**Down to the Struts**

Season 4 Ep. 4: Disabled in Court

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Guest: Erika Rickard

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**Introduction**

[jazzy piano chords, bass strumming with smooth R&B]

Qudsiya Naqui:

Hi, this is Qudsiya Naqui, and welcome to another episode of Down to the Struts, the podcast about disability design and intersectionality. Today we'll listen in on my conversation with Erika Rickard. Erika directs a project at the Pew Charitable Trusts aimed at modernizing our nation's civil legal system. Worlds are colliding in this episode. Erika and I work together on this project at Pew, and I'm excited to bring you this conversation about our new report, “How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations.” The COVID-19 pandemic caused financial distress for millions of people, including disabled people facing eviction debt and family crises. What's less known is that many of these problems played out in state civil courts around the country. Meanwhile, courts raced to bring their operations online, trying to keep the wheels of justice turning in the midst of a public health emergency. Erika and I will talk about the potential promise of technology to increase participation in our civil legal system, especially for people without lawyers, and the barriers that can arise when courts do not center access for litigants to make the system more open, equitable and efficient. Okay, let's get down to it.

[jazzy piano chords, bass strumming with smooth R&B]

Qudsiya Naqui:

Thank you so much, Erika, for joining me on the podcast today. I'm really excited to have you.

Erika Rickard: 2:12

Yeah, thank you very much for having me.

Qudsiya Naqui:

I was hoping you could start off by telling us a little bit about yourself, you know, and what made you passionate about access to the civil court system.

Erika Rickard:

Hi, I'm Erika Rickard, I direct a project at Pew focused on modernizing our nation's civil legal system, so, looking at how courts operate, and how we can make them work better for the people that they're intended to serve. And I work with you, Qudsiya, , at The Pew Charitable Trusts. I use she her and hers pronouns. And a little bit about me, I'm a shorter white woman with short hair, I wear kind of masculine clothing, I'm usually wearing a tie when I'm at work. And I talk really fast. And I've been working in and around courts, pretty much all of my adult life. And I've found there to be this real gap between the ideals that we have of the Administration of Justice and the reality as how it plays out in people's lived experience. And that gap is both really wide, but also hopefully really ripe for improvement. So my first job out of college was in the court system in California, and I worked in a self help office where I would help people who were trying to get guardianship of a child. So someone who was a grandparent or another family member trying to get legal rights over a child that they were taking care of. And the number of people who had to come back multiple times because they had the wrong paperwork, or they filled out their name, the last name first and not the first name first, or something really minor procedural deficiencies that would set them all the way back in their process really showed me the way that courts can to a fault be kind of more insular and focus on their own process rather than on how people are trying to use the court in order to navigate their legal needs.

Qudsiya Naqui:

Thanks so much, Erika, for sharing that story. And yes, this is definitely a moment of worlds colliding. I'm so honored to work with you and learn from you at Pew. And I'm really excited to share some of the findings of a report that we worked on together that came out in December of 2021. But before we get to that, I was hoping that you could share for us some examples of how disabled people might interact with a state civil court system.

Erika Rickard:

So when we're talking about the civil court system, basically what we mean is everything that's not criminal so a disabled person might interact with the court system for any number of reasons that aren't related to their disability. So that could include anything from financial issues like a contract dispute or a debt collection case to family issues like divorce or guardianship. To child support to housing issues like conditions of housing or evictions, we know that one in three US households in a given year faces a civil legal issue that could wind up in court. There's also the issue of civil legal problems that are created by or exacerbated by systemic inability to respond to people's needs and people's disabilities. And, I think you might actually have more research on that front, but there are certainly documented disparities between different demographic groups, including people with disabilities based on the issues related to how our housing policy is structured, or how our child welfare policy is structured.

Qudsiya Naqui:

Yes, that's very true. And a couple of examples of that would include the fact that disabled people are far more likely than non disabled people to lose custody of their children simply for the fact that they are disabled. Additionally, another example is, you know, having to go to housing court, because your housing is inaccessible, or exacerbating your disability in some way. So those are some ways in which being disabled particularly places you in a position where you would interact with the civil court system.

