

Anna Gassman-Pines:

From the Sanford School of Public Policy at Duke University, this is Policy 360. I'm Anna Gassman-Pines.

Every year, a huge number of Americans, 250 million, face issues that land them in the civil justice system, think eviction and debt collection and poor housing. And here's a shocking number, more than 90% of people with low incomes either get no legal help or inadequate legal assistance.

My guest today is Mallory SoRelle. Mallory is a faculty member here at Duke, and she's co-written a book called *Uncivil Democracy: How Access to Justice Shapes Political Power*. In the book, 124 people share their experiences related to power, politics, and justice. The book is so readable, it's filled with true stories and analysis about how to create effective public policy for everyone. Welcome to the studio, Mallory.

Mallory SoRelle:

I'm delighted to be here.

Anna Gassman-Pines:

So Mallory, you start your book with a story about a woman named Josephine. Tell us about her.

Mallory SoRelle:

Yeah, so Josephine is a remarkable woman in many ways. Josephine is a grandmother, she's an older black woman who lives in Harlem, New York. She's been in the same apartment for a really long time, and that apartment got bought out, essentially, by corporate landlords who own a lot of properties across the city. And Josephine and all of her neighbors started to notice the conditions in the apartment deteriorating in really dramatic ways. I'll give you one example of that.

So, Josephine is in her apartment and starts to see sewage backing up into her bathroom through the toilet.

Anna Gassman-Pines:

Oh, wow.

Mallory SoRelle:

And Josephine has enough experience now with these landlords to know they're not going to fix that promptly because they haven't fixed any of the other things that have begun to deteriorate and create safety hazards, in any prompt way. So Josephine finally says, "This is enough. I can't live like this. I'm going to hire a licensed plumber to come out and fix this, and I'm just going to send the bill to my landlord." And she tells the landlord that, and the landlord doesn't want to pay the bill. So eventually, Josephine takes her landlord to court and she's able to get access to a legal services attorney to help her to make sure she does everything she can to fix the problem in a way that won't violate her lease.

And Josephine is a little bit unusual, because she's successful. She actually gets her landlord to cut her a check to pay for that plumber. It's less than \$200, but it feels like a real victory to Josephine. But the problem is, this is only an individual fix, right? It fixes one of the many problems for one of the many tenants in the building. And Josephine says, "That's not good enough," right?

Anna Gassman-Pines:

Right.

Mallory SoRelle:

"I was taught to care for the community, not just for my own needs. There must be a better way for us to handle these problems." And so, Josephine gets connected with folks who are trying to organize tenants across the city in properties who are owned by the same landlord, and Josephine's never done anything like this before but she says,

"No, this is important. This is what I'm going to do." And so, Josephine starts organizing all of the tenants in her building. They join this broader tenant association, they engage in a rent strike to try and get the landlord to actually address these problems.

And so, the story we tell is one of an ordinary person experiencing extraordinarily bad housing conditions, who tries to make use of the legal system to get some of those problems solved. And she has some success, but it's not enough. And so, this experience really empowers her to turn to this sort of form of collective organizing, where she and all of her neighbors can try and actually get these major issues in their housing fixed when the courts aren't enough to do that.

Anna Gassman-Pines:

Yeah, and I definitely want to come back to this organizing piece for sure. But before we get to that, can we just talk a little bit more about the civil court system? So, Josephine actually has success, which sounds like it's pretty amazing, but in your work you find that actually, that's pretty uncommon. Is that right? So can you talk a little bit more about why Americans have trouble getting justice in civil court?

Mallory SoRelle:

Absolutely. So, if we think about lower income folks in particular, right? In the United States, if you have to go to court because you are accused of some sort of criminal offense, the constitution guarantees that you have a right to an attorney. But there's no similar guarantee on the civil side, and so when people are going to court for everything from eviction, to debt collection, to child custody issues, whatever that is, there's no guarantee that you have representation. And so if you can't afford an attorney, you may just be out of luck. And policymakers for a long time now have thought about ways to try and provide subsidized or free access to attorneys for lower income folks. And we talk in the book some about how support for that has waxed and waned over time.

