

# AALS

## Disability Law Section

### Newsletter 2022



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Northwestern University Pritzker School of Law

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## Letter from the Chair

Dear Section Members,

It is hard to believe that another year is almost over! For many of us, the year has been a challenging one. Amidst a still-ongoing pandemic, we've pushed through to teach, write, and serve, all while managing personal responsibilities. Yet, amid these setbacks our community has pressed on, both in and outside of the classroom, working, among so many pressing concerns, to protect accommodations for people with disabilities in the workplace and classroom, to protect access to the ballot for people with disabilities, and to advance the goals of reproductive justice for all people with disabilities, including people with disabilities who are low-income people, people of color, and LGBTIA.

As scholars, we have the chance to use our research, teaching, and public service to push for a more just world. The achievements that follow, and many others, give me hope for the future of disability rights and disability justice movements:

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“As scholars, we have the chance to use our research, teaching, and public service to push for a more just world.”

Jamelia Morgan

- Professors Katherine Macfarlane and Doron Dorfman filed an amicus brief in the Fifth Circuit presenting the legal theory for why mask mandates can be imposed as a reasonable accommodation. You can read Professors Macfarlane and Dorfman's groundbreaking brief here: [https://drive.google.com/file/d/1\\_UtKfA0LVafXaaHi9HydSzciMl-6dMgm/view](https://drive.google.com/file/d/1_UtKfA0LVafXaaHi9HydSzciMl-6dMgm/view)
- Professors Jasmine Harris and Karen Tani hosted a tremendous two-day symposium, *The Disability Frame: Opportunities, Costs, and Constraints in the Broad Struggle for Inclusion*, at the University of Pennsylvania Carey Law School. The virtual event was sponsored by the University of Pennsylvania Law Review, which will produce a volume of essays related to the symposium's topic in its upcoming symposium edition. Recordings of the event can be found here: <https://www.youtube.com/watch?v=6Us3E5TiOPY>
- Professor Robyn Powell engaged in extensive writing in scholarly journals and public outlets advocating for reproductive justice for people with disabilities. Professor Powell's article, *Disability Reproductive Justice*, is forthcoming in the *University of Pennsylvania Law Review*. Professor Powell has posted a draft of her article on SSRN here: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4031850](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4031850)
- Sarah Lorr published *Unaccommodated: How the ADA Fails Parents* in the *California Law Review* demonstrating how family courts treat ADA claims in both family and federal courts and how both courts fail to “vindicate the rights of parents with disabilities by sidestepping responsibility for parents' claims under the ADA.” Lorr's groundbreaking article not only provides a trenchant critique but also offers concrete proposals to ensure the rights of parents with disabilities are vindicated in family and federal court. You can read Lorr's article here: <https://californialawreview.org/print/unaccommodated-how-the-ada-fails-parents/>
- In the last year, several members of our disability laws section launched centers, were appointed to lead institutes, or received funding to continue ongoing clinical or advocacy work, including Britney Wilson at New York Law School, Katherine Macfarlane at Southern University Law Center, Nicole Buonocore Porter at Chicago-Kent College of Law, and me at Northwestern Pritzker School of Law.

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We hope that you will join us in celebrating these tremendous accomplishments!

With these important and memorable touchpoints in mind, we invite you all to attend our section programming at the 2023 AALS conference this January. We are hosting and/or co-sponsoring four events at the upcoming conference. More details on that event are listed below.

It has been an absolutely honor to serve as Chair of this terrific section and work alongside Professors Doron Dorfman and D'Andra Shu. I wish you all continued success on your future endeavors!

Jamelia Morgan, Chair

## **2023 Disability Law Section Programs**

### **Disability: Engaging with an Often Overlooked Diversity Dimension in Our Classrooms**

(January 6, 2023; 10:00-11:40 am; Marriott Grand Ballroom 4, Lobby Level, North Tower)

Inclusive classrooms should take into account all forms of diversity. Yet one diversity dimension that is likely present and impacting students in your classroom is the one dimension that is discussed the least: physical, learning, and psychological disabilities. Consider just one example of how being blind, having a learning disability like dyslexia, or having anxiety can impact students' writing. Given the scope of these hurdles, we need to better equip ourselves to promote learning and inclusion for this cohort of students. Panelists will present on a wide range of topics that impact students with disabilities in our law school classrooms.

