

AALS

Disability Law Section

Newsletter 2020



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Letter from the Chair

Dear Section Members,

Few of us at the Annual Meeting in January of 2020 could have imagined what 2020 would bring: a global pandemic, massive protests for racial justice, a historically tumultuous election. For all of us, this year has brought times of fatigue, worry, and stress. For many of us, responses to the pandemic have further highlighted the divisions within our society and who is deemed “disposable” (people of color, people with disabilities, service workers). We should all be proud that many members of this Section have been vital actors in ensuring that even amidst this pandemic, no lives are treated as disposable.

But even as 2020 has been a time of genuine difficulty and struggle, it has also been a time of unusual potential for change. Massive protests for racial justice have put structural solutions to police violence—like moving resources from police departments to mental health intervention—on the mainstream agenda. The explosion of employees working remotely from home has called into question long-dominant assumptions about whether “full time face time” is indeed an essential part of most jobs. While widespread change has not yet arrived, it seems more possible than at many moments in the recent past.

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Against this backdrop, the two Section programs that the Disability Law Section is bringing to you this year—**“Disability and Intersectionality: Celebrating 30 Years of Intersectionality and the ADA”** and **“Disability and COVID-19: Lessons from Disability, Lessons from the Pandemic”**—seem like especially vital conversations to be having. Both panels take place on Friday, January 8: Disability and Intersectionality takes place from 11 AM-12:15 PM (Eastern) and Disability and COVID-19, from 2:45-4 PM (Eastern).

“Disability and Intersectionality: Celebrating 30 Years of Intersectionality and the ADA” will bring together leading scholars doing work at the intersection of disability and other characteristics, including race, immigration status, gender, and socio-economic status. Although we had selected this topic prior to the major events of 2020, those events have further emphasized the ways in which disability and other axes of disadvantage are often intertwined in our society. Many of the people of color whose deaths have sparked protest this year, such as Walter Wallace Jr. and Daniel Prude, have also been people with physical or mental health disabilities. And the impact of the COVID-19 pandemic has fallen especially harshly on those with disabilities or health conditions who are also members of immigrant and BIPOC communities. We are fortunate to have joining us for this panel a group of scholars doing innovative, cutting-edge work on disability intersectionality, including Rabia Belt, Sarah Lorr, Jamelia Morgan, Katherine Perez, and Jennifer Shinall.

“Disability and COVID-19: Lessons from Disability, Lessons from the Pandemic” brings together an equally distinguished group of scholars to talk about issues relating to disability and COVID-19, including Samuel Bagenstos, Doron Dorfman (moderator), Jasmine Harris, Arlene Kanter, and Katherine Macfarlane. As the pandemic has unfolded it has offered us a window—often discouraging—into how our society (de)values the lives of people with disabilities. Healthcare rationing along disability-based lines, the emergence of discourses that suggest prioritizing economic growth over those with underlying health conditions, and the relative lack of concern regarding the devastating impacts of COVID-19 on those in congregate care, have all put on display what Jasmine Harris has referred to as “the frailty of disability rights.” But at the same time, the pandemic itself, and responses to it, may provide new opportunities for rethinking how society, work and play are structured, in ways that could promote disability inclusion and justice. *(continued on next page)*

In short, the pandemic has laid bare our limited commitment as a society to disability justice, even as it offers opportunities for challenging the necessity or “naturalness” of disability-exclusionary policies, practices and structures.

The Section's leadership has also continued to engage in meaningful work beyond the annual meeting programming. Our Chair-Elect (soon to be Chair) Katherine Macfarlane has continued to work to bring to fruition an Affinity Section for Law Professors with Disabilities and their Allies within the AALS structure. (If you are interested in potentially joining such a Section, please reach out to Kat at kmacfarlane@uidaho.edu). And our Secretary (soon to be Chair-Elect), Jamelia Morgan, launched a disability works in progress series, which has provided invaluable feedback to numerous scholars. It has been both a pleasure and a privilege to work with both Kat and Jamelia, and with the broader Disability Law Section Executive Committee.