Anna Gassman-Pines:

Sure.

Mallory SoRelle:

But throughout that period, there has never been enough support for the need. Right? And so, the vast majority of low-income folks who have civil legal problems that could go to court either don't end up taking them there because they can't get assistance, or they end up being what we call pro se clients. So they are essentially self-represented, they don't have access to counsel, or maybe they couldn't get access to counsel for all of their legal needs.

And you can imagine what happens when some individual client shows up against a credit card company or a corporate landlord whose lawyers are all sitting there, it doesn't usually go their way. And so, a lot of the folks we talk to who we might think of and say, "Oh, you should win your case. Given the evidence you have, this should be an easy win for you." But they go to court and they don't have a lawyer, and they feel like the judge won't listen to them, they can't present their evidence, and they lose. And the circumstances are usually really dire when that happens.

Anna Gassman-Pines:

That reminds me of one of the other people that you profile in the book, Sora. There's a quote in the book from Sora that when she brought her case to court, the judge in her own words was, "Very, very nasty." So you talk about Sora was alone in the courtroom during the proceedings, and she said that the experience was like, "Nobody was on my side. It's like they belittle you because you don't have a certain type of money." And she goes on to say, "The state is supposed to help you. It's sad that the system works with the landlords instead of the people."

Mallory SoRelle:

Yeah, that's exactly right. And Sora is a really interesting case, because she goes through the court system in Atlanta, the housing court system there twice, fighting an eviction both times. The first time, she tries to get access to an attorney. So, Sora receives public housing vouchers, and Sora has a pretty incredible story. She essentially didn't have a home for much of her teenage years, she left an abusive home, more or less was unhoused for most of that time. And when she discovered this sort of public housing program, she was actually delighted. She was like, "Wait, the government is actually going to help me find housing." And so, she was fairly positively inclined toward thinking that government would help.

And then she ran into problems where payments from that program came late, her landlord tried to evict her. She really had not done anything wrong, but she couldn't get a lawyer because the legal services in the area that she lived were overburdened and they simply just didn't have someone who could help her. And so, the first time she goes through court, she says, "I had all this evidence, and they wouldn't look at any of it." And she got evicted and everyone was telling her, "Oh, that doesn't seem right. You shouldn't have been evicted."

The second time the same thing happens, she goes back through the courts but she's able to get an attorney. Right? This time they have someone free who can help her and she says it was a totally different experience. "They knew exactly what to do, they could force the judge to listen to my evidence, and it worked out in my favor." And it's a really interesting outcome because for her, the lesson that she took away from that the first time was, "Man, the government's supposed to be helping me, and they really seem against me." And then the second time she said, "When I got this help through government subsidized legal services, it did work in my favor." And so her takeaway was, everyone should have access to that. And so, she went to college for paralegal studies and wants to become a lawyer eventually so that she can help people like her and make sure that she's trying to fix it for others.

Anna Gassman-Pines:

That's an amazing story. So, it seems like civil litigants like Sora are often on the losing end of a power imbalance. Is that how you see it?

Mallory SoRelle:

Yes. So, one of the things that's interesting about the civil legal system in the way sometimes scholars and legal professionals talk about it is, we think about it as a sort of voluntary court system and that people can choose or not to bring claims against people.

Anna Gassman-Pines:

Right, right, right. Mm-hmm.

Mallory SoRelle:

But when we're thinking about folks who are marginalized because of their class, their race, most of those folks are not showing up voluntarily to the civil courts, right? They're being brought there because of an eviction notice or debt collection notice or things like that. Sometimes people are choosing to take cases, right? They're trying to challenge bad landlords who aren't keeping up with their properties or things like that. But often, folks are forced into those positions and they're forced to come with no legal help, where the outcome of the case may or may not depend at all on the actual merits of the case. And so, part of what this ends up doing collectively is a sort of upwardly redistributing the assets of folks who come into these courts without any help to already well-resourced actors, whether that's landlords or financial companies or debt collectors, whomever that is, in ways that are really challenging.