Erika Rickard:

And so far, what we're talking about are issues that, uh, that are legal problems that a person might have that could wind up in court, and that's thinking about disabled people interacting with the civil legal system to address their own legal needs. There's also, of course, people who are interacting with the civil legal system, because they are professionals in that civil legal system. So disabled people work in courts, their attorneys, their interpreters. So thinking about the ways that people interact with the court system aren't limited to people with disabilities having legal problems.

Qudsiya Naqui:

That's really true. And I, myself as a disabled lawyer, have have had that experience. I started my career when I was 19, as an undergraduate intern, working on housing issues at a legal aid office, and I worked as a paralegal after after college where I had to interact with the civil court system. And then later on in my legal career, I both worked in the immigration court system and also in family court. And I must say, there were so many aspects of those processes that as a blind person, I found really difficult to navigate. And with the stakes being quite high as I was trying to advocate on behalf of my clients on critical issues. Yeah, absolutely. So all of that being said, and we we've we've said a little bit about this, what are what are some of the identified barriers that disabled people can experience specifically in the state court system? Can you can you give some examples?

Erika Rickard:

Sure. And I think some of the examples are really physical structural barriers, which really actually reminds me of a guest that you had, I think it was Stephanie DeLuca was talking about the physical barriers with the Capitol building and how having a historic building can can mean both, that there are insurmountable barriers, but there's also a kind of like cultural complacency about the need to reduce the barriers that already exist. And that's certainly true with courthouses, many of which are very old and sometimes historic. But the kinds of barriers that disabled people encounter in state courts are really, really numerous. And the, we've been following some of the work from the National Center for Access to Justice at Fordham Law School, which has documented kind of a list of different policies or processes that courts can adopt to reduce barriers. And those range from things like resources, like access to interpreters, to technology constraints around things like screen readers being able to navigate court websites or court forms. And what they've found is they looked at all 50 states and the court systems in all 50 states, and identified a set of policies and procedures and training tools and things for court systems to try to reduce barriers to disability access. And they created a scale from zero to 100. And they found that of all the 50 states 44 states received a mark of 50 or less out of 100 points. So we're seeing numerous barriers at the policy level. But when it comes to how that actually plays out for people, whether for court users, whether that's litigants or attorneys, navigating the court system, how those barriers play out and how many people are affected, and how their lives are affected is a lot less known than it should be. Unfortunately, courts largely Do Not Track data about things as simple as requests for individual accommodations and whether those requests are met much less larger questions around demographic characteristics of people who are navigating civil courts and including whether people have disabilities

Qudsiya Naqui:

that's really illuminating and I think it's it's particularly compelling and almost Stark because one of the important important hallmarks of the Americans with Disabilities Act that was passed in 1990, which went beyond the Rehabilitation Act of 1973, that only applied to entities receiving federal funding is that the ADA extended these protections presumably, into a public entity, like a state court. But you know, as you describe the NCAA J, data and findings, state courts are still, you know, really struggling to meet the requirements of the ADA. And those are some really good examples that you gave. So I wanted to hone in specifically on one aspect you were talking about, which relates to our report, which is access to technology in the court system. So we recently published a report that describes how courts sort of ramped up the use of technology as a result of the COVI-D19 pandemic and the shuttering of physical courthouses. And we found, you know, some some interesting things and a lot of learnings about how courts need to think about technology as they modernize into the future. Could you describe some of the findings of the report and what recommendations we made,

Erika Rickard:

I'd be happy to. One of the hallmarks of the court system across the country is that it relies on precedent and is rather slow to change. And we've seen, courts are rather slow to change when it comes to the adoption of technology in particular, but when by but in March of 2020, that all changed courts, as you mentioned, courthouses had to be shuttered because of public health emergency declarations across the country. And courts had to grapple pretty quickly with how to make sure that the wheels of justice kept turning, even during the pandemic. And so what we found was that, by and large, almost all of the country experienced some form of virtual hearings. So court cases that had a hearing in a courtroom where two sides would argue their side of the story, and the judge in the courtroom would make a decision, move to virtual platforms like Zoom. But what we did was we went a step further and look not just at the remote proceedings that were happening. But what leads up to that moment, what happens before a court hearing, the paperwork that gets passed back and forth, and the use of technology to facilitate kind of the inner interim steps of a court case. And what we found was that while before the pandemic, states had slowly adopted electronic filing of court paperwork, and very few of them had actually adopted electronic filing for people without lawyers. Once, at the start of March 2020, between March and August of 2020, numerous courts started to adopt different forms of electronic filing and electronic processes for people to be able to navigate the court system. So by March 2020, every state had some form of e-filing, but it was largely for attorneys. And there were 13 States in particular, that had no mechanism for people to electronically file court documents before the pandemic started, if they did not have an attorney. During the pandemic 10, more states adopted a tool or some kind of workaround for people without lawyers to be able to electronically submit paperwork during the pandemic. So that was helpful to see that courts can be responsive to the needs of the community, right. This was kind of an unprecedented time for all of us, but in particular, for courts to be able to figure out how to take their decades or centuries old processes and dramatically transform them into something that was all virtual or all remote. But what we also did was we looked at how that plays out in areas of particular need for people that are facing financial distress also as a result of the pandemic. So we looked at three different key issue areas that are some of the highest volume type of court cases. So debt collection lawsuits, which are the single most common type of civil court case, evictions, which are the second most common type of civil court case and child support, which is another really high volume area of court dockets. And what we found was that while electronic electronic filing was taking place for attorneys, and while zoom hearings or other virtual remote proceedings were taking place in those three different case types. People without lawyers actually weren't afforded the opportunity to electronically submit their paperwork in eight states when it came to debt collection lawsuits, and nine states for eviction cases and intense dates for child support. So in each of those different issue areas, people without lawyers were left kind of struggling with how to actually meaningfully participate in a court case and that has significant consequences for people when it comes to what the outcome of that case is going to be, and how that case is going to affect them in the rest of their lives.

Qudsiya Naqui:

That's a really helpful sum-up. And just to kind of add in a little bit of the sort of disability component to this discussion, you know, one of the things we which was a sort of beyond the, the scope, and the capacity of our research was understanding how accessible these electronic processes even were. So more than half of court systems in the US are decentralized, which means that decision making funding and other aspects of Court Administration can vary from county to county locality to locality. And so it was really difficult to figure out because of this diffuse nature of Court Administration, you know, what the, the scope and scale fully was of issues of access. And another thing to consider is, as we learned from Aimi Hamraie, from Vanderbilt, back in our first season, when we talked about technology and access during the pandemic kind of on a more broader scale, access is negotiated and what could make the process accessible for one group of disabled people could create a barrier for another. So for example, for some folks, maybe physical access to the court building was better, but for others, you know, working online, really improved access. But for example, for a population, like let's just say, blind folks, you know, working online or being able to engage in court presses online could potentially be really helpful. But there could be a really big barrier if those online processes are not accessible. So so it's a complex problem that we're starting to sort of uncover. But it became clear to us to our research, I think, an Erika definitely weigh in, that there needs to be more study here and more sort of deep analysis of where where barriers arise for people with disabilities in the court system.

Erika Rickard:

I absolutely agree. I think one of the limitations for us was that we were examining how courts were identifying their own new processes. And that was largely through the, in the form of emergency orders that courts were putting out. And because courts are so decentralized, as you said, courts were putting out emergency orders at the state level. And at the local level, whether that city, your county, specialized courts or other kinds of courts, sometimes other branches of government are also putting out emergency orders that affected the courts. So through our colleagues at Wesleyan University, we looked at 10,000 different court orders that were issued during the pandemic, and found that around less than 2%, around one and a half percent of those court orders mentioned disability access at all, and none of them included specific reference to actually ensuring that technology was accessible during the pandemic. So that that may be starker or more extreme than what actually was happening at the local level. But because the local level is so obtuse and are so obscure and hard to unpack, it's really something that warrants further study.

Qudsiya Naqui:

And also, I think, at some point, getting the feedback of actual, you know, court users, you know, could be really informative in terms of understanding what real barriers that disabled, non disabled, or unrepresented, or have any other kind of characteristics of marginalization or oppression, I think, understanding that perspective is really key. So that brings me to my next question, which, you know, we talk a little bit about in our report, but, you know, what, what, based on you know, what we found, in this experience of looking at the court operations during the pandemic, what can courts do to work towards greater access for disabled people.