Finally, in the months that follow, look out for a symposium issue of the AALS Journal of Legal Education, spearheaded by Karen Tani and Lilit Siegel, regarding disability in legal education (and the experiences of disabled law students), to which several section members have contributed. As this issue makes clear, the work of building toward disability justice remains critically incomplete within our own profession. To that end, as we turn toward 2021, it is important that we continue to work to identify and to dismantle ableism and disability exclusion within our own spaces, even as we also address such issues in the wider world.

Katie Eyer, Chair

2021 Disability Law Section Programs

Program #1: Disability and Intersectionality: Celebrating 30 Years of Intersectionality and the ADA

Friday January 8, 11 AM-12:15 PM EST

Participants: Rabia Belt, Katie Eyer (moderator), Sarah Lorr, Jamelia Morgan, Katherine Perez, and Jennifer Shinall.

Program #2: Disability and COVID-19: Lessons from Disability, Lessons from the Pandemic

Friday January 8, 2:45-4 PM EST

Participants: Sam Bagenstos, Doron Dorfman (moderator), Jasmine Harris, Arlene Kanter, and Katherine Macfarlane.

Program #3: Intersectionality, Aging, and the Law (Section on Aging and the Law program, co-sponsored by our section)

Wednesday January 6, 2:45-4:00 PM EST

Participants: Naomi Cahn, Veronica Gonzales-Zamora, Jalila Jefferson-Bullock (moderator), Nina Kohn, Katherine Pearson, Tara Sklar, and Ruqaiyah Yearby.

Disability Section Publications and Honors, 2020

Valarie Blake

PUBLICATIONS

Health Care Civil Rights Under Medicare for All, 72

HASTINGS L.J. ___ (2021)(forthcoming)

Rewritten Opinion: Doe v. Mutual of Omaha in FEMINIST JUDGMENTS: REWRITTEN HEALTH LAW OPINIONS (Seema Mohapatra & Lindsey F. Wiley eds., forthcoming 2020)

Sex Discrimination in Health Care: LGBTQ Rights After Bostock, CAL. L. REV. ONLINE (2020)(forthcoming)(with Ashley Stephens & Amy Post)

Filling a Federal Void: Promises and Perils of State Law in Addressing Women's Health Disparities, 48 J. MED. ETHICS 485 (2020)(with Michelle McGowan)

Lexis Civil Rights & Strategy Series: Federal Health Care Law (LexisNexis 2020)

HONORS

Awarded Tenure and Full Professor Status, West Virginia University College of Law

Nicole Buonocore Porter

PUBLICATIONS

EMPLOYMENT DISCRIMINATION LAW: CASE AND MATERIALS ON EQUALITY IN THE WORKPLACE (West Academic, 10th Ed. forthcoming 2020) (with Maria L. Ontiveros, Roberto L. Corrada, Michael Selmi & Marcia McCormick)

Buonocore Porter (Continued)

DISABILITY LAW, CASES AND MATERIALS (West Academic, 2nd Ed. forthcoming 2021)(with Stephen Befort)

Accommodating Pregnancy Five Years After Young v. UPS: Where We Are and Where We Should Go, ST. LOUIS J. OF HEALTH L. & POL'Y (forthcoming 2021)

Adverse Employment Actions in Failure to Accommodate Cases: Much Ado About Nothing, 95 NYU L. Rev. Online 1 (2020)

HONORS

Awarded the Paul Steven Miller Memorial Award

Doran Dorfman

PUBLICATIONS

Suspicious Species, 2021 U. ILL. L. REV. (forthcoming 2021)

The Professionalization of Urban Accessibility, 47 FORDHAM URB. L.J. (forthcoming 2020)(with Mariela Yabo)

Disability Rights and Evolving Crisis Standards of Care (working title), J. HEALTH POL. & POL'Y (forthcoming 2021)(with Ari Ne'eman, Zackary Berger & Michael Ashley Stein)

Dorfman (Continued)

Reweighting Medical Civil Rights, 72 STAN. L. REV. ONLINE 176 (2020)(with Rabia Belt)

Disability Rights as a Necessary Framework for Crisis Standards of Care and the Future of Health Care, 50 HASTINGS CENT. REP. 28 (2020)(with Laura Guidry-Grimes et al.)