Anna Gassman-Pines:

And for many cases, there's no legal remedy even when it's the court's fault that something hasn't gone the way it should have. Is that right?

Mallory SoRelle:

That's exactly right. So, I'll give you an example. The eviction process looks a little different depending on where you live, but one of the fairly common features is that if you don't show up on the day that your court case is being held, a default judgment is rendered against you, which usually means you're evicted. And so, that makes some amount of sense if you don't show up. But the problem is, in order to show up, you have to know that the court case is happening.

So for example, we spoke with folks in Detroit where the mail system is just not good. And so, they frequently have clients who never actually get their notices to appear in the mail in time to appear. And so, they get these default judgments when the clients didn't even know they were supposed to show up.

Another example that happened in a number of places during the pandemic is, despite the fact that there was supposed to be an eviction moratorium, many still proceeded. And so, a lot of the civil courts moved to Zoom for public health reasons, which makes a lot of sense. But for any of us who know Zoom, we know sometimes you get the wrong link, the wrong invitation, and that was actually happening in the courts.

Anna Gassman-Pines:

Oh, wow.

Mallory SoRelle:

So, we told the story of one woman who showed up to the Zoom room for her court hearing and waited and waited and no one showed up. She was like, "What's going on?" And she found out later that the city had actually changed the Zoom room but had not notified anyone. And so, she actually had an attorney who tried to get an injunction and the city was like, "Yeah, we know this happened, but we can't really do anything," and evictions move so quickly, that the process was already in place to evict people. So, even if they had gotten relief three months down the line, they still would've been evicted.

Anna Gassman-Pines:

Okay, well, there's so many stories in this book but I want to talk about one more. There's another person you talked to who was paying rent on time but did not realize that they weren't paying it to their landlord. So, what happened?

Mallory SoRelle:

So, this is actually the same woman, we'll call her Tamara, who experienced the Zoom debacle.

Anna Gassman-Pines:

Okay. Oh, wow. Okay.

Mallory SoRelle:

So, she actually was able to work out that issue with her landlord and stay in the house for some time, but eventually, the landlord wanted to raise the rent and she couldn't afford it.

So, Tamara started looking around in Louisville, Kentucky for a place to live. And there is a very large property company in Louisville called, I think it's Main Street Partners, that owns a tremendous amount of the real estate in Louisville and they rent it out. But part of the problem is, they buy all of these houses and they don't immediately rent them, and so there are a lot of these houses that are just sitting vacant. And what that has led to is essentially, fraudsters. Right? They come in, they change the locks on the property, and they rent them out under the guise of this company, and nobody knows the difference. And so, that's what happened to Tamara. She found this house, it was in a neighborhood she wanted to live in, it was affordable.

Anna Gassman-Pines:

Looked legit.

Mallory SoRelle:

She thought, this is great. And what made it even worse is then she told some of her friends about it-

Anna Gassman-Pines:

Oh, gosh.

Mallory SoRelle:

... and said, "You all should check this out. This seems great." So she talked to whom she thought owned the property, we'll call him Tristan, and she was paying rent to Tristan for a long time, for the better part of a year. Until one day, the real Main Street Partners showed up and said, "You're squatting in our house," and she was stunned. She was like, "What do you mean? I've been paying rent for all of this time." And she had a lawyer who was able essentially to draw out the eviction process for a long enough time that Tamara was eventually able to find other housing.

But along the way what she found out is, the police knew all of this was going on. So she went to the police and they said, "Yeah, they've done this with this house multiple times. You actually made it longer than anyone else," and the city counselors knew this was happening. And so, attorneys have tried to bring suit against the property owners for saying, "You're essentially neglecting these and creating the conditions to let this happen," but there's been no political or policy remedy despite the fact that everyone knows it's going on.

Anna Gassman-Pines:

And these examples and the historical and survey data in the book really do seem to show that for many people, there's a limit to a lawyer's power. So, Tamara had a lawyer, but it sounds like there wasn't a whole lot that that lawyer could do. So, what do you think is the alternative?

