

## You First Podcast - Episode 14: Accessibility in Florida Prisons

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**Announcer:** Welcome to "You First," the Disability Rights Florida podcast.

**Keith Casebonne:** Hello, and welcome to You First. I'm Keith Casebonne, and thank you so much for listening. As I'm sure many of our listeners know, the Americans with Disabilities Act of 1990 ensures that people with disabilities are not discriminated against because of their disability.

It assures us that employment opportunities exist, that public buildings are accessible, that transportation is made available and much more. Well the ADA also includes prisons. In Florida, prisoners with disabilities were not receiving the same access to programs or services that other prisoners were receiving.

To tell us more about what Disability Rights Florida did to remedy those oversights, we have David Boyer, Director of Investigations at Disability Rights Florida, and Molly Paris, Assistant Director at Florida Lawyers Assistance and formerly a member of our investigations team here at Disability Rights Florida. Thank you, both Dave and Molly, for joining us today.

**David Boyer:** Thank you.

**Molly Paris:** Thank you for having us.

**Keith:** Please just start us off today with a brief overview of what this case, officially known as Disability Rights Florida v. Jones, is all about.

**Molly:** OK. For many years, Disability Rights Florida has been receiving letters from inmates directly and from family members of inmates in the Florida prison system. Just to note before I delve into the case, this has to do with state prisons. Every county has a jail, but this case is strictly the Florida state prisons.

We were receiving quite a few letters from inmates about the violations that were going on in these prisons throughout the state of Florida. They were from folks with a variety of disabilities to folks that were blind and had visual impairment, deaf and hard of hearing, and then also mobility impairment. For quite a few years, we were receiving these letters.

In 2013, we joined forces with another agency called the Florida Justice Institute. They have been doing prison cases for a number of years and really have a lot of expertise in that area. We talked with them about the case. We decided to co-counsel and tackle...

Because we could not address all of these individual letters that came, all of these individual complaints -- there were hundreds, probably hundreds per week -- we had to really tackle it on a larger scale.

So that's how the case came about and that's how we got started. That's when we started our investigation. Back in 2013 is when we first met with the Florida Justice Institute and decided to file this lawsuit.

**Keith:** How did you guys prepare the case?

**Molly:** We actually spent a couple of years preparing the case. Because this is such a large-scale case, it's not something that could happen overnight. We spent a couple of years gathering our evidence.

The way that we did that, first of all, I already mentioned the letters. We divided those up and looked at the different types of violations that were happening. I'll give just a brief example from each disability group.

For example, with our deaf and hard-of-hearing folks, the prisons were not providing interpreters for very important services, for example, medical appointments, disciplinary hearings. Also, there were sort of archaic TTY telephones. Folks were not able to communicate with their families the same way that inmates without disabilities were able to.

**Keith:** It sounds like they couldn't even communicate with other people in the prison. And like you said, the doctors...

**Molly:** Exactly. The lack of interpreters, like I said, it was medical appointments, psychiatric appointments, disciplinary hearings, work. They were really being excluded from work opportunities as well. Some of the prisons have a program...

For example, the one that is very common in the Florida prison system is a program called PRIDE and that gives inmates an opportunity to work. Really it's part of their rehabilitation process -- some of the individuals that are going to be getting released -- and some of the work opportunities were simply not available and they were being just outright excluded.

The blind and visually-impaired inmates, there were a variety of issues there. The first was just the physical access, getting around the camp, the inmates refer to it as a camp.

They have something called an impaired inmate assistant. Another inmate is assigned to an inmate with a disability to perhaps guide them throughout the camp, or help them with reading, help them in classes, things like that.

We were getting a lot of complaints that these impaired inmate assistants, either they didn't have one, so they were left on their own to try to navigate the compound with no help, or there were impaired inmate assistants that were exploiting them and saying, "I'll only help you get to the dining hall if you give me money, or if you give me your food from the commissary."

