Episode 5: Yochai

Yochai Eisenberg: What's great about where we are nowadays in our society is that communities are listening. People are becoming better at listening, and I think they are listening, and I think will listen to advocacy organizations. So it also means that more people need to speak up and become involved.

Anna Zivarts: This is Anna Zivarts, the director of the Disability Mobility Initiative, a non-driver organizing program of Disability Rights Washington. *The Road is the Sidewalk* is a podcast series we're producing in collaboration with Zack Hurtz, a blind podcaster from Kitsap County, Washington. In our advocacy work with non-drivers from communities throughout Washington state, we hear a lot about how inaccessible sidewalks, crossings, and transit stops prevent disabled non-drivers from accessing our communities. After the Americans With Disabilities Act passed more than 30 years ago, the cities and counties we live in should have developed plans about how they were going to address these barriers in our public right-of-way. However, not only do many of these barriers remain, lots of communities haven't created inventories of barriers or timelines for when they plan to fix them. Kitsap County, where we're focusing our series, is one jurisdiction with no such plan. In this series you'll hear interviews with disabled community members about how this lack of access impacts their lives, as well as interviews with researchers who are working on sidewalk accessibility. Episode Five: Yochai.

Yochai Eisenberg: Hi, my name is Yochai Eisenberg and I'm an assistant professor in the Department of Disability and Human Development at the University of Illinois at Chicago. I came to work around accessibility by way of urban planning, actually. I got my Masters in urban planning almost 15 years ago. There was an opening for a position on a research project that had to do with accessibility of communities and health and physical activity. And it was in this department. I thought I'd try it out and you know, honestly knew very little about disability and accessibility. Very little was taught in my urban planning program, and actually, very little is still taught in a lot of urban planning programs around disability and accessibility. And that's an area where I think there could be real growth in terms of teaching around accessibility and disability. And really, probably, you know, where I hope to end with this conversation is what, you know, we need in terms of improving the workforce's knowledge, experience and skills around ADA transition planning. And so yeah, I guess that's where I started off, and kind of through that project was connected with our Great Lakes ADA Center, which provides training and technical assistance around the ADA. And, you know, kind of from there grew out into other projects and research that had to do with accessibility and how that impacts people's lives and people's health and a lot of work, you know, kind of directly with people with disabilities and with disability organizations in trying to improve their communities. So, yeah, that's, I guess, kind of the, the story that I can share about that.

Zackery Hurtz: Can you tell us of the history of the ADA?

Yochai Eisenberg: Sure, yeah, I can give a little history, you know, talk about how the ADA right was passed in 1990, and public rights-of-way were part of that law. And along with every other facility that was part of the general public, and especially around facilities that were built and maintained by local government entities. So, you know, the ADA was built on previous legislation, right, including the 1968 Architectural Barriers Act, which mandated that buildings built with federal funds be accessible. And then the 1973 Rehabilitation Act that also made it so that any federal buildings would be accessible as well. And then this extended it further to all buildings and local entities that govern and maintain—those buildings and facilities. And, you know, at that time, you know, a lot of the language in the ADA really focuses on curb cuts or curb ramps—the parts at the end of the sidewalk where it slopes down to the street. You know, it's expanded from there, and if you if you look at the original language from the ADA and Title II of the ADA, there are some very specific points that communities have to hit on. And, you know, I can just lay them out—there's kind of five key points that they were required to do in relation to the public right-of-way and calling out a transition plan, which was part of that. So, they're supposed to do a self-evaluation or an inventory of their facilities and services, which includes services for folks who are Deaf and Hard-of Hearing, everything related to communication, right, all the aspects of the buildings, and now websites as well, right. So, all those aspects that that public entity is involved in were required to be accessible. And then there's these five required pieces for, you know, being compliant for local public entities. And those are specifically that they do an inventory or self-evaluation of those facilities, that they then develop a schedule for remediating any issues that they found. They're supposed to name an ADA Coordinator or official who's responsible for removing those barriers, right, so you kind of have someone who's responsible. And then they're supposed to explain how they're going to make their facilities accessible. The last one, the fifth one, is that they're supposed to provide the public an opportunity to participate, and specifically people with disabilities the opportunity to participate in that removal process. So the ADA transition plan, it's important to realize is part of the larger process of removing barriers, right, that's where the ADA wanted to go. That's where the aim of the ADA was, is barrier removal and nondiscrimination through that barrier removal. And the ADA transition plan was outlined as the mechanism for doing that, right, which is, you know, it's a basic structure that's part of any, you know, typical strategy for an organization of business and government that you include these basic pieces to removing those barriers. This part of the ADA, which is, you know—I think I said it as part of Title II of the ADA. And these plans—ADA transition plans—were supposed to be completed by 1992, I think it was. But as we know, many communities had not done that and still lack transition plans today. So maybe that's a good place to stop in terms of, you know, some of the history of that. But, you know, beyond—before the ADA, there was a lot of work and, right, there was a lot of work around public rights-of-way and curb cuts. In places like Berkeley, where, you know, they had done a lot of work towards advocacy and working with the city to create wheelchair accessible routes, and you know, the first ones to kind of pioneer the work around curb cuts.