Mallory SoRelle:

Yeah, and I will note, I think one of the reasons that there are limits to what lawyers can do is an intentional feature of policy design. So, when Congress started debating back in the '60s how best to provide access to legal services for lower-income folks, there were people in Congress who saw this as a sort of fundamentally progressive idea, where lawyers could be used to not only help individual clients but actually to change the stakes for large groups of marginalized folks when policymakers weren't doing it.

But there were also a lot of policymakers who had a more conservative interpretation who were still supportive of legal services because they saw it as a way to "civilize" these people. So to say, we know that there are a lot of folks, this was happening in the '60s and '70s when there were race riots happening in urban centers across the US. And so, some of these more conservative policymakers said, "We actually think if we provide legal representation to these folks, it will channel all that rage from collective action, that could actually threaten our power into this very individualizing, civilizing mechanism of the courts where people only get help for their specifically defined individual problems." And so over time, a lot of those folks have narrowed away what legal services providers can do.

So for example, if you get legal services funding, you cannot engage in class action lawsuits anymore, which you used to be able to do. And so, there's now this very narrow window of things that lawyers can help people with, but none of those change the underlying structural problems that cause people to go into the civil courts in the first place.

And so, what we find in the book actually is that a really promising alternative is organizing and collective organizing. So, when we're showing up in courts observing what's happening, we started running into all of these tenant groups. And so, people were coming in to deal with an eviction or something like that, and they didn't have any help. And then out in the halls, they were meeting these organizers who were saying, "Look, we can help you provide some basic legal advice, but come work with us and let's think about ways we can actually build more collective power instead of relying on the courts just to fix these problems." And so, organizing offers a way for these groups to connect, build relationships, build trust, and then be able to exercise that sort of collective power

in whatever direction they need to try and get policy change or to try and help one another, provide mutual aid. And yes, sometimes also to provide legal assistance.

Anna Gassman-Pines:

But you didn't set out to write a book about organizing.

Mallory SoRelle:

We did not, no.

Anna Gassman-Pines:

So, talk to me about how that's where you ended up.

Mallory SoRelle:

We did not set out to write a book about organizing. We set out to write a book about how people's experiences in these courts shaped the way they thought about politics. And I think both know Jamila mentioned, or my co-author and I, I think both came into this with some thoughts about how that might work. But we expected, I think mostly a deficit story. I think we expected that most people would go into the courts, have a bad experience, and that would turn them away from politics. And we definitely found that.

Anna Gassman-Pines:

Sure.

Mallory SoRelle:

That absolutely is true, and our interview evidence, our survey evidence, lots of evidence shows that to be true. And we also went in thinking that probably folks who had access to an attorney would have less of that deficit story, and that also proved to be true. But what we found in the process of this is that there is this third route, right?

Anna Gassman-Pines:

Yeah.

Mallory SoRelle:

Which is the ability to organize collectively and to become empowered as a result of that. And there were several folks we interviewed who had either of those first two experiences, either a really negative experience because they didn't have an attorney, or an experience where they did, but at the end of the day, they walked away saying two things. First of all, they said, "Man, when I was in those courts, I realized this wasn't just about me. There were so many other people in that room with the same problem, and the judge just wouldn't recognize it. And at some point, it can't be all our faults when it's a whole room full of people who don't know one another with the same problems with the same landlord, and somehow we're being evicted because they won't keep their buildings safe."

Anna Gassman-Pines:

Safe.

Mallory SoRelle:

And those folks said, "There's got to be a better way than us all sitting in here one by one trying to deal with this." And so, I think that sparked a lot of interest among folks, kind of like Josephine, who said, "If the community's not doing good, I'm not doing good. And so, how do we make sure the community is doing better?"

Anna Gassman-Pines:

And you say that this issue has a potential effect on democracy. How so?

