

## Lessons From the Humiliation and Death of Sandra Faye Twiggs

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On Sunday April 15, 2018, Judge Merrilee Ehrlich stripped any shred of dignity or humanity from a 59 year-old woman, who appeared before her, in her first appearance before the court after being arrested. In as much as the video (below) and the transcript (attached) demonstrate how unhinged Judge Ehrlich acted towards this women, and how the Court staff and lawyers, like palace eunuchs, allow such unabated behavior to continue. However, the outrage from the surface must be examined, and lead to thorough introspection and change, and not merely the retirement and resignation of this long-time judge.

According to the Miami Herald, Sandra Faye Twiggs was a 59 year-old woman who used a wheelchair and lived with asthma and chronic obstructive pulmonary disease, or COPD. Until April 13<sup>th</sup>, she had never been arrested or had any charges. Ms. Twiggs did not like her 18 year old daughter's boyfriend, and believed she was a victim of domestic violence and filed a domestic violence injunction against him which was pending at the time of the incident. However, on April 13<sup>th</sup>, Ms. Twiggs and her daughter, Michelle Ballard, had an argument about a fan, and Ms. Twiggs scratched her daughter which led to the arrest by the Lauderhill Police for the scratch – a misdemeanor domestic battery.

She was kept in the jail for two days before her appearance before Judge Ehrlich, and had trouble getting her medications at the jail. She was wheeled into a room at the North Broward satellite courthouse, and could barely be seen above the lectern, which no one bothered to move. There was no question that this was the first time that Ms. Twiggs had any interaction with the justice system, and any person would have been terrified. Ms. Twiggs was coughing and breathing as she was constantly berated each time that she attempted to speak and to answer a question. It even got to the point where Judge Ehrlich was manic in “offering a kindness” and then chastising Ms. Twiggs for interrupting:

Judge Ehrlich: I’m just trying … First of all, attorneys, don’t interrupt the court, and listen to what the court says because it may answer your questions. Ma’am, my one question to you … Can someone there give her water as a kindness?

Ma’am, do you need water? Just nod your head?

Mrs. Twigs: And a breathing treatment.

Judge Ehrlich: Ma’am, I am not here to talk to you about your breathing treatment. That-

Mrs. Twigs: [crosstalk 00:03:55]

Judge Ehrlich: Excuse me. Oh, lord. Will you say something, counsel, in the microphone, so that she can hear you and you can give her instructions about propriety in court? I’m not gonna spend all day with her interrupting me. It’s your turn to speak, counsel.

Attorney 2: Mrs. Twigs, just stay silent for a moment.

Mrs. Twigs: Yes ma'am, yes sir.

At the end of the hearing, Ms. Twiggs was stunned into silence and acquiescence, and then again, Judge Ehrlich again demonstrated her insensitivity:

I want you ... You will get paperwork today before you're released from the jail. It will say that you have to check in with pre-trial services by noon on Monday. You have to arrange for someone to carry you there if you can't get there yourself, and they will give you the further instructions about checking in. Do you understand me?

According to the Herald, Ms. Twiggs was not released that day, but was kept in the jail for additional two days until she was released. Her friend stated, "She came home so devastated she couldn't catch her breath." The next morning, Ms. Twiggs sister found Ms. Twiggs dead in her bed. She did not need to arrange to have anyone carry her to pre-trial diversion.

The video of Ms. Twiggs was posted on a Broward Courthouse blog, where Public Defender Howard Finkelstein learned about it. On April 20<sup>th</sup>, he sent a letter to Chief Judge Jack Tuter demanding Judge Ehrlich's removal from the criminal bench. As soon as this hit the press, Judge Ehrlich resigned effective June 30<sup>th</sup> and returned to the Family Court bench. However, on April 21, 2018, Chief Judge Tuter placed her on administrative leave until her retirement.

## **Failure on many levels**

Our judicial system must be held at the highest standard for public trust and confidence. According to the preamble of the Florida Code of Judicial Conduct:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

Thus, it should be axiomatic that the introspection that is done when an incident like this comes to light, that a deep introspection must be done to ensure that confidence can be restored in our legal system. Not to Sandra Faye Twiggs, to whom our system had failed, but to others. Also, there are many Sandra Faye Twiggs, and others like Judge Ehrlich, but in courtrooms without cameras.