Zackery Hurtz: Could you summarize the work you did in Chicago with their ADA transition plan and tell us a little bit about it?

Yochai Eisenberg: So our work started out from a national project. We took a random sample of communities around the country and looked to see if they had ADA transition plans. And then we also want to know what the quality of their plans were. Because, you know, I think one of the things that many urban planners are aware of and folks in in community development understand is that plans can get made but may sit on a shelf—may not be implemented, if there's not—if it's not a good plan, right? So what makes a good plan a plan that will be implemented? So that's where we kind of started out and worked with a group of stakeholders and experts, who work on ADA transition plans, to create these quality indicators for ADA transition plans. And then we set out to find and evaluate those plans, both nationally, and then in the Chicago region, which is a kind of seven county region that includes Chicago and its outlying areas. And so there's about close to 300 local entities in this area and we sought to identify as well, which ones had ADA transition plans in this area too. And you know, we found similar results in both cases locally and nationally, that around 11 to 13% of communities had an ADA transition plan, and then that their quality really varied—that there was some important gaps in terms of quality and pieces that were not being met. Certain pieces that were in— and definitely there were certain cases of really high quality plans—but that a lot of them were missing key pieces, both pieces of a plan that were required and then pieces of these quality indicators that are things that you would think would be very important to have in a plan like, you know, setting out funding for how barriers were going to be removed and describe having a public involvement. So there's some of the pieces that you know, we're lacking. And in terms of your question around, you know, if this matched what we thought, we really had no idea. You're talking with certain folks in the state level, you know, around how many, you know—what percentage did they think would have plans—what percentage of communities? People really had no idea. It was all over the place. You know, I guess one person I thought was—most likely was around, you know, 25 to 50%. So that's where we were expecting things. So this was definitely lower than what we expected. But I think, you know, kind of having that number, having an understanding of what that number is, is a real important indicator, right? It's a really important benchmark in terms of knowing where communities are at, because even if you don't look at the plan itself, right, if you don't look at its quality—knowing if a community has a plan, at least, you know, gives you an understanding that this community has an understanding of what they're supposed to do, and is at least starting to tackle this important issue. And so it's pretty clear that many are still not there, and likely lack an understanding of what they're supposed to do.

Zackery Hurtz: Can you tell us of some of the results and changes of the work? What was focused on and where did it lead?

Yochai Eisenberg: In terms of what we did in the Chicago area, we partnered with a great regional organization called the Metropolitan Planning Council, which is—it's not the MPO but it's an advocacy and civic organization that focuses on regional planning, and really is one that I think helps to light the fire under our region and state in terms of aspects of equity, transportation, and other aspects of living in this region. You know, they were really interested in understanding where our community was at. They saw a report nationally and wanted to know what was going on locally. Since completing that report, it really caught the eye of our

