

S07_Ep02_Upsolve-vs-NY

[Transcript may not reflect last minute changes to script, and may have certain machine-generated misspellings. We're trying our best!]

Dan: Hey there--

Dan: In October 2019, a few days before Halloween, I visited the general-sessions courthouse in Memphis-- where lawsuits get heard-- with the journalist Wendi C Thomas. (in tape, WCT: "They're gonna go through your bag." DW: "That's fine")

Dan: She had spent a LOT of time in that courthouse. Over the course of more than a year, she had documented how the biggest hospital in town had been Awsuing thousands of patients over unpaid bills, including lots of its own badly-paid employees.

Dan: Wendi's incredible work got results. When she published her story, that hospital had actually dropped thousands of cases, and promised not to file new ones. That had been a few months before. But there were other hospitals, other medical groups still at it. So there were cases to see, plenty of them. (Zipper sounds-- DW: "That's recording equipment")

There was no recording allowed in the courtroom, but Wendi and I debriefed on the way out.

Dan: Yeah. Things were

Dan: moving so fast. I was like, I don't think I could take notes to this fast.

Wendi C Thomas: Oh yeah. . We'll go out this door. Yeah. I was going to try to time how quick. Moving through the cases, but, um, you know, probably less than 10 seconds yeah, , yeah. Okay. Okay.

Dan: Even counting the ones for people showed

Wendi C Thomas: up. Yeah.

Dan: Right, because this was the other thing. Lots of people don't show up to court. They may not be able to take time off from work, and they may figure it's hopeless.

Dan: Which honestly might not have been too far off base. The people who did come? Looked completely lost. I mean, not one of them had a lawyer. They were alone in a totally unfamiliar environment.

And you know who was super at-home in that environment? The lawyers representing the hospitals. These lawyers and the judge were basically colleagues-- they'd been coming together in this exact room, week-in, week-out, for years. They didn't need to take time off of work to come here. For them, this was work. A day at the office. An easy routine.

Dan: Versus the defendants, who had no idea how things worked, what their options were. How they might mount a defense.

Dan: A non-profit group called Upsolve wants to help with that.-- to help people being sued over debts to get a little orientation, a little advice-- from folks like social workers, librarians, pastors. Upsolve wants to train those helpers.

Dan: Except: Those helpers would be committing a crime: It's called the unlicensed practice of law. Even just giving people a few pointers, helping them fill out a form before they go to court? A crime. You can go to jail.

Dan: And so Upsolve has filed a federal lawsuit, asking a judge to say: If this is a crime -- this little thing, giving people a few tips -- it shouldn't be.

Dan: And if you've been listening to this show for a while, you can probably see why: I REALLY like this case.

Dan: This is An Arm and a Leg, a show about why health care costs so freaking much, and what we can maybe do about it. I'm Dan Weissmann. I'm a reporter, and I like a challenge. So my job on this show is to take one of the most enraging, terrifying, depressing parts of American life and bring you a show that's entertaining, empowering and useful.

Dan: This one's about empowerment.

Dan: We've been talking on this show for a couple of years now about our legal rights. It turns out we have more rights than most of us know about. Because most of us aren't lawyers. And most of us can't afford to pay lawyers to enforce those rights. A lot of the time, that's like not having the rights at all.

Dan: And this problem-- access to justice -- isn't limited to disputes over medical bills, or problems with insurance companies. Here's Upsolve's founder, Rohan Pavuluri:

Rohan Pavuluri: there are so many issues. Like when you need a divorce from an abusive spouse or a restraining order, when you're evicted from your home and you need access to bankruptcy if you can't afford a lawyer and you probably can't find a free one because there's not enough supply that's available, you, are out of luck.

Dan: Rohan has a super Young Overachiever story. He's in his mid-twenties. He started Upsolve when he was in college, at Harvard, in 2018.

Dan: In a TED Talk - yep, he's got a TED Talk-- he tells the story of a young woman who faced overwhelming, unpayable debts. And found out that a bankruptcy lawyer would cost her 1500 bucks.

Rohan Pavuluri: I mean, what a cruel irony in America, it costs you \$1,500 to tell the court that you have no money.