Panelists: Kathryn Boling, Cara Cunningham Warren, Jennifer Kindred Mitchell, Suzanne Rowe, Mark Wojcik

### **The Rehabilitation Act at 50**

(January 6, 2023; 10:00-11:40 am; Marriott Grand Ballroom 3, Lobby Level, North Tower)

This year marks 50 years since the Rehabilitation Act of 1973 was signed into law, one of the earliest and most comprehensive federal disability rights law. The Act ushered in a new era of legal rights and remedies for people with disabilities. Fifty years later, it remains a viable tool for challenging discrimination against people with disabilities, particularly discrimination by federal agencies, like ICE, or the BOP. The Rehab Act is also commonly use in the special education context. The panel will examine the past and future of Rehab Act litigation while commemorating the fiftieth anniversary of this important legislation.

Panelists: Doron Dorfman (moderator), Claudia Center, Robert Dinerstein, Laura Rothstein, Karen Tani

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## **2023 Disability Law Section Programs** **(continued)**

### **Reimagining Law and Policy Affecting Individuals with Substance Use Disorders**

(January 6, 2023, 1:00-2:40 pm; Temecula Room 2, First Floor, North Tower)

A panel comprised of experts in law, nursing, drug policy, disability rights, bioethics, and the medical humanities will examine several issues affecting individuals with substance use disorders (SUDs). The first speaker will identify discrimination faced by individuals with SUDs. The second speaker will offer a solidarity-based approach to combat the negative impacts of intragroup and association stigma for people with SUDs. The third speaker will present findings from a survey of statutes containing stigmatizing SUD language. The fourth speaker will argue that the framing of substance use as a chronic medical disease facilitates the mistreatment of individuals with SUDs.

Panelists: Kelly Dineen, Jennifer Oliva, Elizabeth Pendo, Stacey Tovino

### **How the Pandemic Changed the Law Beyond the Pandemic**

(January 7, 2023, 8:30-10:10 am; Pacific Ballroom Salon 16, First Floor, North Tower)

This program will discuss how the pandemic changed employment in ways that will last far beyond the end of the pandemic. Subtopics will include occupational safety law, accommodation law, discrimination law, regulation of work-at-home arrangements, and other rules for the employment relationship.

Panelists: Susan D. Carle, Richard Carlson, Laura Lane-Steele, D'Andra Millsap Shu

## Disability Section Publications and Honors, 2022

### Rabia Belt

#### PUBLICATIONS

*The Fat Prisoners' Dilemma: Slow Violence, Intersectionality, and a Disability Rights Framework for the Future*, 110 GEO. L.J. 785 (2022)

*A Conversation About Law & Political Economy and Disability, Part 1&2*, LPE Blog (2022) (with Doron Dorfman, Jasmine Harris, Jamelia Morgan & Karen Tani)

### Valarie K. Blake

#### PUBLICATIONS

*Anti-Selection is Only the Beginning*, 50 J.L. Med & Ethics 155 (2022) (with Jessica L. Roberts)

*Advancing Harm Reduction Services in the United States: The Untapped Role of the Americans with Disabilities Act*, 21 YALE J. HEALTH POL'Y, LAW & ETHICS 61 (2022) (with Abigail Fletes, Maria Katherine Delos Reyes, John C Messinger, Blake & Leo Beletsky)

*Rural Communities and Legal Rights to Gender-Affirming Care*, 124 W.VA. L. REV. 877 (2022) (with Nathan R. Hamons)

#### PROFESSIONAL NEWS

Valarie Blake was appointed the Associate Dean of Faculty Development & Research in July 2022

### Jeannette Cox

#### PUBLICATIONS

*Work Hours and Disability Justice*, 111 GEORGETOWN L.J. \_\_\_ (forthcoming 2022)

*The "Essential Functions" Hurdle to Disability Justice*, 84 OHIO ST. L.J. \_\_\_ (forthcoming 2023)

### Doron Dorfman

#### PUBLICATIONS

*Disability as Metaphor in American Law*, 170 U. PA. L. REV. (forthcoming 2022)