regional MPO, the Chicago Metropolitan Planning Agency, the local FHWA, coordinators, and the local state DOT coordinators. And, you know, it helps, I think, to make that these agencies at the higher level, right, at region and state level and federal level gain an understanding of where there was this gap. And I think they use that to then be able to pool resources and funding to help create a new ADA department at the regional MPO and Chicago Metropolitan Agency for planning, which is something that I have not seen anywhere, within any other MPO. I'm sure there may be some that I'm not familiar with. I've seen some at the state level where there's, you know, certain departments focused on supporting ADA planning, like in Minnesota, Ohio, Indiana— but now at this regional level, and with this type of investment, where they've not just hired one person, right, to be the coordinator, but have developed a whole team approach. And what I like that they've done is they've really framed this around equity and around safety. And, you know, really have kind of pushed this as an important agenda item for their agency as a whole not like, it's this separate piece that, you know, is not integrated into other things that the agency is doing. So I think they're seeing it as part of the broader agency goals. And so they've hired a director, they've hired several planners, and I think had like, many interns over the summer to focus on this study. And I think, you know, what they're trying to do is to also dig into things a little more and understand the why—like our study didn't get to the why communities are not doing this and where the gaps are in terms of knowledge, skills, and funding for creating these plans. You know, I guess one piece that we did highlight in the report is that many communities have not done their inventories or self-evaluations around their public rights-ofway, so they — and likely their buildings as well. That's one big gap in terms of a starting point, right, that you need to do some—even though there's lots of different ways to do it, you need to do some kind of inventory to gain an understanding of where there are barriers. And so that's a key piece that I think the region is aware of, and now, you know, having all these resources, having all the staff dedicated to it, I think is going to really catalyze ADA transition planning. I think they're taking a nice approach in terms of, you know, not necessarily pushing on, you know, a forceful aspect of, you know, if you don't do this, you will be sued. Because I think, right, there is a climate right now around that and an important climate because a lot of my research and the things that I'm I've been doing—I'm working on a map of ADA lawsuits around the public rights-of-way, and we're mapping that out around the country. And you know, it's all over, and the reason it's impactful is that those cities that have been sued, and then the cities around them, are doing the work that they needed to do originally, which was just having a plan and removing barriers. And, you know, unfortunately because perhaps lack of enforcement, lack of tracking—there's a lot of detail that goes into these pieces. They weren't held to the standard. And I think lawsuits help communities realize that there is this standard that they need to be held to, and it's a civil rights law, it's not something that they can just choose to do or not do. So yeah, that's kind of the long story of what happened in our region. I think our state at the state level is also taking this more seriously and trying to work with folks out—communities outside our region to have their plans, and then to make sure that their plans are good quality. And, you know, one piece that I guess I would highlight in this area is around—I think that's what was part of your—the last part of your question in terms of what else needs to be done. And that's, I think, around—something that I think could help in our region, as well as perhaps in the Washington area region, is around supporting people with disabilities to get involved with local planning, you know, participation in local planning,

community development is something that has—is a whole field in itself and something that, you know, there's quite good quality indicators for involvement in planning as well. And that goes anything from—right, like just being informed that a plan is happening, which is where a lot of the plans that we found were at, right, they follow a lot of what they have done, perhaps with other plans, where it's—they do the plan all by themselves, put it up on a website, and—for 30 days—and that's kind of the open public period—public involvement opportunities that they provide. The communities that are doing this well—that's part of the research that we've done to, is to interview communities that have done this well—are really taking a strategic approach to public participation and, getting to that higher level of public involvement and public participation by reaching out to disability organizations, to having meetings in the community instead of at City Hall, and having virtual meetings and having lots of different kinds of opportunities for the disability community to be involved, and to kind of take seriously the translation of this information about the transition plan. Because even when you say "ADA transition plan", it's like, what is that, like, you already lost people there. But then once you get into the weeds of, you know, the way that the plan is laid out, and you know, discussing slope percentages and requirements, you kind of lose people. And really the intent is to get people's involvement with understanding the key barriers, with understanding the prioritization of the removal of those barriers, right, in many communities, what we found, let's say—I think it was at least over 50% I think of sidewalks and over 65% of curb ramps were—had barriers in them. And that's based on what the community's self-assessment inventories were. And so, you know, not—that's something that is—most communities is going to require—likely several decades. And so, you know, without big investments of funds, which we do have, you know—there is that start right now with the infrastructure bill, but it's likely not enough in many communities to make that much of an impact. We're hoping it does, but that's something that remains to be seen. So, you know, the key there is creating that prioritization and creating what's called a good faith effort towards planning and removal of barriers. And I think that good faith, right, comes from the engagement piece. It has to start there. And so in terms of what's needed, I think it's—it's starting out and, you know, treating people with disabilities as key partners in this barrier removal process. And that may mean other things as well in terms of involvement, right, like paying for transportation to meetings, or paying for being part of a process if you're going to—if the person with disabilities is going to take time to be part of a council that reviews the process and helps to steer the direction of a plan, they should get a stipend for being part of that process. That's kind of a summary of what I think is needed in terms of public involvement. And like I said, I think that translation piece, and perhaps there are certain things that the ADA center or organizations like yourself, you know, might have an important role in—in terms of helping to bolster local leadership, right, being a local leader in your community, towards being able to talk about this piece, right, and kind of knowing—you know, it can be very difficult when talking with local planners who, you know, might be so focused on other things like what's required and not required and what is part of their jurisdiction and not right? It's like, the curb ramp is part of their jurisdiction, but as soon as you get to the sidewalk—that's not me, or the streetlight, that's the county or state thing, right? And so all of that can get very tricky for anybody. And it's something that I think, you know, improving knowledge and skills around how to, you know, be an active member of your—of a local ADA board around transition planning, you know, might really help in terms of guiding the local entities, although, you know, I don't