Dan: Upsolve's big project so far has been a web tool that helps people file for bankruptcy without a lawyer. I've seen it described as TurboTax for bankruptcy, except it's free.

Dan: You fill in some information, upload your pay stubs, tax returns.

Dan: The website spits out legal papers you go file yourself.

Liz Jurado used Upsolve in 2019-- when a mysterious medical bill . She'd been a stay at home mom until her husband got laid off. She took a job, and a few months later got a letter from the Sheriff:

Dan: It said there had been a legal judgment against her -- in 2010. And now that she was earning wages, they'd be garnished: the money would be pulled out of her paycheck and sent directly to... whoever had sued her.

Liz Jurado: that really took me, you know, took me for a loop. What is this? Where did it come from? How could they not tell me about it until now? ,

She didn't recognize the creditor-- an anesthesiologist? A surprise bill -- I mean, she'd *been* insured -- and this was 12 thousand dollars.

Liz figured it had to be from the birth of one of her younger kids. Which would make it at least ten years old.

Liz Jurado: I don't even know if it was my, my son or my last daughter, . And I was like, this can't be happening to me right now.

Dan: She had become her family's breadwinner, and that paycheck was already stretched.

She was scared, and she was mad.

Liz Jurado: Like how are you going to come out of the woodworks and tell me, Hey, this is yours. I mean, no, first of all, no.

Dan: Bankruptcy seemed like her only option.

Liz Jurado: and then I started to look for how I can go about it, because again, that costs money too. I'm like, Okay.

Dan: But when Upsolve came up in a Google search, offering free help online, she hesitated.

Liz Jurado: , you know, reading it and it sounded too good to be true. So if it's too good to be true, you learn, it probably is.

Dan: A month later, with another note from the sheriff, and a month closer to having that money pulled from her paycheck, she figured she didn't have much to lose.

Liz Jurado: I just went in. And I just started, you know, click typing away and putting all my bills in there

Dan: And the system sent her back legal documents, with her information filled in.

Liz Jurado: I and printed everything out and I did all the filing myself

Liz Jurado: I went to the court . I was literally the only person without an attorney

Dan: And it worked. That was 2019. Upsolve's says people have used its website to discharge more than 450 million dollars in debt.

Dan: But Rohan says he always thought of the bankruptcy tool as just the start of a bigger project: Addressing the access-to-justice gap.

By mid-2021, he'd started thinking about what might be next

Rohan Pavuluri: Debt collection. Is sort of one of the biggest areas of law after traffic tickets, that Americans experience.

Dan: So, a big target, and a big injustice.

Rohan Pavuluri: it's such a terrible problem that anybody can be sued for these debts, especially if you don't owe them. And then if you don't respond, you automatically lose. Like what kind of system is that?

Dan: How to intervene? Rohan says he had always liked the idea of training people who were already on the ground in communities.

And around this time, one of his funders -- from the Robin Hood Foundation -- introduced him to someone.

Reverend John Udo-Okon: this is Reverend John Udo-Okon, the senior pastor of one of live international in the Bronx, New York city.

Dan: Reverend John describes his church as heavily involved with community outreach. They employ community health workers, and social workers, and they run a food pantry. He says a LOT of the people they serve have a LOT of debts they can't pay.

Dan: So he asked Upsolve to come to one of the town hall meetings he holds on Saturdays.

Reverend John Udo-Okon: I said, listen, it's one thing for me to tell you what the people are going through, , it's a different thing for you to come and sit down with the people and talk with them.

Dan: So they did.

Reverend John Udo-Okon: the first time that, absolve came, they came with a team of lawyers for the town hall,

people were waiting to see them waiting to talk with them, willing to cry, make that voice in his head, you know?

Dan: He says the Upsolve lawyers found it overwhelming -- and they came back. Came to the food pantry, talked with people waiting in line for food. Offered one on one help.

Dan: And then last fall, Reverend John says the folks from Upsolve floated an idea: They were thinking about training people like him, people like his social workers, to give people the same kind of help

Reverend John Udo-Okon: they asked me, you know, Reverend John, you know, if we were to do this, would you be interested? I said, oh my God, that's what I've been waiting for.