**Keith:** Oh, wow.

**Molly:** We had inmates that were run into the wall. I had one gentleman who was named in our lawsuit that was run into the wall numerous times by his aide. I don't know if it was on purpose, or just that he was negligent, but he kept getting hurt.

The folks with mobility impairments, there were a variety of issues, some of them had to do with the same impaired inmate assistants. Folks were not pushing them, or they would have a wheelchair pusher who got in trouble and got sent to confinement, and then the individual with the disability would be without it. And again, a lot of the exploitation.

We also had an issue with folks that had prosthetics, they were being taken away for security reasons -- a prosthetic arm, a prosthetic leg. There was one inmate who was an amputee, and he was put on a second bunk, on a top bunk.

**Keith:** Oh, my gosh.

**Molly:** Yeah. We learned about these issues and then we hit the road. I don't have the exact number in front of me, but Florida has more prisons than most states. Florida is also a very large state, so we split them up.

At this point, it was David Boyer, myself, and a couple of the attorneys from the Florida Justice Institute.

We also included a woman named Sharon Caserta, who has a lot of expertise in deaf and hard-of-hearing issues. She's actually a sign language interpreter in addition to a lawyer.

She also co-counseled the case with us. She was originally at Jacksonville Area Legal Aid and then she moved to Morgan & Morgan.

This legal team that we put together split up the state. We traveled to prisons all over the state with interpreters, where appropriate, when we were going to visit with deaf inmates. We interviewed a lot of people, that's how we got a lot of our information.

Again, we investigated this for several years. We looked at the letters, we found out what the issues were, we interviewed folks. We found the ones that had really compelling stories, we looked at their records.

They authorized us to request their records from the Department of Corrections, and we looked at thousands of records, grievances, disciplinary reports, medical records, responses to the grievances, requests for accommodations and modifications. We looked at numerous, numerous records.

**Keith:** Wow. It sounds like it was quite a laborious process. Was this a class action, essentially?

**David:** Well that's an interesting question. The traditional way to bring one of these cases is you get a client who has a visual disability, or is deaf, or mobility-impaired, and then you do the Department of Corrections, that's the traditional way.

In a traditional class action, what you would do is find examples of each of these disabilities and then sue based on that group of individuals of that class action lawsuit.

In this case, we filed our lawsuit based on our standing, our ability to sue as Disability Rights Florida, as an organization. Based on the fact that we have clients and constituents with

disabilities and we are federally-mandated to bring lawsuits based on those clients and constituents, and that's how this lawsuit was organized.

We were actually suing them as an organizational plaintiff, Disability Rights Florida versus the State of Florida. That provides some good benefits in a lawsuit. Number one, it sends a message that a protection advocacy agency for the State of Florida is behind this. We've put our name on this, we stand behind this.

Unfortunately, prisoners may not have the best reputation to bring a lawsuit like this. That class of folks has their own stigma attached to them, and the fact that we as an organization stand behind this lawsuit is a little more effective sometimes.

Additionally, the law governing lawsuits like this, the Prison Litigation Reform Act, which was brought in to being a few years ago, limits the ability for prison inmates to file lawsuits like this. They have to go through a long series of administrative remedies. They have to file several grievances...

**Keith:** Really? Wow.

**David:** Yeah. Those grievances actually have to ultimately be filed with the Secretary of Corrections for the State of Florida. If several levels, three or four levels of grievances that have to be filed, and those have to be all filed before a prisoner can bring a lawsuit.

In a case like this, if this were a class action, a traditional class action with 100 inmates, then you would have 100 inmates trying to file three or four grievances per inmate.

**Keith:** Oh. It sounds like an organizational nightmare. [laughs]

**David:** Right, right.

**Keith:** Yeah. OK. The case is filed, what happened in the case?

**Molly:** We filed it in the Northern District of Florida, in Federal Court. As I said that the pleadings are all available...I believe you can get them...I think that the complaint there's a link to it on our website and...

**David:** Yeah. I want to add at this point how complex this complaint is. A typical Federal complaint is maybe 20 pages long. Molly, how long was the...?