want to put it all on people with disabilities. I think the local entities and the local ADA coordinators also need to really improve their knowledge— improve their awareness and skills of what's needed and how to approach this ADA transition plan.

Zackery Hurtz: Can you talk about the limitations of the ADA in regards to missing sidewalks?

Yochai Eisenberg: That I think communities that are connecting their ADA transition plans to their other pedestrian and mobility efforts are the ones leading in this area, because they are thinking about those connected routes and accessibility of those connected routes. And now it's just adding that element on of accessibility. But they've perhaps already gone through to look at that connectivity of where there is or isn't a sidewalk and started to think and create plans around that connectivity, and then being able to add on that accessibility. So that's, I guess, I think, both something that can happen, you know—ideally, I think it happens early, right, where there's this awareness that the ADA transition plan shouldn't be a separate document that's just handled by the engineering department, right? It's something that should be part of larger plans and should be part of larger pedestrian plans that could tackle that issue. Pedestrian transportation plans—I'm thinking of Austin, I believe, is one example of this where they integrated it well, and in Portland, I believe, as well, in terms of integrating a lot of their pedestrian goals with their ADA transition plan goals. And I think, yeah, communities that are doing that—there's also aspects of the policy in regards to requirements for maintaining an ownership on the sidewalk, right? And one of the issues that people talk about for sidewalks is that many communities—it's the responsibility of the owner of that parcel, homeowner or commercial owner, to pay for improvements, right? And most people don't want to do that. And often, what happens is they maybe get charged for it, which, you know, is not politically good for local leadership. And so some communities, I believe Austin was one of them, where they were trying to, you know, create a policy that would make sidewalks the responsibility of the city. And so transfer ownership—sidewalks, which are, you know, typically part of the public right-of-way, right, that area between the roads and an individual home parcel, and transfer that ownership to the city, right? But many cities are also reluctant to do that, right, because it could open them up to larger lawsuits. So it'd be interesting to dig in for Austin—where they're at, how they're doing it, and how that's faring in terms of improving their broader pedestrian network, right, and the connectivity of sidewalks itself. And so, yeah, I guess I guess you're right, I think it shows a limitation of the ADA in terms of the ADA only covers facilities that are there. If the facility is not there it's not required or part of what's in the ADA, because in a sense it's not discriminating against people with disabilities, it's discriminating against everyone. But I think there's some good connections there. I think there's good connections with safety now especially. There's a big push towards reducing pedestrian deaths, creating more safe roadways. And so I think especially around areas where there's no sidewalk on either side of the street that those can be areas to focus on. And perhaps some of this federal funding that you were talking about earlier, in terms of the infrastructure bill, could be used for—to improve both pedestrian connectivity overall and accessibility.

Zackery Hurtz: Would you mind shedding some light on why in Chicago things are moving forward, but in other jurisdictions, they're playing a game of hot potato trying not to be legally responsible?