[Un]Usual Suspects: Deservingness, Scarcity, and Disability Rights, 10 U.C. IRVINE L. REV. 557 (2020)

Commentary: *Olmstead v. L.C.* in FEMINIST JUDGMENTS: REWRITTEN HEALTH LAW OPINIONS (Seema Mohapatra & Lindsay F. Wiley, eds. Cambridge U.P., forthcoming 2021)

The Universal View of Disability and its Danger to the Civil Rights Model, in BOUNDARIES OF DISABILITY: CRITICAL PERSPECTIVES (Licia Carlson and Matthew Murray, eds., Routledge, forthcoming 2021)

Disability Section Publications and Honors, 2020

Katie Eyer

PUBLICATIONS

Claiming Disability, 101 B.U. L. REV. (2021)(forthcoming)

Disability Identity and Law Faculty: Opportunities for Addressing Bias Within the Profession, __ J. LEGAL EDUCATION __ (2021)(forthcoming)

Progressive Textualism and LGBTQ Rights, <http://www.scotusblog.com/2020/06/symposium-progressive-textualism-and-lgbtq-rights/> (2020)(SCOTUSblog Symposium on *Bostock v. Clayton County*)

Irrational Inequality: The Role of Fact-Based Review in Equality Change, 73 VAND. L. REV. EN BANC 177 (2020)

Ann C. McGinley

PUBLICATIONS

Enough!: Eliminating Police Abuse of Individuals of Color with Disabilities, 21 Nev. L. J. __ (forthcoming 2021)

Intersectional Cohorts, Dis/ability, and Class Actions, 47 Ford. Urb. L. J. 293 (2020)(with Frank Rudy Cooper)

Jamelia Morgan

PUBLICATIONS

Policing under Disability Law, __ STAN. L. REV. __ (forthcoming 2021)

Policing Marginality in Public Space, __ OHIO ST. L.J. __ (forthcoming)(symposium essay)

Rethinking Disorderly Conduct, 109 CALIF. L. REV. __ (2021) (forthcoming)

The Paradox of Inclusion: Applying Olmstead's Integration Mandate in Prisons, __ GEO. J. ON POVERTY L. & POL'Y __ (forthcoming 2020)

Toward a Disability Critical Race Theory (DisCrit) Approach to American Law, in DISCRIT EXPANDED: INQUIRIES, REVERBERATIONS & RUPTURES (Annamma, et al. forthcoming 2020)

Elizabeth Pendo

PUBLICATIONS

Substance Use Disorder, Discrimination, and the CARES Act: Using Disability Law to Strengthen New Protections, __ ARIZ. STATE L. REV. __ (2021)(forthcoming)

Pendo (Continued)

Protecting the Rights of People with Disabilities in ASSESSING LEGAL RESPONSES TO COVID-19 (Scott Burris, et al., eds. Boston: Public Health Law Watch)(Aug. 2020)

Ensuring the Reproductive Rights of Women with Intellectual Disability, J. of Intellectual & Development Disability (2020) (with Nicole Agaronnik, Tara Legu, Christene DeJong, Aixa Perez-Caraballo & Lisa I. lezzoni)

The Americans with Disabilities Act and Healthcare Employer-Mandated Vaccinations, 38(16) VACCINE 3179 (Apr. 3, 2020)(with Y. Tony Yang & Dorit Rubinstein Reiss)

Disability Section Publications and Honors, 2020

Pendo (Continued)

The Role of Law and Policy in Achieving Healthy People's Disability and Health Goals around Access to Health Care, Activities Promoting Health and Wellness, Independent Living and Participation, and Collecting Data in the United States, Rockville (MD) Dept. of Health and Human Services, Office of Disease Prevention and Health Promotion (ODPHP) (Mar. 12, 2020) (with Lisa I. Iezzoni)

ETHICAL CHALLENGES IN DISCHARGE PLANNING: STORIES FROM PATIENTS, NARRATIVE INQUIRY IN BIOETHICS (2020)

Sex-Based Discrimination in Health Care Under Section 1557: The New Final Rule and Supreme Court Developments, 33(1) THE HEALTH LAWYER 1 (Oct. 11, 2020) (with Brietta R. Clark & Gabriella Garbero)

Resolving Tensions Between Disability Rights Law and COVID-19 Mask Policies, 80 MD. L. REV. ONLINE 1 (2020) (with Robert Gatter & Seema Mohapatra)

