

DISABILITY IN PRISON

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I. INTRODUCTION

The 2016 symposium, “Beating Mental Illness: A Dialogue on Race, Gender and Disability Stereotypes in Use of Force Cases,” examined complex issues of race, gender, sexual orientation, and disability (i.e., “intersectionality”) in the context of the Black Lives Matter Movement and engagement with the criminal justice system.¹ The “use of force” in policing often serves “as the entry point to the justice system for people with disabilities.”² Among other topics, the Symposium examined the 2015 decision in *City and County of San Francisco v. Sheehan*, in which the Supreme Court considered the application of the Americans with Disabilities Act (“ADA”) to circumstances involving the use of force (a shooting) in the arrest of a woman with schizophrenia who lived in a group home for persons with mental illnesses.³

According to a 2016 report by the Center for American Progress, *Disabled Behind Bars*, approximately ten percent of police interactions involve individuals with either mental health conditions or cognitive (e.g., intellectual, developmental, and learning impairments), hearing and vision, and mobility disabilities.⁴

Rebecca Vallas, the author of *Disabled Behind Bars*, writes:

The interplay of disability with race, poverty, sexual orientation, and gender identity further complicates the link between disability and the criminal justice system. There is a disproportionate incidence of intellectual and developmental disabilities among low-income racial and ethnic minority populations, which have higher rates of police involvement in their neighborhoods than higher-income neighborhoods.⁵

This article, which is based on my remarks at the Symposium, considers the incarceration of individuals with disabilities, the less publicly visible side of interactions between law enforcement officials and individuals with mental and physical disabilities. Between 2015 and 2016, I was retained by the Southern Poverty Law Center (“SPLC”) and the Alabama Disabilities Advocacy Program (“ADAP”) to evaluate the plaintiffs’ (prisoners) allegations of disability discrimination throughout Alabama’s state prisons in violation of the ADA and the Rehabilitation Act of 1973.⁶ In *Dunn v. Dunn*,⁷ the putative class of plaintiffs alleged that they had experienced and continued to experience system-wide and programmatic barriers to addressing their needs as prisoners with disabilities⁸ in the programs and activities administered by the Alabama Department of Corrections (“ADOC”).⁹

In *Dunn*, I was asked to examine whether and, if so to what extent, ADOC’s alleged programmatic barriers affecting plaintiffs, as individuals with disabilities housed in the state’s fifteen major correctional facilities, resulted in inappropriate and unequal services that unfairly denied access to and equal participation in ADOC’s programs. The plaintiffs alleged that ADOC’s program failures made them, and continued to make them, uniquely vulnerable to the effects of incarceration on the basis of their disabilities, particularly as relative to the general prison population.¹⁰ The plaintiffs, adult men and women incarcerated in ADOC prisons, brought the case to remedy ADOC’s alleged failure to provide nondiscriminatory programs on the basis of disability, in accordance with the requirements of the ADA and enforce ADOC’s “affirmative obligation to make benefits, services, and programs accessible to disabled people.”¹¹

As Alabama State prisoners, the plaintiffs satisfied the ADA eligibility requirements for the receipt of programs provided by the state.¹² Plaintiffs alleged that throughout the prison system they received inadequate and inferior services that, among other consequences, subjected them to exclusion from participation in and the denial of (or relegation to inferior) programs.¹³ The plaintiffs claimed that this resulted in a substantial risk of serious harm, loss of function, injury, and even death. The plaintiffs further alleged that overcrowding, insufficient staffing levels, and deficiencies in staff training in prison facilities exacerbated these failures.

In this article, I first overview issues characteristically facing prisoners with disabilities, many of whom were incarcerated as a result of “policing on the basis of disability.” Thereafter, I offer recommendations based on my work in *Dunn* and other

related prison cases, which are based in part on materials I have examined as well as on prisoner interviews and prison site inspections that I have conducted.¹⁴ I conclude with a call for future actions.