Dan: But of course ... it would be illegal for Reverend John to actually give that kind of help. Reverend John says he knows of a local pastor who got busted for giving out legal advice.

Dan: And that's how Reverend John and Upsolve came to file a lawsuit together, in January of this year. They're suing New York's state attorney general, Letitia James in federal court — asking a federal judge to say, hey: This thing that Rohan and Reverend John are planning to do?

Dan: You can't prosecute them for that. The law that says they can't?

Dan: They say it violates the constitution.

Dan: Coming up: The argument they're making, and how all this might go. Right after this.

Dan: This episode of An Arm and a Leg is produced in partnership with Kaiser Health News. That's a non-profit newsroom covering health care in America. Kaiser Health News is not affiliated with the giant health care outfit Kaiser Permanente. We'll have a little more information about Kaiser Health News at the end of this episode.

Dan: So, to understand the argument that Rohan and Reverend John are making in their lawsuit, it's important to know exactly what they're proposing to do. It is SUPER-limited.

Dan: In New York, if you're sued over a debt, the court is supposed to send you a form-- this is an actually an attempt to make it simpler to fight back: It's a checklist of defenses. And some are straightforward, like: "This is not my debt. I am a victim of identity theft or mistaken identity"

Dan: But a lot of others are less clear. Like: "Failure to mitigate damages. [Parenthesis, Plaintiff did not take reasonable steps to limit damages.]"

Dan: Rohan's proposing to train people like Reverend John to sit down and go through the form with you.

Dan: The training actually includes a script, with a question for each box. Like for the box that says "failure to mitigate damages," you're supposed to ask:

Dan: Are there things the creditor could have done, but didn't do, that would have helped minimize their loss? One example is where a tenant leaves a lease early and the landlord delays in seeking an alternative tenant. It is landlord's burden in court to prove that it took reasonable measures to mitigate damages."

Dan: If the answer is yes, you tell them to check box number 14.

Dan: I mean, that's useful, and it's very, very limited. Which is the point. Here's David Udell. He runs the National Center for Access to Justice at Fordham, and he filed an amicus brief in the case. Upsolve's founder, Rohan sits on his board.

David Udell: this lawsuit. Isn't about having, a Reverend in the south Bronx do a full trial in a civil court.

David Udell: Or defend somebody in a criminal court. This lawsuit is about that. Reverend being able to help somebody check some boxes on a court form .

Dan: And as limited as it is, helping people check those boxes is technically giving legal advice. Which only lawyers are allowed to do.

Dan: Rohan's suit says: Yes, ok, that's technically giving legal advice-- and it's also SPEECH. Freedom of speech is protected by the First Amendment. And we're saying free speech protections, in the U.S. Constitution, take precedence over state law in this specific case.

Dan: To the degree that New York state law forbids this very specific, limited, useful speech-- by people who will be trained and supervised, by the way-- the law is violating the constitution.

Dan: So, briefs in Rohan's case actually make a big point of emphasizing how against-the-law this currently is.

David Udell: it's sort of counterintuitive that a brief might take the position that would Rowan's doing is prohibited , but that's actually making clear that it's important for the judge to rule on this case, uh, you can't just blink at it and say, oh, it's not really the practice of law. It is,

Dan: I love this nerdy stuff.

Dan: But it's early days. As we record this, the defendant, New York Attorney General Letitia James hasn't even filed her arguments in response yet.

Dan: And then a judge will eventually make a ruling, and maybe there'll be appeals. And then if Rohan and Reverend John WIN the case... well, these are state laws. And there are 49 other states. David Udell thinks a win here would be a big deal, but still.

Dan: I mean, part of me hates this story because it shows what a big mountain there is to climb here.

It's outrageous that millions of people get sued for debts. Including: sued for getting sick when the price of treatment is not affordable.

There's nowhere near enough free legal help, but there's always a practiced lawyer on the other side.

It seems like the very least we could ask is to allow pastors and social workers and librarians, say, to help people fill out a checklist?

You get help filling out the checklist, you're still on your own to go compile evidence, and arguments, and go to court, alone.