*Penalizing Prevention: The Paradoxical Legal Treatment of Preventive Medicine*, 108 CORNELL. L. REV. (forthcoming 2023)

*Experimental Jurisprudence of Health & Disability Law*, in CAMBRIDGE HANDBOOK OF EXPERIMENTAL JURISPRUDENCE (Kevin Tobia, ed.) (forthcoming Cambridge University Press 2023)

*Commentary on Olmstead v. L.C ex rel. Zimring*, in FEMINIST JUDGMENTS: REWRITTEN HEALTH LAW OPINIONS (Seema Mohapatra & Lindsey F. Wiley, eds.) (forthcoming Cambridge University Press 2023)

### Katie Eyer

#### PUBLICATIONS

*Transgender Constitutional Law*, 171 U. PA. L. REV. \_\_\_ (forthcoming 2022)

### Katie Eyer (continued)

*Transgender Equality and Geduldig 2.0*, 54 ARIZ. ST. L.J. \_\_\_ (forthcoming 2022)

*Am I Disabled? Disability Identity, Law Faculty, and Social Change*, \_\_\_ J. LEGAL EDUC. \_\_\_ (forthcoming 2022)

*Disentangling Textualism and Originalism*, 13 CON. L. NOW 115 (2022) (based on keynote Constitution Day lecture).

### Sharona Hoffman

#### PUBLICATIONS

AGING WITH A PLAN: HOW A LITTLE THOUGHT TODAY CAN VASTLY IMPROVE YOUR TOMORROW, Second Edition, First Hill Books (2022)

*Interoperability in the Post-Roe Era: Sustaining Progress While Protecting Reproductive Health Information*, 328 JAMA 1703 (2022) (with Daniel Walker & Julia Adler-Milstein)

*Physicians and Cognitive Decline: A Challenge for State Medical Boards*, 108 J. MED. REG. 19 (2022)

*Sharing Clinical Notes: Potential Medical-Legal Benefits and Risks*, 327 JAMA 717 (2022) (with Charlotte Blease & I. Glenn Cohen)

*Cognitive Decline and the Workplace*, 57 WAKE FOREST L. REV. 115 (2022)

## Disability Section Publications and Honors, 2022

### Arlene S. Kanter

#### PUBLICATIONS

*Remote Work and the Future of Disability Accommodations*, 107 CORNELL L. REV. 101 (2022)

#### HONORS

Awarded Syracuse Alumni Law Honors Award, September 2022 (SUCOL Highest Alumni award)

Selected as *Chai Feldblum Award* Recipient, by the AALS Disability Law Faculty and Allies Section, to be awarded at the AALS Annual Meeting, January 2023, San Diego CA

### Sunita Patel

#### PUBLICATIONS

*Embedded Healthcare Policing*, 69 UCLA L. REV. 810 (2022)

### Michael L. Perlin

#### PUBLICATIONS

JUSTICE OUTSOURCED: THE THERAPEUTIC JURISPRUDENCE IMPLICATIONS OF JUDICIAL DECISION-MAKING BY NON-JUDICIAL OFFICERS (Temple University Press) (2022) (with Kelly Frailing)

*"Insanity is Smashing up Against My Soul": The Fifth Circuit and Competency to be Executed Cases after Panetti v. Quarterman*, 60 U. LOUISVILLE L. REV. 557 (2022) (with Talia Harmon)

### Michael L. Perlin (continued)

*"The Distant Ships of Liberty": Why Criminology Needs to Take Seriously International Human Rights Laws that Apply to Persons with Disabilities*, 31 S. CAL. REV. L. & SOC. JUST. 374 (2022) (with Alison J. Lynch, Kelly Frailing & Ashley Juneau)

*Trauma-Informed Forensic Mental Health Assessment: Practical, Legal, Ethical and Alignment with Therapeutic Jurisprudence Perspectives*, 28 PSYCHOL., PUB. POL'Y & L. 226 (2022) (with Julie Goldenson & Stanley Brodsky)

### Nicole Buonocore Porter

#### PUBLICATIONS

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

*Symposium, Disability Diversity & Identity Capitalism*, 56 NEW ENGLAND L. REV. 153 (2022)