Mallory SoRelle:

Yeah, so, I mean, we don't always think of the legal system as being about political power, but it is. So, one of the things that we know is that when people engage with government in any number of ways, whether that's through the courts, whether that's getting some other kind of policy benefit, whether that's going to the DMV, right? It teaches us lessons about government. It tells us something about how much we're valued, how well we're treated. Are we given benefits that we then want to protect? And so, we know that across any number of policies and experiences with government agencies, it shapes the way people think about politics and it shapes how interested they are in participating. You're going to be a lot more interested in participating in politics if you have something you're trying to protect and if you think people are going to listen to you because they treat you well. And so in that sense, people's experiences navigating the courts are inherently political, because it teaches them something about whether they're valued as citizens and whether it's worth their time to engage in politics.

But in addition to that, the ability to become engaged in more collective forms of organizing is also inherently political, because that is a way that folks who scholars often think of as not having much political power. Right?

Anna Gassman-Pines:

Yeah.

Mallory SoRelle:

We think of people who are economically marginalized or racially marginalized or marginalized based on any other number of factors, we generally think of them as not being able to exercise political power in very many meaningful ways. But what we find is, that simply isn't true when folks are able to organize. And so, a lot of the tenant groups we talk to have been instrumental in trying to get, for example, right to counsel laws passed in their state so that everyone who's going through housing court does have an opportunity to get an attorney. And if they can't get one, the judge will dismiss the case and say, "Don't come back until this person has representation." They've been instrumental in winning elections in local city councils, right? So you have folks on the city council who say, "Oh, I know this housing fraud thing is happening, and we actually need to pay attention to that." And so, there are a lot of ways that there's this direct relationship between people having these civil legal problems and the way they choose to or choose not to engage in politics as a result.

Anna Gassman-Pines:

So, it sounds like a better understanding of the power of the people, and especially when people organize and work together, could start to reshape public policy. Is that right? I mean, did I get that right?

Mallory SoRelle:

Yeah. So, if we think about why the civil legal system is so overburdened in the first place, it's because people don't have enough resources to pay their rent or they don't have access to health insurance, and so they're having debates in the courts with their insurance company about whether they should be covering something or not. It's because there aren't sufficient regulations on what landlords can and can't do, and so you have lots of kids living in houses with lead paint and landlords aren't going to remediate that because nobody's going to force them to. And so, when we think about all of these sort of structural problems that policy has not solved, that's why people are going into the civil courts in the first place.

So when their experiences then lead them to organize, one of the goals is that organizing can potentially empower people to change those underlying policies to reduce instances of having to go to the civil courts in the first place. Though I will say, that's the happy story.

Anna Gassman-Pines:

Sure, right.

Mallory SoRelle:

I don't think it's that simple because when you talk to folks who are engaged in organizing, there aren't always clear policy solutions. Right? So we might say, okay, well, what are some policies that would help organizers do their work? We know for labor unions, there's the Wagner Act that gives people protections when they organize in private workspaces. And so one idea is, maybe there's a tenant version of a Wagner Act that allows tenants to organize collectively without facing retaliation. And that may be great, but there's also some concern, I think sometimes among organizers, that when you put very specific legal processes in place, it can also limit the type of activities that they can engage in. And so that, it's not always clear what the right policy solution is, but it is clear that generating more political power lets those groups make choices about how they want to exercise it and in what direction and to what end.

Anna Gassman-Pines:

Yeah, and that reminds me about a really interesting thing that happened at your book launch, which was so fascinating. But at the book launch, Hahrie Han, a political scientist and MacArthur Genius Award winner, said, "A big challenge in organizing a tenants union means getting people to see themselves not just as private people, but public people." And I think that's a little bit what you're talking about, right?

Mallory SoRelle:

Yeah, absolutely. I think a lot of people, I mean, I think this is true just generally, we're all busy, we all have a lot of things going on, it's easy to not focus on things that are bigger than ourselves. But I think particularly folks who have been consistently marginalized by a system, who have been taught over and over, your voice isn't important. Right? What you want doesn't matter. You are going to be treated differently than other folks. We don't think you deserve the same things. It's really hard, I think, then to think it's worth your time to invest energy doing anything other than trying to survive and get through your day. Right?