II. PERILS OF DISABILITY IN PRISON

According to the 2014 National Academy of Sciences Report, *The Growth of INCARCERATION in the United States*, physically and mentally disabling conditions “constitute a growing percentage of correctional health care needs as the result of a confluence of trends, especially the increase in chronic disease among younger Americans and the aging of the correctional population.”¹⁵ The National Academy finds that:

Prisoners with disabilities also tend to be overlooked. Disabilities that are relatively minor in society at large can constitute serious impediments to well-being in prison. Living in correctional facilities entails activities of daily living (ADLs) that pose particular challenges to people with physical or developmental disabilities. For instance, regular ADLs include bathing and dressing, but ADLs in prison also can involve getting on and off an upper bunk, dropping to the floor for alarms, and hearing and promptly following orders against extensive background noise.¹⁶

Similar to many state prison systems, ADOC’s mission is to “confine, manage, and provide rehabilitative programs for convicted felons in a safe, secure, and humane environment, utilizing professionals who are committed to public safety and to the positive re-entry of offenders into society.”¹⁷ All inmates, including prisoners with disabilities, are subjected to practices based on this mission statement. As “qualified” beneficiaries of the state system, prisoners with disabilities may not be subjected to inadequate and inferior services on the basis of their disabilities, behaviors resulting from their disabilities, nor to unnecessary exclusion from equal participation in confinement and rehabilitation programs as offered to the general prison population. For example, as I discuss below, prisoners with disabilities are entitled to appropriate reasonable accommodations (e.g., physically accessible housing facilities for inmates who use wheelchairs) as well as effective communication of informational materials (e.g., Braille materials for blind inmates, sign language interpreters or captioning for deaf inmates, and educational, vocational, and reentry activities).¹⁸

The National Academy of Sciences, in *The Growth of INCARCERATION in the United States*, sets forth core principles with regard to the use of incarceration in the United States, which have particular relevance to issues facing prisoners with disabilities.¹⁹ Among these principles are the values of “proportionality” and “parsimony;” that is, conditions and consequences of imprisonment “that [are] more severe than is required to achieve valid and applicable purposes is to that extent morally unjustifiable [and] excessive.”²⁰ The National Academy finds that “the conditions and consequences of a prison sentence should not be so severe as to substantially weaken one’s status as a member of society.”²¹ Thus:

The principle of citizenship suggests a rigorous review of the conditions of confinement and of the legal disabilities and restrictions imposed on those who have been incarcerated. In particular, policies and practices that result in long periods of administrative segregation from the general population, deprivation of meaningful human contact, overcrowding, and unnecessarily high levels of custody all require rigorous review. . . . Conditions of confinement should be reviewed with the objective of increasing prisoners’ chances of reentering society with social relationships intact and better prepared to make a positive, productive transition. Review of these conditions and the policies that regulate them is compelling because, with rare exceptions, all those incarcerated in the nation’s prisons and jails will be released to return to their communities.²²

The National Academy’s principle of “social justice” provides that “prisons should be instruments of justice” and promote, not undermine, the “fair distribution of rights, resources, and opportunities.”²³ Justice requires meaningful *opportunities* for equivalent program participation by the incarcerated, and not disparate, inferior, and segregated treatment on the basis of disability.²⁴ The ADA and the Rehabilitation Act incorporate these principles into their statutory schemes.²⁵

Research shows that prisoners with disabilities are at an increased risk for inadequate rehabilitation and safety while incarcerated.²⁶ Inmates with disabilities have higher rates of injuries from violence and unintentional causes as compared to the general population of inmates without

disabilities.²⁷ Inmates with comorbid mental health conditions, and psycho-social and cognitive impairments (who are overrepresented in prisons²⁸) are at a higher risk of being victims of violence and displaying more violent behaviors relative to inmates without such disabilities.²⁹ Incarceration is also generally associated with greater and deteriorating health conditions.³⁰

The absence of timely and effective reasonable accommodations, as well as the lack of effective communications and physical accessibility, significantly increases the likelihood of present and future injury and illness facing prisoners with disabilities. Absent reasonable accommodations, for instance, inmates with disabilities are less able to engage meaningfully in prison activities as offered to the general population, and they are more vulnerable to misunderstanding and exploitation by other prisoners and correctional staff. Additionally, the absence of reasonable accommodations for prisoners with disabilities (e.g., in educational, vocational, work-release, and reentry programs³¹), is reasonably expected to be associated with increased levels of recidivism. Research supports this conclusion, showing the association between effective accommodations and subsequent academic success of individuals with disabilities.³² These findings are in accord with others that have been documented in the correctional setting:

[G]iven that Section 504 and Title II require *all* entities that provide public services to act affirmatively to ensure that disabled individuals have meaningful access, prisons seemingly have even more responsibility in this regard, because inmates necessarily rely totally upon corrections departments for all of their needs while in custody and do not have the freedom to obtain such services (or the accommodations that permit them to access those services) elsewhere.³³