Yochai Eisenberg: Yeah, no, that hot potato game is tricky, for sure. And one—you know, I think it likely relates also to like, the inventory process where like, you—I think there's some some legal aspects of like, if you don't know that there's a barrier, then you're not liable to fix it, right? Once a city knows and has done an inventory or self-evaluation, they know that there are barriers— if you don't fix it, you know, what are your implications for opening up liability? The people that I've talked to, you know, it seems like, you know, even if you do that you are opening yourself up to liability, but a strong defense is that you have a transition plan, right, that you, you have these mechanisms, you have a schedule, for when that barrier, or any barrier that you identified, would be removed, and that's a strong defense—that's where communities want to get to. And I think—you know, I'm not totally sure how our region is approaching it, I think they're trying to get to it as a, This is your responsibility piece, you know, they're still making communities aware of, you know, the requirements and that lawsuits can happen, but not necessarily trying to make it the impetus or the main focus. And more I think their aim is to identify and try to support local entities in regards to what knowledge, resources, skills are needed for those local planners, and engineers to create those plans. So I think they're trying to focus on that gap there and, you know, trying to identify the ways that they can be supportive of communities. And, you know, I don't know which one is going to be more successful, right? Like, it'd be great if maybe the Seattle region took the other approach, right? And then we could compare which one is more successful in a couple of years. But that's the approach I think that they're taking. And so they're investing some funds in training, right, lots of different training and opportunities for communities in the region to learn what they need to do. And then I think they're also thinking about potential investments in certain resources that could be leveraged, right, because when you have a bunch of communities in the same area and using the same service, there are opportunities to potentially have some cost savings or cost sharing across communities, potentially facilitation from the MPO or state level, in terms of let's say, you know, creating an inventory through a consultant or nonprofit group. Those are some of the things I think that the region is starting to put together and think about. You know, I think it's important conversation that they're at least starting to have. I think, yeah, it'll hopefully help build. But at the same time, lawsuits are happening, for sure. And, you know, each year there's been different lawsuits in our region. I think that still has its place. And I think it has its place in communities where even if they have a plan, if they haven't implemented it, right, then they're also not fulfilling their requirements under the ADA. The City of New Orleans, there was a lawsuit in 2021, with that exact piece where the city had a transition plan, I think from like, 2010. And they hadn't been removing barriers in a way that they described in that plan, and hadn't been removing enough barriers. And a judge decided that, you know, they had to focus more of their funding towards removing barriers. So having a plan is not enough in the end that, you know, I think we got to focus everyone's attention to, you know, removing barriers.

Zackery Hurtz: What can we do as advocates and agencies to implement ADA transition plans and accessibility within communities?

Yochai Eisenberg: Yeah, I guess I'll touch on a few things that I already mentioned slightly and then add a few more. You know, I think the piece about helping support local residents with disabilities with lived experience to be part of that ADA transition planning process and to kind of know what it is and how they can be involved and how they can be leaders is an important piece. We're doing some research in the next few years about that, and like, what makes successful involvement in local ADA transition planning. And we're hoping to share that out as well. I think that's going to be an important piece to help in creating that relationship of local involvement and participation in ADA transition planning. So I think there's an important role potentially around education and leadership development for advocacy organizations. We're working with several CILs in our area, who are also part of this broader project that I'm working with John Froehlich from University of Washington on. You know, that's one of the pieces that we identified as well is different curriculum there. And I also think, you know, connecting with urban planning, transportation, engineering schools help ensure that planners are more knowledgeable about the ADA and about how to integrate ADA transition planning into their work. I guess my hope is that ADA transition plans and, you know, broader planning for people with disabilities becomes part of more kinds of plans: housing plans, transportation plans, all kinds of plans—are able to take it more seriously and able to integrate it more so that it can be implemented, I think it comes down to whether these plans and initiatives get implemented. And I think that has to do with all these pieces of education and understanding of disability and accessibility that are needed. So that would be one of my hopes for the region. Also, that—I think, you know, people see this as a process that is continuous, right? When people talk about the ADA transition plan, they call it a living document. And I guess I would like to extend that to call it a living system. Because I think if we think about accessibility as a system, we gain an understanding that it includes various people, various stakeholders, various processes, various policies, that all kind of work together towards whether barriers will be removed or not. And so I think, you know, if we can help to educate folks about their role in the system and how they can improve accessible communities, I think that can go a long way. So yeah, and a part of that — I think, you know, your role in this is huge, I think, as far as a disability advocacy organization. I think what's great about where we are nowadays in our society is that communities are listening, people are becoming better at listening, and I think they are listening. And I think we'll listen to advocacy organizations. So it also means that more people need to speak up and become involved, and that can be a challenge, right? There's various challenges to that. But I think that communities do listen. Especially—sometimes it just takes repeating it, right? Repeating things over and over, and maybe speaking louder, but I think communities will listen.

Zackery Hurtz: If you'd like to follow Yochai. He is an assistant professor of Disability and Human Development at the University of Illinois.

Anna Zivarts: Thank you for listening to *The Road is the Sidewalk*. The Disability Mobility Initiative continues to work with advocates, local elected leaders and agency staff to ensure that disabled non-drivers have access to our communities. If you're interested in learning more, please check out our website at dismobility.com or follow us on Twitter at Dismobility.