Erika Rickard:

So what courts did in kind of mid 2020, in response to the pandemic was pretty heroic and pretty dramatic in their attempts to start something new for the first time launch something across the board. But what they what that meant was that it was also very rushed. And it did not include very much input or feedback from court user constituencies, including disabled people. And right now, as courts are thinking about what's going to happen as they move forward, which parts of the transition that they've made during the pandemic are going to revert back to the way it always was, which parts they want to continue on into the future now is a really important pivotal opportunity to engage court users, particularly disabled court users to do exactly what you said and in assessing what the barriers are right now, but also when they're exploring new forms of technology. actually seeking the input of court users before adopting a new technology, right, getting somebody to actually try something and make sure that it works before you buy it for your whole state. That's, that's both an opportunity to assess what already had is on the ground and how it's working and how it can be improved. But also to kind of be more forward looking about what kind of future technology tools or other tools are going to be adopted and getting court user feedback at the outset and on an ongoing basis will really help inform the courts moving forward.

Qudsiya Naqui:

And what role can can research kind of play in this? I mean, there's, you mentioned sort of just the user feedback aspect. Are there other sort of areas of inquiry beyond just like the usability of the technology itself that need to be addressed?

Erika Rickard:

Absolutely. When we're looking at whether the court system has equitable processes for all court users, there are so many questions that have yet to be answered or yet to be composed, within how courts operate, we really should expect that courts as a public institution are accessible, open and transparent to the public and to researchers to be able to know what's actually happening inside of courthouse walls, whether they're physical or virtual, and what the outcomes are for people who are navigating them. So getting court user feedback on technology, before it's deployed is one kind of smaller piece, but then being able to examine what are the major court cases? How are they transpiring? What are the other disparate outcomes that are being experienced by people based on demographic differences that have nothing to do with the merits of their court case? Those are questions that we don't yet have sufficient answers to because court data is so hard to come by.

Qudsiya Naqui:

And what role do you think that disability advocates can play in bringing courts closer to better access and stronger access for disabled people?

Erika Rickard:

I think that by and large, courts are kind of an under recognized actor in people's lives for better or worse, whether they're ameliorating or exacerbating qualities or financial, economic housing or family stability or, or harm. And I think that that's particularly important for advocates within a community, whether that's disability advocates or other advocates to recognize the role that the court system has in your community, and to be able to be a meaningful participant to to bring your voice to bear on the changes that are being made in the court system. So most states have an Access to Justice Commission or a similar body that makes decisions about how to inform future changes that courts are making. And there's a seat at the table there, seek out that seat at the table and be a voice for your community within the Access to Justice conversations that are happening in your community.

Qudsiya Naqui:

Thanks for that, Erica, and why do you think access to justice is a part of disability justice or should be?

Erika Rickard:

That's a great question. I think what really resonates with me about disability justice are the two concepts in particular one is self determination. And the other is kind of the expectation of difference. And I think those are two areas that where there's a lot of overlap in the framing for access to justice, and where courts need to move to and that's thinking about something as simple as the way that courts operate with kind of an expectation of their there being professional intermediaries that have certain ability, race, gender, and kind of breaking down those expectations will require processes and policies that actually embrace the differences in different court users and set new expectations for what court processes court forms court hearings, that can actually be accessed in a way for people to be able to meaningfully participate, regardless of ability.

Qudsiya Naqui:

Great, well, Erica, this has been a pleasure. I had fun having the worlds collide. And I I'm I'm so grateful to have had the opportunity to work on this report. And we'll share a link to it in our show notes. And I hope that disability advocates who are listening to this podcast will start to think about the court as an institution that needs their action. And I hope that we can all work together to to make justice real for disabled people in state civil courts. So thank you so much for joining me.

Erika Rickard:

Thank you.

[jazzy piano chords, bass strumming with smooth R&B]

Thanks for joining us for this episode of Down to the Struts. This podcast would not be possible without the energy and creativity of our audio producer Elana Nevins and our social media manager, Avery Anapol. If you'd like to become a patron and support the awesome team that brings this podcast to life, you can visit www.patreon.com/downtothestruts. You can also join our Facebook group, Down to the Struts Podcast. And you can follow us on Twitter and Instagram at Down to the Struts. Finally, remember to subscribe rate and review the podcast on Apple Podcasts, Spotify, Stitcher, or wherever you love to listen. Or you can do none of that and simply enjoy the conversations that you find here. Stay tuned for Episode Five coming to your feeds on February 1. We'll hear from author, essayist, and journalist, Robert Kingett about being a blind gay author and the need for more intersectional voices and literary fiction. I can't wait to be with you again very soon so we can get back down to it.