*#MeToo and the Process That's Due: Sexual Misconduct Where We Live, Work, and Learn*, 2022 U. ILL. L. REV. 663

*Disclaiming Disability*, 55 UC DAVIS L. REV. 1859 (2022)

### Robyn M. Powell

#### PUBLICATIONS

*Disability Reproductive Justice During COVID-19 and Beyond*, 72 AM. U. L. REV. \_\_\_ (forthcoming 2023)

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

*Disability Reproductive Justice*, 170 U. PENN. L. REV. \_\_\_ (forthcoming 2022)

*Beyond Disability Rights: A Way Forward After the 2020 Election*, 15 ST. LOUIS U. J. HEALTH LAW & POL'Y 391 (2022)

#### HONORS

In November 2022, Professor Robyn Powell received the Early Career Award from the American Public Health Association's Law Section

### Blake E. Reid

#### PUBLICATIONS

*The Curb-Cut Effect and the Perils of Accessibility without Disability*, in FEMINIST CYBERLAW (Meg Jones and Amanda Levendowski, eds., forthcoming 2024, University of California Press)

*Stopping to Smell the 1-800-Flowers: Dignitary Harms in Web Accessibility Litigation*, \_\_\_ GREEN BAG ALMANAC \_\_\_ (Law and Flowers volume) (forthcoming 2022) (with Zainab Alkebsi)

## Disability Section Publications and Honors, 2022

### Blake E. Reid (continued)

*Two Paths for Digital Disability Law*, Communications of the Association for Computing Machinery (ACM) (peer-reviewed) (May 2022)

### 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)

*Disability Rights in Health Care Dodge a Bullet*, JAMA HEALTH FORUM (2022) (with Hanna Eichner)

*Unlimited Medical Liability?*, 72 Emory L.J. Online 1 (2022) (with Leah R. Fowler & Paul Appelbaum)

*Mind the App*, 31 ANNALS OF HEALTH L. LIFE SCI. 143 (2022) (symposium contribution) (with Leah R. Fowler)

### Laura Rothstein

#### PUBLICATIONS

DISABILITIES AND THE LAW (Thomson/West Spring 2022 and Fall 2022 editions) (with Julia Irzyk)

*Addressing Barriers to Educational Opportunities Arising from Disabilities*, in OXFORD HANDBOOK OF EDUCATION LAW (forthcoming)

*What Would Louis Do? The Brandeis Brief on Land Use and Its Present Impact on Racial Segregation*, in RACIAL JUSTICE IN AMERICAN LAND USE (Cambridge Press, forthcoming 2022)

#### HONORS

Alberta O. Jones Award from Central High School for leadership on civil rights in creating the pipeline partnership between Central High School and the Brandeis School of Law (October 28, 2022)

### Ani B. Satz

#### PUBLICATIONS

*Animal Experimentation Law: Current Issues in North America*, in OXFORD HANDBOOK ON GLOBAL ANIMAL LAW (Anne Peters, Kristen Stilt & Saskia Stucki eds.) (forthcoming by Oxford University Press)

### Ani B. Satz (continued)

*Disability, Vulnerability, and Public Health Emergencies*, in RE-CONCEIVING EQUALITY AND FREEDOM: VULNERABILITY, DEPENDENCY, AND THE RESPONSIVE STATE (Martha Fineman & Laura Spitz, eds.) (Routledge, forthcoming)

*Health In All Education: A Transdisciplinary Learning Outcomes Framework*, Am. J. Preventative Med. (forthcoming) (with Rosemary M. Caron, Sabrina Neeley, Christina Eldredge, Allen C. Goodman, Daniel B. Oerther, Tanya Smith Brice & Dawn M. Whitehead)

### D'Andra Millsap Shu

#### PUBLICATIONS

*Remote Work Disability Accommodations in the Post-Pandemic Workplace: The Need for Evidence-Driven Analysis*, TEMPLE L. REV. (forthcoming 2023)

*The Coming Causation Revolution in Employment Discrimination Litigation*, 43 CARDOZO L. REV. 1807 (2022)

#### HONORS

Awarded South Texas College of Law Houston Award for Excellence in Scholarship (2021-22)