And so, I think one of the things that is really important about organizing, and just to be clear, when we talk about organizing as opposed to mobilizing, organizing is an ongoing project. It's inherently relational. It's about building relationships over time with people so that you trust and make decisions together and can exercise, which is very different from mobilizing, which is usually like, there's one thing we want you to do. We're going to ask you to do it. You're going to do it, and we're done. Right?

Anna Gassman-Pines:

Right, yeah.

Mallory SoRelle:

And so, I think it's hard, yeah, to convince people that that's going to be a worthwhile exercise. And it's hard work to do because it's not just a one-off, sign this petition and you're done, go vote and you're done. Right? It's an ongoing relationship that you have with people that requires your time and energy towards some public facing action, and that's a lot to ask of people.

Anna Gassman-Pines:

To that end, I'm wondering, what do you think success would look like when it comes to tenants rights?

Mallory SoRelle:

That's a great question. I think one way of thinking about that, as I alluded to earlier, I'm not sure there's an easy answer. Obviously, one version is that tenants would have more rights and of a say, more control over their situation.

I think one of the things that's really important is allowing tenants and tenant organizations themselves to answer that question. I think it's common for folks who study public policy or who are policymakers to think, okay, we have this answer and we're going to assume that's good for everyone without actually talking to the people who it's affecting. So I think one answer to that question is, what would be great to see is actually tenants being able to set some of that agenda.

I think one thing that has been a threat to a lot of the work that tenant organizing has done is preemption. So in the US, we have a federated system of government, which means that national governments and state governments and local governments are all in charge of different things. And a lot of work around housing and for tenants happens at the local level. Sometimes it's at the state level, but often it's at the local level. And so a lot of tenant organizations have been quite successful in getting policies enacted at the local level. And then state governments that might not like those laws have come in and preempted them, which is essentially said, state governments will come in and say, "You, city government, you actually can't pass laws like that." And I think that's a real challenge because it feels like you've invested all this time and energy and you won something, and then it just gets snatched away. So, I think trying to figure out a way to protect some of these local victories from being preempted would be great, because it can be harder to get statewide laws passed.

Anna Gassman-Pines:

Sure, right.

Mallory SoRelle:

Right? And so, I think a lot of tenant organizations are starting to work up to that, but it's a bigger challenge.

Anna Gassman-Pines:

Yeah. What's one takeaway that you have for policymakers coming out of this work?

Mallory SoRelle:

Oh, goodness. I think I have a lot of thoughts about that.

Anna Gassman-Pines:

Okay. You can give me a couple on that.

Mallory SoRelle:

No, I mean, I think the biggest takeaways is, one of the things we know in political science is that policymakers not maliciously, but often misunderstand the preferences of their constituents in very predictable ways, which is often in more business friendly, or I don't mean partisan conservative, but small C conservative ways.

Anna Gassman-Pines:

Sure.

Mallory SoRelle:

In part because folks with those preferences tend to be the ones who have more access. And so, policymakers often think they know what their constituents want, but it is often just a subset of their constituents. And so, I think being attentive to the organizing that's happening in your communities, being attentive to the needs of folks who may not be the ones knocking on your door.

And we hear success stories of this, where organizers have been able to interface with policymakers and say like, "Hey, this may not be a thing you knew about. Can you think about this? Here's what we're looking for," and that has in some places. But I think policymakers really taking seriously, not just what elites and experts are telling them, but what the folks who are actually living these experiences are telling them, is an important step.

Anna Gassman-Pines:

Well, Mallory, thank you so much for joining me today and for the work you and your co-author, Professor Jamila Michener from Cornell have put into this work.

Mallory SoRelle:

Yeah. Thanks so much for having me, and it's always exciting to get to talk about this project.

Anna Gassman-Pines:

The book is really an achievement, it's called *Uncivil Democracy: How Access to Justice Shapes Political Power*. Mallory SoRelle is the Tony and Teddy Brown Associate Professor here in the Sanford School of Public Policy at Duke. That's it for now, we'll be back soon with another conversation. I'm Anna Gassman-Pines.