The Americans with Disabilities Act in the COVID-19 Workplace in WORK LAW UNDER COVID-19 (Jeffrey M. Hirsch & Sanchin S. Pandya, eds.) (Oct. 4, 2020)

Blocked from the Ballot Box: People with Disabilities, ABA Section on Civil Rights and Social Justice (June 26, 2020)

Pendo (continued)

COVID-19 and Disability-Based Discrimination in Health Care, ABA Commission on Disability Rights (May 22, 2020)

Michael L. Perlin

PUBLICATIONS

"But I Ain't A Judge": The Therapeutic Jurisprudence Implications of the Use of Non-Judicial Officers in Criminal Justice Cases, 64 AM. BEHAV. SCI. 1686 (2020)

"A Self-Ordained Professor's Tongue": Therapeutic Jurisprudence in the Classroom, INTERNATIONAL SOCIETY FOR THERAPEUTIC JURISPRUDENCE, OCCASIONAL PAPERS SERIES #1 (Oct. 4, 2020),

"Deceived Me into Thinking/I Had Something to Protect": A Therapeutic Jurisprudence Analysis of When Multiple Experts Are Necessary in Cases in which Fact-finders Rely on Heuristic Reasoning and "Ordinary Common Sense", 13 LAW J. SOC'L JUST. 88(2020)

"See This Empty Cage Now Corrode": The International Human Rights Implications of Sexually Violent Predator Laws, 23 NEW CRIM. L. REV. 388 (2020) (with Heather Ellis Cucolo)

Perlin (Continued)

"A World of Steel-Eyed Death": An Empirical Evaluation of the Failure of the Strickland Standard to Ensure Adequate Counsel to Defendants with Mental Disabilities Facing the Death Penalty, 53 U. MICH. J. L. REF. 261 (2020) (with Talia Roitberg Harmon & Sarah Chatt)

Why Lawyers and Forensic Mental Health Professionals Must be Trauma-Informed, Foreword to ASSESSING TRAUMA IN FORENSIC CONTEXTS VII (Rafael Javier et al. eds. 2020)

"I Met Another Man Who Was Wounded with Hatred": How We Ignore the Sexual Needs and the Sexual Actions of Persons with Intellectual Disabilities, in INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AND THE CRIMINAL JUSTICE SYSTEM (Voula Marinos et al. eds. 2020) (with Heather Ellis Cucolo & Alison J. Lynch)

ADVANCED INTRODUCTION TO MENTAL DISABILITY LAW (Elgar Publ.) (2021)

JUSTICE OUTSOURCED: THE THERAPEUTIC JURISPRUDENCE IMPLICATIONS OF JUDICIAL DECISION-MAKING BY NON-JUDICIAL OFFICERS (Temple U. P.) (2021)

Disability Section Publications and Honors, 2020

Perlin (Continued)

"You That Build the Death Planes": Bob Dylan, War and International Affairs, 37 ARIZ. J. INT'L & COMPAR. L. __ (2020)

"Something's Happening Here/But You Don't Know What It Is": How Jurors (Mis)Construe Autism in the Criminal Trial Process, __ U. PITT. L. REV. __ (2020)(with Heather Ellis Cucolo)

"Man Is Opposed to Fair Play": An Empirical Analysis of How the Fifth Circuit Has Failed to Take Seriously Atkins v. Virginia, __ WAKE FOREST J.L. & POL'Y __ (2021)(with Talia Roitberg Harmon & Sarah Wetzel)

OTHER NEWS

Performed with the New Jersey Symphony

Robyn Powell

PUBLICATIONS

Responding to the Legal Needs of Parents with Psychiatric Disabilities: Insights from Interviews with Parents, 38 LAW & INEQ. 69 (2020)(with Susan L. Parish, Monika Mitra, & Joanne Nicholson)

Confronting Eugenics Means Finally Confronting its Ableist Roots, 27 WM. & MARY J. WOMEN & L. __ (forthcoming)

Powell (Continued)

Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19, 98 WASH. L. REV. __ (forthcoming)

Barriers and Facilitators to Compliance with the Americans with Disabilities Act by the Child Welfare System: Insights from Interviews with Disabled Parents, Child Welfare Workers, and Attorneys, 32 STAN. L. & POL'Y REV. __ (forthcoming)(with Sasha Albert)