The provision of ADA accommodations by state prison systems typically derives from a verbal or written request for an accommodation by an inmate with an ADA-related disability or by that inmate's actions. Knowledge of an individual's need for an accommodation may be reasonably evident, such that prison staff are on notice of that prisoner's eligibility to participate in prison activities. Sometimes, the need for an accommodation may be evident even though the inmate with the disability does not expressly request an accommodation and does not consider him or herself to be a person with an ADA-protected impairment.³⁴

Moreover, many disabilities are non-obvious, such as a cognitive disability, an intellectual or mental health disability, a traumatic brain injury, and learning impairments from which inmates cannot effectively read, write, and understand informational documents. These impairments require information to be presented in simpler and alternative formats as an accommodation. In these instances, in the absence of assessment techniques and training, prison staff are not able to effectively determine the need for reasonable accommodations for prisoners with disabilities.³⁵ Nonetheless, best practice would not necessarily require that an inmate request a specific type of accommodation when the need is explicit or apparent. That is why the ADA requires an "interactive process" or meaningful discussion among staff and the inmate to identify a reasonable accommodation.³⁶ The approach is to ensure that prisoners with disabilities receive program benefits as afforded to inmates without disabilities.³⁷

In the absence of system-wide policies for the ADA accommodation process, prisoners with disabilities are often forced to rely on individual "coping mechanisms" and self-directed alternative "accommodations." For instance, inmates with disabilities frequently resort to paying other inmates to receive basic accommodations (e.g., paying an inmate to push an inmate's wheelchair or for attempting to sign for a deaf inmate). These ad hoc accommodations commonly lead to ancillary health and safety risks (e.g., denial of equal access on the basis of their disabilities to work-release programs, emergency evacuation, and physical and programmatic activities). Moreover, however effective such "self-help" strategies may be to aid disabled prisoners to participate in prison programs, these non-systematic approaches to accommodation do not negate the state's continuing responsibilities under the ADA to offer accessible programs and services and to provide reasonable accommodations and effective communications.³⁸ The negative effects of inadequate accommodations are exacerbated in aging, overcrowded, and physically inaccessible facilities.

III. IMPLICATIONS OF DISABILITY IN PRISON

My examination in *Dunn* involved review of case documents, correctional accreditation standards, as well as of reports and social science literature on inmates with disabilities. I conducted inspections of the majority of Alabama's high and medium security prison facilities, with on-site interviews and observations of male and female inmates with mobility and sensory impairments, psychosocial, mental health (e.g., schizophrenia and bipolar disorder), cognitive disabilities (e.g., developmental, intellectual, and learning impairments), as well as diseases and illnesses (e.g., diabetes, hepatitis, high blood pressure, and cancer).³⁹ There is high comorbidity and co-occurrence among these conditions and disabilities, which has been shown to raise additional health care and programmatic considerations.⁴⁰

One area of my review focused on the ways in which state prison systems developed and implemented policies and procedures to address the needs of inmates with disabilities. For example, whether the prison developed and implemented an "ADA/Section 504 Transition and Self-Evaluation Plan," as required by law and whether the prison had policies to identify, assess, and monitor programs to ensure access and nondiscriminatory participation by prisoners with disabilities. With such policies and procedures in place, a prison system is more likely to effectively plan and track its service outcomes for inmates with disabilities. However, in the absence of responsible ADA program administrators (often called "ADA Coordinators") to ensure facility accessibility, it is difficult to monitor the accommodation needs of inmates with disabilities.⁴¹

Inappropriate disability classifications and the associated lack of accommodations for vulnerable individuals such as those with disabilities, further exacerbate secondary mental and physical disabilities, which also are associated with anti-social behavior, decreases in health and functioning, victimization, negative outcomes for inmates and institutional safety, and increased risk of recidivism.⁴² As mentioned above, at prisons where no ADA accommodation process exists, inmates with disabilities often must "self-accommodate" or pay for accommodations that would otherwise be required to be provided by the state. Sometimes, where no formal accommodation processes exist, the only option for an inmate with disability is to "self-accommodate." A second area of my review involved assessment of ADA-related training offered to prison staff. For example, staff training often is needed for identifying, interacting with, and accommodating inmates with disabilities. There also is a need for staff training on communicating with an inmate with a visual or a hearing impairment (e.g., provision of a qualified sign language interpreter for an inmate who is deaf and subject to assignments of inmates with disabilities and accessible specialized cells such as segregation and suicide cells); (2) education and trade programs (e.g., accessible learning materials); and (3) work-release programs (e.g., accessible vocational training programs).