And it requires mounting a federal lawsuit just to provide this minimal help -- in one state?

I hate all that.

And yet, I do love that Rohan and his pals are doing this. Because legal knowledge is power. As we've been learning on this show: We have rights. They're not always THAT complicated.

One of my favorite stories we've ever done was about Shaunna Burns, a 40-something mom from North Carolina, who spread the word about some of those rights in a bunch of 60-second videos on TikTok. You might remember some of her advice. For instance: a lot of the time, debt collectors can't PROVE a debt is yours, or that they have the right to collect it.

Shaunna Burns: hi guys. Here's how to handle it. Anytime a collection agency calls you the very first call, what you need to do, you need to say, I would like to request an itemized bill with every single charge. And I would like a copy of my original invoice or my original receipt with my signature.

Shaunna Burns: If they come back and they say, I'm sorry, we don't have that. You come back and say, well, Without that you can't legally collect this debt. So I legally don't have to pay it, have a great day and hang up the fucking phone.

Dan: Shaunna heard back from people who said they went to court armed with that knowledge and got cases against them dismissed.

(Nerdy legal issue: Nobody's gonna prosecute Shaunna for the unlicensed practice of law because she's not giving individual advice. And as we learned when we covered Shaunna, there are nuances to that defense; I'd definitely want some individual advice, if I could get it.)

So, Rohan wants to train Reverend John and a bunch of other people to give that advice? And to mount that fight for the right to do it?

I hate that it's necessary, but I'll tell you what I love: I love that they're going RIGHT at it.

Some other efforts are taking what sounds to me like a longer way around: Utah's State Supreme Court has authorized some "experiments" with letting non-lawyers do more things — including, in a couple cases, helping folks being sued for medical debts.

And don't get me wrong: I love this too. But: It's taken years to get some experiments up and running. Then they'll get evaluated...

Can you imagine waiting for that process to play out, and then trying to get 49 other states to allow the same thing? Me neither.

So: I love that instead of asking permission, Rohan and Reverend John are fighting for forgiveness, in advance. Go fight.

Dan: Coming up next time on an Arm and a Leg, our producer Emily Pisacreta brings us a story that started with a note from listener Mariel Moore. Mariel's got, Crohn's a chronic, inflammatory bowel disease. So.

Mariel: Every time I go see my gastroenterologist, I get signed up for some sort of unpleasant, diagnostic test of some sort. And so I usually try to avoid it as long as possible.

Dan: Last time she went, she discovered something else unpleasant: a much higher bill than she was used to. The reason turns out to be private equity investors have been buying up gastroenterology practices in a big way, or as one investor sells it.

Folks, we are living in the golden age of older. Rectums

Next time on an arm and a leg:

What happens when investors decide your butt is a gold mine?

Till then, take care of yourself.

This episode of An Arm and a Leg was produced by me, Dan Weissmann, with Emily Pisacreta, and edited by Marian Wang. Daisy Rosario is our consulting managing producer.

Adam Raymonda is our audio wizard. Our music is by Dave Winer and Blue Dot Sessions.

Gabrielle Healy is our managing editor for audience. She edits the First Aid Kit Newsletter.

This season of an arm and a leg is a co production with Kaiser health news. That's a nonprofit news service about healthcare in America, an editorially independent program of the Kaiser family foundation. Kaiser health news is not affiliated with Kaiser Permanente, the big healthcare outfit.

They share an ancestor. The 20th century industrialist Henry J Kaiser. When he died, he left half his money to the foundation that later created Kaiser health news. You can learn more about him and Kaiser health news at [arm and a leg show dot com slash Kaiser](http://armandalegshow.com/slash/Kaiser).

Diane Webber is national editor for broadcast at Kaiser health news; she is the editorial liaison to this show.

Also: Our pals at KHN make other podcasts you might like! For instance, if you want The Latest on the politics of health care, you may already follow "What the Health," hosted by KHN's chief Washington Correspondent, Julie Rovner. Every week she brings together reporters from top outlets-- you know, the New York Times, Politico, CNN, like that-- to break down the latest. That's at [K H N dot org, slash podcasts](http://KHN.org/slash/podcasts).

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