The Americans with Disabilities Act and Termination of Parental Rights Cases: An Examination of Appellate Decisions Involving Disabled Mothers, 39 YALE L. & POL'Y REV. (forthcoming)(with Susan L. Parish, Monika Mitra, Michael Waterstone, & Stephen Fournier)

Terminating the Parental Rights of Mothers with Disabilities: An Empirical Legal Analysis, 85 MO. L. REV. __ (forthcoming)(with same Authors)

Supporting Disabled Parents and Their Families: Perspectives and Recommendations from Parents, Attorneys, and Child Welfare Professionals, __ J. PUB. CHILD WELFARE __ (forthcoming)(with Sasha Albert)

Powell (Continued)

Perceived Community-Based Needs of Parents with Psychiatric Disabilities at Risk of Custody Loss, 112 CHILD. & YOUTH SERV. REV. __ (forthcoming)(with Monika Mitra, Joanne Nicholson, & Susan L. Parish)

HONORS

Appointed Bruce R. Jacob Visiting Assistant Professor at Stetson University College of Law

Blake E. Reid

PUBLICATIONS

Copyright and Disability, __ CALIF. L. REV. __ (2021)(forthcoming)

Telehealth and Telework Accessibility in a Pandemic-Induced Virtual World, __ COLO. L. R. FORUM (2020)(forthcoming)(with Christian Vogler & Zainab Alkebsi)

Internet Architecture and Disability, 95 INDIANA L.J. 591 (2020)

Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-Enabling Provisions for Persons with Disabilities, J. WORLD INTELLECT. PROP. 1-17 (2020)(with Caroline Ncube & Desmond Oriakhogba)

Disability Section Publications and Honors, 2020

Reid (Continued)

HONORS

Promoted to Clinical Professor

Laura Rothstein

PUBLICATIONS

DISABILITIES AND THE LAW (Thomson/West Spring 2020 and Fall 2020)(with Julia Irzyk)

SPECIAL EDUCATION LAW (6th ed. Sage Publications 2020)(with Scott F. Johnson)

COVID-19 and Protests Have Shown Limitations of Americans with Disabilities Act, COURIER JOURNAL (July 24, 2020)

PRESENTATIONS

The ADA and Higher Education: Thirty Years Later, Stetson U. College of Law 41st Conference on Higher Education Law and Policy (2020)

Teaching Poverty Health and Law in a Traditional Course With Lots of Bells and Whistles, AALS Annual Meeting (2020)

Affirmative Action—The Impact of Hopwood, Grutter, and Fisher, Stetson U. Conference on Higher Education Law and Policy (2020)

Rothstein (Continued)

HONORS

Outstanding Service to Community Award (2020) from the University of Louisville

Megan S. Wright

PUBLICATIONS

Equality of Autonomy? Physician Aid in Dying and Supported Decision Making, 63 ARIZ. L. REV. ___ (forthcoming)

Legal Issues in Dementia, in THE BEHAVIORAL NEUROLOGY OF DEMENTIA (Bruce Miller & Brad Bouve eds., forthcoming)(with Jalayne Arias & Ana Tyler)

Regulating Post-Trial Access to In-Dwelling Class III Neural Devices, in THE FUTURE OF MEDICAL DEVICE REGULATION: INNOVATION AND PROTECTION (I. Glenn Cohen et al. eds. forthcoming)(with Joseph J. Fins)

Olmstead Enforcements for Moderate to Severe Brain Injury: The Pursuit of Civil Rights through an Application of Law, Neuroscience, and Ethics, 95 TULANE L. REV. ___ (forthcoming)(with Zachary E. Shapiro, et al.)

Dementia, Cognitive Transformation, and Supported Decision Making, 20 AM. J. BIOETHICS 88 (2020)

Wright (Continued)

Dementia, Autonomy, and Supported Healthcare Decision Making, 79 MD. L. REV. 257 (2020)

Disorders of Consciousness and Disability Law, 95 MAYO CLINIC PROCEEDINGS P1732 (2020)(with Joseph J. Fins & Samuel Bagenstos)

The Neglect of Persons with Severe Brain Injury in the United States: An International Human Rights Analysis, 22 HEALTH & HUMAN RIGHTS J. 265 (2020) (with Tamar Ezer & Joseph J. Fins)