IV. RECOMMENDATIONS FOR DISABILITY IN PRISON

There is no one solution to address the needs of prisoners with disabilities and discrimination that the ADA was intended to prevent; that is, state prison systems that result in unnecessary exclusion, segregation, and isolation on the basis of disability. The result of such disability discrimination is harmful and stigmatizing. However, ADA accommodations and accessible services enhance equal program participation for prisoners with disabilities as well as for the general prison population and those who may become disabled in prison. The beneficial "ripple effects" associated with ADA accommodations, when well-planned and properly implemented, are likely to result in programmatic, safety, and economic benefits to prison operations.⁴⁹ There are other recognized approaches to fostering equal services for inmates with disabilities, who are among the system's most vulnerable prisoners. These practices include development and implementation of:

1. *ADA self-evaluation plans*: develop and adopt a system-wide ADA self-evaluation plan.⁵⁰
2. *Disability identification and monitoring*: identify and track inmates with disabilities, their accommodations and ADA grievances, and evaluate accommodation requests with consideration of the inmate's preferred accommodation.
3. *Accommodation implementation*: implement an "Inmate Helper and/or Aid" certification training program to assist in the provision of accommodations for inmates with disabilities.⁵¹
4. *ADA training*: provide staff training on ADA disabilities.⁵²

5. *ADA coordinators*: designate facility ADA coordinators with accountability for monitoring and sustaining ADA-related outcomes.⁵³
6. *ADA notice*: disseminate information in accessible formats to inmates about their ADA rights and responsibilities.
7. *ADA accountability*: state prison leaders foster staff accountability with respect to the rights of inmates with disabilities under the ADA.⁵⁴

These practices, among others, are important given the cumulative and escalating effects of disability and chronic health conditions in the context of long-term incarceration, and to reduce the risk of injury and violence while incarcerated.⁵⁵ People with disabilities are more likely to be victims of nonfatal violent crimes than people without disabilities, and they are more likely to report rape or sexual assault compared to people without disabilities—women are victimized more often than men, and people with cognitive disabilities have high rates of violent victimization. Mental illnesses, such as depression and anxiety, are common concerns for people with disabilities who are less likely to report receiving adequate social and emotional supports.⁵⁶ In addition, the inability to attain and retain employment post-release is associated with an increased risk of re-arrest.⁵⁷ Inmates with disabilities who are denied equal opportunities and appropriate accommodations to engage in prison work-release programs because of their disabilities are at a greater risk of recidivism. In addition, prison staff often misperceive the behaviors associated with an inmate’s disability (e.g., deaf or hard of hearing, blind, epileptic, intellectual challenges, psycho-social effects, and irrational speech or aberrant behaviors)⁵⁸ as violating disciplinary codes and prison rules.⁵⁹ Punitive consequences and sanctions, therefore, may be used improperly to address the behaviors of prisoners with mental illness, for instance. Such behavior is often the *result* of mental illness and is exacerbated due to inappropriate and unmodified mental health care and medication treatment programs as well as from a lack of reasonable accommodations.⁶⁰ Research also shows that people with mental disabilities are generally susceptible to stereotyping and bias. Misinformed reliance on biases⁶¹ and stereotypes about people with disabilities, and the behaviors associated with their disabilities (e.g., as to the relationship between mental illness and violent behavior, as referenced above in *City and County of San Francisco v. Sheehan*),⁶² often leads to inappropriate actions that may further exclude and punish these individuals.⁶³

In 2016, subsequent to the presentation of my report in *Dunn*, the parties settled the ADA claims against ADOC.⁶⁴ In accord with the recommendations described above, ADOC agreed to prepare and implement an ADA Transition and Self-Evaluation Plan, screen inmates for physical and mental disabilities at intake, house inmates with disabilities in accessible and ADA compliant settings, and designate ADA Coordinators at prison facilities. ADOC also agreed to create ADA accommodation request and grievance procedures, with forms and materials available in alternative accessible formats. Staff must receive training on the ADA, and the Alabama Disabilities Advocacy Program (“ADAP”) will monitor compliance with the agreement over multiple years.

V. CONCLUSION

“Incarceration inherently involves the relinquishment of many privileges; however, prisoners still retain certain civil rights, including protections against disability discrimination.”⁶⁵ There is no justification in policy, practice, or research for continued discrimination, segregation, and suffering by prisoners solely on the basis of their disabilities.⁶⁶ Rather, with safety and rehabilitation as primary objectives, prison systems may appropriately provide prisoners with disabilities equitable and reasonable access to the programs offered to the general prison population. Discrimination in prison services towards inmates with disabilities is neither inevitable nor is inaction unavoidable.⁶⁷ The recent symposium illuminated the challenges and opportunities to be faced in the years to come.