**Molly:** With a 123 pages.

**Keith:** Wow.

**David:** It's a 123-page complaint, very complex, very detailed in that process.

**Molly:** Exactly. It was certainly the longest complaint that I had ever worked on. The complaint was filed, Judge Hinkle was our Judge in Tallahassee. From there, just the usual procedures of a Federal lawsuit started. The state file their response and then the process of discovery started. Discovery, is when each side has an opportunity to claim more information from the other.

At that juncture, we requested a lot of documents. We had well over...to get additional information. We had the information that we used to file the complaint and then we needed more information to continue to work on our case. We requested more inmate records.

Also, logs of wheelchair use, site plans, accessibility, architectural issues. We requested...it was well over 100,000 pages of documents in discovery and we reviewed all of it. That was over a period of a couple of months at the Department of Corrections in charge.

They requested documents from us, we provided them, and we have an electronic discovery database. This all took place electronically, not like in the old days when you were sending each other paper.

**Keith:** With that amount of pages, that would have been quite cumbersome. [laughs]

**Molly:** Yeah. It's like the entire room is filled with documents...

**Keith:** Wow.

**Molly:** ...but the exchange of information took place some time. Also part of our discovery in getting more information and building our case, we hire experts. We like to think that they were experts in disability law, but we're not experts in some of these more specific issues. We need folks that are published, and have been doing this for years, and know what they're talking about.

We hired three different experts, one for each area of disability. We hit the road again. We interviewed hundreds of inmates. With the architect, he took this very detailed survey of each facility that we went to. The Department of Corrections had folks there. We had our folks there. One attorney was able to accompany the expert. Each of the expert wrote a report and that became part of our case.

While this is happening, the defendants, the Department of Corrections started to take depositions of some our folks, more documents are being exchanged, and we are gathering a lot of this information.

Then as this part for the course in many Federal lawsuits...Well, many lawsuits in general, we filed something called a Motion for Summary Judgment. I won't get into all the specifics of what an MSJ is, but it had all of our expert reports and it's a way to say, "Here judge, this is our case in our favor. Look at the facts. Look at the evidence."

However, right around the same time, as that was happening, we were instructed to go through mediation. That started in the beginning of 2017, was our first mediation session, in January of 2017. That's...

**David:** That lasted 42 years, I think. No, I didn't mean that.

**Molly:** No.

[laughter]

**Keith:** Quite felt that way.

**Molly:** It lasted until July when the case was finally settled. Do you want to talk a little bit about the mediation?

**David:** The mediation was in six or seven sessions. Typically our mediation of Federal case is, you go to mediation one day, and maybe two days, and either reach to an agreement or not, and then go to court.

In this case, it was a process of our attorneys meeting with the Department of Corrections attorneys, both with our expert reports, and both with the impressions of our experts. Seven or eight times we met, worked out all of the little details of how this lawsuit was going to be resolved.

What types of things were the Department of Corrections is going to do to change their system, or change their facilities, change their rules in order to accommodate our folks with disabilities. It was very detailed, down to every line. I can't stress how detailed it was for someone who's a little more global-thinker like myself. It was very tedious.

[laughter]

**David:** For seven or eight sessions, we worked it out and we came up with a settlement agreement that completely resolved all of the issues in the lawsuit.

Keith. Oh, wow. The end result was a settlement agreement. I imagine in itself must have been very detailed based on everything else you're telling us. Can you describe that a little bit?

**Molly:** Sure. I have to say that the Department of Corrections, it was an arduous process, but we did iron out all of the details, and all of the issues in the case. We conceded on some issues, they conceded on some issues.

Ultimately, the settlement agreement was a work of art, if you will. It provided a lot of remedies and protection for our individuals, of the folks that we...the exemplars in our case and the inmates.

Some of the examples of the things that the settlement included, they're going to be hiring more interpreters, they're going to have onsite interpreters, video phones. Florida is one of the...I think there are about seven states now in the whole country that have video phones in their prisons.

