**Down to the Struts**

Season 5, Bonus: Disability as Freedom

Host: Qudsiya Naqui

Guests: Justice Shorter, Darlene Hemerka, and Katherine Perez

Transcript by Qudsiya Naqui

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**Introduction**

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

Qudsiya Naqui:

This is Qudsiya Naqui, and welcome to Down to the Struts, the podcast about disability design and intersectionality. Thanks to all of you who listened in on season five, and if you haven't gotten a chance to do so yet, it's certainly not too late. I'm back in your feeds with one more bonus episode for this season. Today I'll be sharing audio from a panel that I facilitated called, “Disability as Freedom” for the Equal Justice Works leadership Development Training. Equal Justice Works is the nation's largest facilitator of postgraduate Public Interest Law opportunities. The organization creates opportunities for law students, lawyers and organizers to transform their passion for equal justice into a lifelong commitment to public service. Equal Justice Works is grounded in the belief that a community of leaders who are committed to public service can fulfill our nation's promise of equal justice for all. Founded by law students in 1986. The organization has been growing its community ever since and mobilizes close to 200 public service leaders known as Equal Justice Works fellows each year to serve communities and address unmet legal needs. The Leadership Development Training brings together hundreds of Equal Justice Works fellows each year to build the skills and tools they need to become effective public service leaders. During the panel we've excerpted here you'll learn about why we must approach legal advocacy within the frame of disability rights, disability, justice and intersectionality in order to carve a pathway to equal justice for all we focused on the examples of disaster recovery, immigration and education. And you may also recognize some familiar voices—friends of the pod, Katherine Perez and Justice Shorter joined us for this discussion. Okay, let's get down to it.

Katherine Perez:

Hi everyone, I'm Katherine Perez, and I am a Latina woman wearing big frame glasses. Just cut my bangs always think they look good on me and then I always regret that long brown although I dyed it kind of reddish hair. And I'm when I'm like, in front of a pink wall background with, you know, flowered frames my home and wearing kind of a beige jacket thing. I am in Los Angeles on the land of the Tongea, Chumash, and Kizh, and I am the director of the Coelho Center for Disability Law, Policy, and Innovation, which is housed at Loyola Law School. Thanks for having me.

Justice Shorter:

Good afternoon, everyone. My name is Justice Shorter. My pronouns are she her I am coming to you live from Washington DC, but I was born and raised in Milwaukee, Wisconsin, so I am a Midwest girl at heart with respect to my image description. I am a black blind lesbian woman. At present, my hair is natural it is inflect twist all across the front with two strand twists in the back. I am the National Disaster Protection Advisor at the National Disability Rights Network. I advise the 57 federally mandated protection and advocacy agencies for people with disabilities on any issues related to buyers disasters, emergencies and other types of crises, which now of course includes pandemics. Thanks so much. I'm excited to be in conversation and community with you all today.

Darlene Hemerka:

Thank you so much. Hi, everyone. My name is Darlene Hemerka. I use she her pronouns. I am a 2017 Equal Justice Works fellow. So it's so exciting to be back here at Ltd. I am wearing blue frame glasses and I have medium length brown hair. I'm sitting in a chair with a with beige background. One thing that you can't see about me is that I was born with cerebral palsy and I use a mobility device to ambulate. I am currently a staff attorney at the Legal Clinic for the Disabled, which is based in Philadelphia.

Qudsiya Naqui:

Justice Shorter, Katherine Perez and Darlene Hemerka talked about why understanding the world through the lens of disability rights, disability justice and intersectionality is essential to robust legal Advocacy and the battle for policy change in the areas of disaster recovery, immigration and education. We'll start with remarks from justice, who described strategies to end the harm and trauma of an emergency management system that was not designed to capture the needs of disabled people, particularly disabled people of color in disaster situations.

Justice Shorter:

I like to think that disability justice picks up where disability rights leaves off, there is collective trauma and harm that have been caused to historically marginalized populations in current emergency management practices. And those issues, those concerns must be addressed at systemic levels, right. And so we need multiple tools and tactics to help these communities survive and thrive and that everyone has equitable access to the legal supports that they need, nor the money or the time to participate in a protracted legal process. So there needs to be multiple remedies at one's disposal in order to survive and to thrive after before and during a disaster. So when we think about this more clearly, we can we can boil it down to a couple of sentences there to kind of synapses or just serve as a synopsis of these ideas in terms of this, the distinction so we can think about disability rights as really focusing on dismantling systems of discrimination, right. So trying to dismantle those systems of discrimination as it relates to people with disabilities, you can think about disability just as it's time to build and bridge and dream beyond those current systems, right. So I've talked about trauma. And one of the best posts that I've ever heard about trauma is that trauma is an experience a series of experiences, or the impact of social conditions that break or betray our inherent need for safety, dignity, and belonging. And you think about what that means for disaster survivors with disabilities who are told that you belong to a community, and we're going to focus on a whole community response. And yet, when it comes to how money is distributed, people with disabilities are left out, or when it comes to how search and rescue is going to happen. Individuals with disabilities are feeling as if they are left without support or left without recourse or left without sheltering, and different options for evacuation. If we're talking about dignity, how condescending the process can be when you ask for assistance, or you try to quite literally show up to a place and you are told that you don't belong here, because we don't have an accessible entrance for you, or we don't have the services or supports that you need. Or in order for you to come through the door, you need to leave something that's so vitally important to us, such as your mobility device, such as your service, animal, all of which are things that should never be a part of the experience of someone who was trying to evacuate or trying to flee a disaster. So when we talk about harm, we need to do so in kind of a more meaningful and robust way. But there are several causes of harm. And I want to acknowledge this here. So when you think about this, we have to understand that policing, prison to jail surveillance, all of this is a part of disaster experiences, especially when you think about people of color. So let's stop for a moment and ask ourselves, who gets surveilled, who is considered a looter who is criminalized and scapegoated institutionalized after disasters, right. So how many individuals with disabilities are left in shelters I used to be deployed out in shelter settings. Many times the folks who are the last to be supported or the last to be transitioned out of shelters are folks with disabilities because there's such a lack of accessible housing available, right. So these are causes of harm for folks who might be then asked or presumed or pushed into institutionalized settings that they cannot easily get back out of sex or labor trafficking is a harm or risk after a disaster, domestic violence, we'll see these numbers tend to rise after disasters, thinking about this in terms of caregiver abuse as well and people no longer having access to their support systems. economic exploitation is a factor abuse and neglect by organizations or individuals who are assisting after a disaster, and pervasive erasure in emergency management of the stories, the reflections, the experiences, the priorities, the interests of individuals with disabilities, and individuals of color, and especially those who live at those intersections. All of that is a part of the experiences of people with disabilities. And so we have to be very clear about that. It's also thinking about this in relation to climate justice. When we talk about mold and Burman poor insulation in people's homes. It makes you far less capable and ready to deal with something that is sudden. So we think about these in terms of slow onset crises, right dealing with these pervasive problems over a protracted period of time. So thinking about this in terms of air pollution, and toxic dump sites in your community, all of these things can affect through respiratory systems. And so when something like a pandemic happens, you're already so highly susceptible to respiratory challenges. And then a pandemic happens. And it exacerbates the problem and makes it even more challenging for you to quite literally survive. Right, especially when you are being told to shelter at home and you're sheltering in a dilapidated home because your landlord has refused to make just the bare minimum of habitability standards, and safety protocols and procedures in your place of residence. Right. So all of these are things that we're thinking about thinking about in terms of oil pipelines, to indigenous lands, lack of green spaces, all of these things, again, play a role, as well as chemical spills, all of these things can quite quite quickly rise to the level of disaster rise to the level of emergency conditions, right. So we always want to be aware of that. But last thing that I will say here is that when we talk about disability justice is inextricably linked to every single other justice based movement one can think of, if you are talking about transformative justice, you can't have that conversation without thinking about disability justice, if you're having a conversation about racial justice, or environmental justice, or disaster justice, or educational justice, all of those movements require that disability justice be a part of the discussion. Why because you can enter into any disability at any phase in your life, it is quite literally one of the only identities that one can assume or or attain at any point in life in terms of gaining a disability or some sort of access and functional need.

Qudsiya Naqui:

Next, we'll hear from Darlene who shared the five ways in which disability rights, disability justice and intersectionality come up in her work with disabled youth and their families in the education system.

Darlene Hemerka:

Hi, again, everyone. As I mentioned briefly, in my introduction, I was a 2017 Equal Justice Works fellow. I was a fellow at the Public Interest Law Center, another organization in Philadelphia. And my project focused on making sure that high school students who were receiving special education services were receiving transition services as part of their planning and transition services are services and activities that help students with disabilities transition from school to post school activities, specifically related to independent living, employment, and further education. And one of the reasons that I really got invested in this topic so quickly, is because I really liked that focus both on the education system and on the employment system. Because often, when students with disabilities aged out of school, either at 18, or 21, that parents refer to that as falling off the cliff. Because there are not nearly as many services for once a student becomes an adult, or a student with a disability becomes an adult. So that just gives you a little bit about my project. But then through my work there, I wanted to talk about some ways that these concepts that we've been talking about. So intersectionality plays out in the education space. So I came up with sort of five ways that it came up in my work. So first, it means inclusion for students in special education, it means inclusion with non disabled students. And that means getting really creative. So maybe the student can't be with non disabled students in all of their classes. But maybe there's a particular subject where they're strong, and if they had some modifications, they might be able to do well, in a particular course, another place where inclusion can and should happen, is in any sort of after school activities, or trips and clubs. So really thinking about how we can make students with disabilities and particularly students in special education feel like they're part of the larger school community. And not just with the same, you know, six students, or however many students that they spend their whole day with, you know, eating lunch with them and everything like that. The second area that I wanted to mention was when we look at funding, we should consider both general education funding, but then also special education funding. So I had a really interesting experience with this during my time at the Law Center. So the Law Center was bringing a case against the Commonwealth of Pennsylvania, for failing to appropriately fund education under the Pennsylvania constitution. And in Pennsylvania. Funding special education is its own funding line. It's different and separate from general education. And so when we, as the legal team began talking about remedies, you know, I just made sure that the team was also considering, you know, special education funding, because what I didn't want is for them to get to some number in general education. And then in three years from now, we realize that, you know, special education is having these same issues, and not being funded the way that it should. And so now, we're going back to court to deal with the special education piece, or just wanting to make sure that it was dealt with as a single issue. And I think that's important when we look at disability how disability justice should play out in education. Now, with this pandemic that has now been going on for well over a year, year and a half, it's really important that we talk to students with disabilities and their families, when we think about reopening plants. And we also have to recognize that each individual student's experience is going to be a little bit different. And just because a student has a particular disability, doesn't mean that they're going to want all want the same thing. There were definitely different points of view within the disability community about whether student they should be prioritized to go back to school first, if schools began to reopen, some families, you know, really felt that virtual learning wasn't working for their students. And they really wanted them to be prioritized to go back in other families thought either that the virtual learning was working really well. Or that the virtual learning wasn't working so well. But for a whole variety of reasons, including that because of their student's disability, they were unable to wear a mask, or unable to understand the need for social distancing, or because the schools that the students went to already had problems with mold, and other issues. They didn't trust the staff, and, and the school to actually be clean enough to keep everyone safe, that they didn't want their student to go back. And so these are all important considerations. You know, when we think about what does Disability Justice look like, in this latest phase of education, in terms of the fact that students of color are disproportionately placed in special education, and also that they are disproportionately kicked out of special education and placed in juvenile justice facilities? And what can we do as lawyers to address this is another big issue. And then finally, recognizing that students whose first language is in English, or whose parents first language isn't English, have a lot of additional barriers to accessing the appropriate special education services. So the Law Center was working on a case where they filed a case about the lack of translation services available, or whether translation was appropriate because the school would often say it wasn't necessary, they could do it a different way. And so as we think about how we bring about disability justice in the education space, we must really think about students whose first language or whose parents first language isn't English, as well.

Qudsiya Naqui:

Finally, here's Katherine, discussing the ableism and racism built into our immigration system, and how legal advocacy and cross movement organizing can combat it.

Katherine Perez:

So in about 2016, a bunch of Latinos with disabilities across the nation we got together and we formed a coalition. So we're working in the activist space within the disability rights movement, Disability Justice Movement, I would say we were working more in the Disability Justice space speaking to the fact that disability leadership tends to be more white. And we wanted to focus more on intersectional. justice issues, we were focusing on a number of issues that that had to do with Latina x's that impacted Latinos with disabilities. But because we did this work during the last administration, we ended up spending a great proportion of our time, working in the immigration space, there was just a lot of rhetoric and bad policies that were assaulting our community. And the more and more, we weren't necessarily, you know, I'm not an immigration attorney, and all of us, essentially worked in the disability rights space. So folks who do Ida Ada, worked at p and A's Disability Rights Akademia. We had folks in in all these different disability sectors. So we weren't necessarily the experts on the immigration side. But what we did was, we were able to work with those immigration organizations and agencies, and coalition's a lot of them sprung up. I don't know if any of you did work during the past administration, but the a lot of immigration groups that got together in coalition to combat a lot of the policies. So we joined those coalition's to make sure that disability justice was represented. And we quickly found that there was a great need for this sort of coalitional work between disability justice, disability rights and immigration justice and immigration rights, that there was sort of a gap there, that hadn't really been addressed on both sides, right, like we could fault both the disability rights community for not having done enough work, cross coalitional work, and also the immigrant rights folks hadn't really done cross coalitional work with a disability folks. So again, we didn't think of ourselves necessarily as great experts. But just because we started doing a little bit of work in this space, the need was so great that we found ourselves inundated with requests to do this intersectional work. So just some examples of intersectional justice in the immigration space, immigration disability space, you might remember, several years ago, the administration tried to take away DACA Deferred Action for Childhood Arrivals, you know, there was a blip of a moment where we thought we might be able to pass the DREAM Act, and the DREAM Act would have been more permanent legislation. So DACA was the the EO and DREAM would have been the more congressional Bill legislation that goes through, you know, our the immigrant community obviously, was fighting against this. But what we did was we interviewed a bunch of documented and disabled folks are documented, eligible and disabled folks to talk about their experiences with the program, and what they would want for the DREAM Act. And the narratives that came out of that were, I think, a little bit different than then some of the narratives that we get from like a non disabled community, we were finding that that these folks even though they were getting access to, to work, that they weren't that they still weren't able to get jobs, because because of ableism. There were some folks who couldn't even get the documented status because immigration attorneys offices were like physically inaccessible, or immigration attorneys didn't have sign language interpreters or know that they, you know, had to comply with disability rights laws to provide those kinds of things. So there were just like a number of issues where, where we made sure to highlight that programs like DACA, and the DREAM Act, need to address their ableist roots for being sort of merit based legislation. And in terms of combating and fighting a path to immigration justice. And another one was, you all might remember the public charge rule. So public charge, essentially, is this law that was put in place in our first immigration laws in 1882. Right? So it's very old law, you know, as old as you know, almost the founding of, of America, we often think about, about racism as being very much rooted in our immigration system, and it definitely is. But if we look back to the earliest immigration laws, you might see that there is a really big analysis for ableism as well, and the intersection of those two things. So essentially, if you don't know the public charge rule, states that if you are likely to become a public charge, then you cannot immigrate to the United States, and public charge on its face, even men if you have a disability. And of course, throughout the history of the United States, our leadership has used this rule, public charge urge can't have a disability have come to us to also target certain racial minorities. So for example through, like the Chinese Exclusion Act through the period through the eugenics period. The point is, is that immigration context, racism and ableism are almost inextricably linked. And we forget those historical roots that we have in our immigration system. So when we're working in the immigration context, today, we have to, we have to be able to untangle both not only the racist, but also the ablest issues that we have. So public charge when it came up, you know, I'm talking about 1882. But it's a law that was still in our books, and the Trump administration was trying to strengthen that law. Of course, again, the Immigration Coalition fought against it, there were a number of lawsuits. You know, we did a bunch of public comments on the on the proposed regulation. So our organization again, went in and tried to make sure that we did a lot of messaging around how public charge, again, was inextricably linked, and an attack assault on the disability community. For example, folks who weren't going to be using Medicaid and other public benefits were also going to be included as what was a balancing test. So they would be more likely to be seen as a public charge. And for folks who know in the disability community, Medicaid is a really important program for people with disabilities. So making those like explicit connections for the immigration community to know that these things are direct assault, and are going to disproportionately affect immigrants with disabilities. Congratulations to all for being Equal Justice Works fellows, there's a lot of stuff we still need to do in this space from when I started only several years ago, until now, I see even more and more folks in both spaces, both the disability side and the immigration side now doing a lot more intersectional work, which is great. We have the Fraihat case where they sued ice for saying using Disability Rights laws. So using section 504, to say that immigration detention centers were not compliant. And we're attacking the immigration space through Disability Rights laws to be able to bring down the system, thinking about how we use disability rights laws, and immigrations space has been sort of new for folks, which is wild, but I think as attorneys we like get in our lanes, you know, and we only use the laws that were given in our lane, right. So these immigration attorneys that I've worked with, they learn they know everything about immigration law, which is awesome. I don't know a lot about immigration law. But when we give them the tools of like the Americans with Disabilities Act, or section 504 magic happens, right? Because they're able to advocate for their immigrant clients with disabilities in ways that they never thought of before, which is wild, right? Because it's there. And these immigration attorneys, they, you know, I go and I train them and it's like, they, they don't know anything about the ADEA. They don't know anything about disability justice or people with disabilities. And all of a sudden, when we do this intervention of intersectional work, when we give them these new tools, we're able to do new things like the Fraihat case where we're trying to take down detention centers through a disability rights law saying that, you know, they're in compliant through this disability rights law. So as you go out and do your work, I hope you think of creative ways that you can integrate disability rights disability justice into whatever lane that you're doing, be able to advocate for all communities.

Qudsiya Naqui:

This episode was produced by Ilana Nevins With special thanks to Avery Anapol for curating our social media, and to Alexander Roberts and Jessica Underwood of Equal Justice Works for their technical support during the panel. To learn more about Equal Justice Works, you can visit equaljusticeworks.org. Be sure to subscribe rate and review the podcast at Apple podcasts, Spotify, Stitcher or wherever you love to listen. Join our Facebook group down to the struts podcast and follow us on Twitter and Instagram at down to the struts. The team and I are hard at work to bring you season six. So stay tuned so we can get back down to it