*, University of Illinois Law Alumni, virtual.

*A 4-Letter Response to COVID-19: PLAN*, Rotary Club, virtual.

## **Tara Sklar:**

### **Publications:**

*The Return of Typhoid Mary? Immigrant Workers in Nursing Homes*, \_\_\_ J. OF ELDER POL'Y \_\_\_ (forthcoming 2021) (with Shefali Milczarek-Desai).

*Preparing the Healthcare Workforce for an Aging Population* in Social Determinants of Healthy Aging: A Public Health Perspective, Aaron Guest & Elaine Jurkowski, eds., (American Public Health Association Press, forthcoming 2021) (with Robyn Golden, Michelle Newman, and Shenita Freeman).

*Telehealth for an Aging Population: How Can Law Influence Adoption Among Providers, Payors, and Patients?*, 46 AM. J. LAW & MED. 311 (2020) (with Christopher Robertson).

*Digital Health Privacy and Age: Quality and Safety Improvement in Long-Term Care*, 17 IND. HEALTH L. REV. 85 (2020) (with Rachel Zuraw).

*Implementation and Enforcement of Quality and Safety in Long-Term Care*, in Assessing Legal Responses to COVID-19, Scott Burris, Sarah de Guia, Lance Gable, Donna Levin, Wendy Parmet, Nicolas Terry, eds. (2020).

*Why Aren't Nursing Home Aides Exposed to COVID-19 Taking Paid Sick Leave*, The Conversation, November 24, 2020 (with Shefali Milczarek-Desai).

*How COVID-19 Could Drive Improvements in Care Facilities*, Petrie-Flom Center at Harvard Law School, Bill of Health, June 10, 2020 (with Nicolas Terry).

*States are Making it Harder to Sue Nursing Homes over COVID-19: Why Immunity from Lawsuits is a Problem*, The Conversation, June 9, 2020 (with Nicolas Terry).

Media:

*COVID-19 highlighted ignored nursing home issues, new research shows,”* KTAR News, September 14, 2020.

*Report Says COVID-19 Brought Light to Issues in Nursing Homes,* KOLD News, September 11, 2020.

*As COVID-19 Ravaged Nursing Homes, it Highlighted Longstanding Problems, UArizona Expert Says,”* UA News, September 10, 2020.

*First the police, now it's long-term care's turn to face 'defunding' calls,* McKnight's Long-Term Care News, September 10, 2020.

Thank you! We hope to see you in January at the Annual Meeting!