The Department of Corrections agreed to install video phones. That was a tremendous victory for us and for our folks.

In terms of the blind and visually-impaired folks, they're going to repave the tracks, so it's easier for people to walk if they use a white cane. Install talking software in the law libraries, so people that are blind will have access to their cases, to be able to file their appeals, to be able to defend their cases.

Also, Mark Mazz, our architectural expert worked with their building person at the Department of Corrections and just went through, bathroom by bathroom, prison by prison, and the Department of Corrections agreed to make a lot of changes, some of them short-term, some of them could be fixed right away.

Some of them just meant installing a grab bar, or moving something to a different area. Others involved some pretty serious construction, knocking down walls. The Department really met us there with the architectural issues, so it included that.

Then more global issues, people being able to go to PRIDE. That was the work program that I mentioned earlier in our talk. People were not going to be excluded on a systemic basis from PRIDE just because they have a disability.

Repairs. Repairing white canes. Repairing wheelchairs. Repairing telephones, the video phones, the TTY phones. Replacing prosthetic devices that don't work. Timelines were put in place with respect to how long, so people wouldn't languish.

If there's an impaired inmate assistant that's missing, the Department agreed to have a pool of impaired inmate assistants, so that if one gets sick, or one goes to confinement, the individual with a disability is not going to be left without someone to push them to the dining hall and now have to go for days and days without eating.

Again, the settlement is also the public record. We feel like it's a work of art because it took a lot of time and it really is going to reach hundreds, thousands of people, really it will.

**Keith:** Sounds like years in the making there too.

**Molly:** Yeah. That's sort of the crux of it. It's hard to think of, without going through it bit by bit, but those are some of the big ones.

**David:** Right. In addition, we have four years now for the Department of Corrections to implement all of these changes.

Some of the changes, like Molly said, are going to be immediate and they're pretty small, but some of these changes are going to be program changes, or construction changes, or rule changes that have to go through a whole process of administrative review.

For about four years now, we will be monitoring this lawsuit. We'll be, as Molly said, hitting the road again and touring these facilities to make sure that the changes are implemented.

We'll be working with Department of Corrections, and with our partners at the Florida Justice Institute, and Morgan & Morgan to make sure that this settlement agreement isn't just a piece of paper, that it actually has some teeth and actually results in these changes.

**Keith:** Sounds like the settlement is really just the beginning.

**David:** Yes, I think you're right. You figure out what's to be done now. We have to actually make sure that the Department of Corrections does what they say they're going to do.

**Keith:** The inmates themselves, are they aware of this settlement? How do they know about it?

**David:** They do know about it. There's communication within the prison system that happens both informally and formally. The inmates are pretty good at communication amongst themselves and they've gotten the word out.

In addition, we've mailed letters to all of the inmates that we've collected information on. Both us, and the Florida Justice Institute, and Morgan & Morgan all mailed a series of letters to the inmates notifying them that the settlement agreement had been reached.

Now the Department of Corrections has placed the settlement agreement in each of the law libraries in the facilities, so inmates are able to go down and check that out.

**Keith:** Well this is really something. It sounds like quite a massive and successful undertaking that we've gone through here. Very excited for this, and I can't wait to see how the monitoring continues to play out. All right, well Molly and Dave, thank you so much today for talking to us about all this.

Again, it sounds like quite an achievement and so much was done to make this happen. Thanks again for talking to us and all the work you guys did on this.

**Molly:** All right. Thank you. Yes, we're very happy about it too. It was quite an endeavor. But as I said before, it's going to reach thousands of people with disabilities and that's Disability Rights Florida's mission.

This was a really big achievement for us, and I think a lot of our folks really felt like they were vindicated.

**David:** I agree. Thanks, Keith. Thanks for taking the time for this.

**Keith:** Excellent. And thank you to everyone for listening to the You First podcast, or reading the transcript online. Please email any feedback about this show to [podcast@disabilityrightsflorida.org](mailto:podcast@disabilityrightsflorida.org).

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