

Not Either/Or, But Both/And

Helping courts analyze disability access by focusing on **effect**, not belief or intent.

[Explore the Framework](#)

[Legal Application](#)



Understanding the Access Problem

Courts regularly encounter litigants who are intelligent, credible, and legally correct—yet unable to perform in court the way the system expects. Too often, that mismatch is misread as defiance, lack of credibility, or poor conduct rather than what it is: an access problem governed by civil rights law.

The Americans with Disabilities Act does not ask whether a judge believes a person is impaired, or whether anyone intended harm. The legal question is whether court procedures, practices, or expectations **distort participation because of disability**.

This framework explains a common judicial error—false either/or reasoning—and offers a clearer both/and approach grounded in Title II doctrine, appellate risk, and practical courtroom realities.

Key Insight

The ADA focuses on **effect**, not **belief** or **intent**. Courts must analyze whether procedures create barriers, regardless of judicial perception or good intentions.

For judges, court staff, attorneys, and policymakers.

The False Binary Problem

Traditional courtroom analysis often forces complex human realities into oversimplified categories. This either/or thinking creates a fundamental misalignment with civil rights law and leads to systemic access failures.

Common False Binaries

- Defiant *or* disabled
- Credible *or* impaired
- Competent *or* accommodated
- Capable *or* limited

Legal Reality

The ADA recognizes that these characteristics coexist. A person can be fully credible while also experiencing genuine limitations that affect courtroom performance.

Civil rights law **rejects forced choices** between competence and accommodation.

The Consequence

When courts collapse these realities into simple categories, they mistake access barriers for behavioral problems—leading to sanctions, credibility determinations, and appellate reversals.

This framing is not required by law and is often the source of harm.

The Both/And Framework

A person appearing before the court can simultaneously hold multiple truths. Understanding this intersection is essential for proper Title II analysis and fair adjudication.

Capable AND Impaired

Intelligence and disability coexist.
Cognitive ability does not negate genuine
limitations in processing, communication,
or stress response.



Credible AND Limited

A witness can tell the truth while struggling
to present testimony in expected formats
due to disability-related constraints.

Correct AND Unable

Being legally right does not guarantee the
ability to perform under standard
procedures that create disability-based
barriers.

The law does not require courts to choose between recognizing capability and acknowledging limitation. It requires courts to remove barriers that distort participation regardless of the person's strengths.

Why Courts Make This Error



Cognitive and Systemic Factors

The either/or error is not primarily about judicial bias or incompetence. It emerges from predictable cognitive patterns and structural pressures that affect how courts process information about disability and credibility.

Understanding these patterns helps courts recognize when they may be relying on subjective belief rather than conducting the objective access analysis required by Title II.

Heuristic Shortcuts

Courts manage enormous caseloads and must make rapid judgments. The brain naturally seeks simple categories: credible/not credible, cooperative/defiant. These shortcuts feel efficient but bypass required ADA analysis.

Invisible Disabilities

Many disabilities that affect courtroom performance—processing disorders, PTSD, autism spectrum conditions—are not visible. Courts may unconsciously expect disability to "look" a certain way, leading to skepticism when it doesn't.

Competence Bias

When a person demonstrates capability in some areas (filing motions, understanding procedure), courts may assume they're capable in all areas—missing that disability can create specific, context-dependent limitations.

From Belief to Effect: The Legal Standard

TITLE II ANALYSIS

The Americans with Disabilities Act establishes a clear analytical framework that does not depend on judicial belief about whether someone "seems" disabled or whether limitations "appear" genuine. The legal inquiry focuses exclusively on effect and access.

01

Qualified Individual

Does the person have a disability as defined by the ADA? This is a factual question, not a credibility judgment about whether they "deserve" accommodation.

02

Meaningful Participation

Is the person denied the benefits of court services, programs, or activities? This looks at **actual barriers**, not perceived cooperation or attitude.

03

By Reason of Disability

Is the barrier caused by the interaction between the person's disability and the court's procedures? This is an objective analysis of fit, not a subjective assessment of believability.

04

Reasonable Modification

Would a modification enable meaningful access without fundamentally altering the nature of the service? Courts must engage in this analysis, not substitute credibility determinations.

Real-World Courtroom Scenarios

These common situations illustrate how the both/and framework applies in practice—and where courts most frequently make either/or errors that create appellate risk.



Witness Testimony

A witness with PTSD provides accurate, legally relevant testimony but becomes dysregulated under cross-examination pressure. Court interprets this as evasiveness rather than disability-related stress response, affecting credibility determination.

Both/and reality: Credible AND limited in standard adversarial format.



Pro Se Representation

A litigant with autism spectrum disorder files well-researched motions but struggles with verbal argument and real-time courtroom adjustments. Court sanctions for "poor performance" without ADA analysis.

Both/and reality: Legally correct AND unable to perform under unmodified procedures.



Procedural Compliance

A party with executive function impairments repeatedly misses deadlines despite genuine effort and legal merit. Court treats as willful non-compliance rather than conducting required modification analysis.

Both/and reality: Capable AND impaired in procedural execution.

The Appellate Risk Factor

Why This Matters for Court Administration

When trial courts skip Title II analysis in favor of credibility judgments or behavioral assessments, they create reversible error. Appellate courts increasingly recognize that disability-related access failures require objective analysis, not subjective belief about litigant conduct.

The case law is clear: good intentions do not cure access violations, and judicial skepticism about disability does not excuse the failure to conduct required modification analysis.

Key Precedent

Reule v. M&T Mortgage and related cases establish that courts must analyze whether procedures create barriers—regardless of whether the judge believes the person is "really" disabled or intended any harm.

The standard is effect-based, not intent-based or belief-based.

Title II

Governs Courts

Public entities including judicial systems must provide meaningful access to persons with disabilities

Zero

Intent Required

No showing of discriminatory intent or judicial belief about disability is necessary for Title II violation

Effect

Legal Standard

Analysis focuses on whether procedures distort participation because of disability, not credibility assessments

Practical Implementation for Courts

Shifting from either/or to both/and thinking does not require wholesale procedural changes or compromise judicial authority. It requires courts to ask different questions—questions that align with Title II requirements and reduce appellate risk.



From Belief Questions

- "Do I believe this person is disabled?"
- "Does this seem like real impairment?"
- "Are they using disability as an excuse?"

To Effect Questions

- "Does this procedure create barriers for this person?"
- "Would modification enable meaningful participation?"
- "Am I analyzing access or making credibility judgments?"

A Judicial Reasoning Tool

This framework is not about shaming courts or turning every case into a disability rights contest. It's about translating civil rights doctrine into practical reasoning tools that help courts avoid reversible error while maintaining fairness and efficiency.

Moving Forward: Resources and Next Steps

Building Infrastructure for Thought

This framework represents part of a broader effort to make disability rights doctrine accessible and actionable for judicial decision-makers, court administrators, and disability advocates. The both/and approach provides a practical tool for recognizing when courts may be substituting subjective belief for objective access analysis.

By understanding that capability and limitation coexist—that people can be credible and impaired, legally correct and unable to perform under standard procedures—courts can better fulfill their Title II obligations while maintaining procedural integrity and public confidence.



Legal Application

Read the companion analysis on how this framework applies in sanctions, accommodations, and appellate review



Further Research

Detailed examination of Title II doctrine, case law, and public confidence research

This work is part of a broader effort to translate disability rights doctrine into practical judicial reasoning tools—without shaming courts or turning access issues into credibility contests. The goal is infrastructure for thought: stable, clear frameworks that make complex civil rights analysis more accessible to everyone involved in courtroom access issues.

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