I am not able to address the systemic issues regarding how Ms. Twiggs was arrested and kept in jail for four days for a domestic battery misdemeanor, or how she may have had issues in obtaining medications in jail. This is endemic of the systematic racism that our country continues to suffer through, and I would welcome any person who would like to comment on

that issue. However, the issues that need to be addressed is the neglect of the fact that the court should have ensured that this defendant's, who had a disability, rights were upheld and that the court understood the issues regarding the issues regarding domestic violence and disability. Lastly, to view this incident as a failure of just the judge is extraordinarily short sighted and does not take into the full accountability that is demanded from this situation.

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity. This translates into two basic principles, that persons with disabilities must be treated on a case-by-case basis, and must receive a full and equal opportunity to participate and benefit from the program or service of the entity similar to those who do not have disabilities. Furthermore, one of the obligations under the ADA is to permit a reasonable accommodation in a program or service for the person's disability if the accommodation is not an undue cost burden or a fundamental alteration in the program of the entity.

In as much as this may seem to be common sense and basic civility, it is frequently "overlooked" by most. When explaining disability discrimination in 1985, the U.S. Supreme Court, in *Alexander v. Choate*, stated that "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference — of benign neglect." Further, when any person is not treated equally by the Court, it lessens that person's worth. The example which occurs often in inaccessible courtrooms is when a witness in a wheelchair cannot go to the witness stand to testify because of its inaccessibility, and must testify from the well. Or, also, and more substantive, when there is no interpreter for a Deaf person, or the Court insists that a family member or friend interprets for a person.

For Ms. Sandra Faye Twiggs, I wanted to reach into the screen and move the lectern so she did not need to stretch over the lectern to speak. Further, Ms. Twiggs was not even permitted to request an accommodation or assistance because of her difficulty breathing, "Ma'am, I am not here to talk to you about your breathing treatment..."

No, Judge Ehrlich, you **are** there to talk about her breathing treatment, her asthma, her COPD, and her needs as a person with a disability as long as she is in custody and needs any accommodation or assistance from the judicial system. I have spoken to many of Judge Ehrlich's fellow judges in the judicial system who have recognized when a person is not receiving an accommodation in a courtroom, and notices that the litigant has a disability and affirmatively asks whether the person needs an accommodation.

### **Reasonable Accommodations – "You have to arrange for someone to carry you there if you can't get there yourself"**

In 2004, the U.S. Supreme Court, in *Tennessee v. Lane*, George Lane, a paraplegic, was compelled to appear to answer a set of criminal charges on the second floor of a county courthouse that had no elevator. At his first appearance, Lane crawled up two flights of stairs to get to the courtroom. When Lane returned to the courthouse for a hearing, he refused to crawl

again or to be carried by officers to the courtroom; he consequently was arrested and jailed for failure to appear. The Supreme Court found that this stated a violation of his rights under Title II of the ADA.

There are always many accommodations that can be provided that can ensure that all of the programs and benefits of the judicial system are available equally to those with disabilities. These rules were adopted by the Florida Supreme Court in 2010, and found at Rules of Judicial Procedure, 2.540. (“Qualified individuals with a disability will be provided, at the court’s expense, with accommodations, reasonable modifications to rules, policies, or practices, or the provision of auxiliary aids and services, in order to participate in programs or activities provided by the courts of this state.”). These rules may include appearing by telephone where necessary, and when it is not a fundamental alteration of the court services.

To say that it is humiliating to advise someone to carry a person with a disability is an understatement.

## **Domestic Violence and Disabilities**

Ms. Twiggs filed for a domestic violence petition for domestic violence against her daughter’s boyfriend, and Judge Ehrlich completely ignored that fact. Ms. Twiggs may have been in danger if she returned to her home, and she may have needed services from the Department of Children and Families.

Women with disabilities are at least twice as likely to experience abuse, and 92% of women with disabilities ranked violence and abuse as their top priorities of topic affecting their lives. In the information obtained by Judge Ehrlich, Ms. Twiggs was dependent for assistance on her daughter who had the boyfriend who she wanted protection from. Because of this dependence, the abuser may use this as a means of gaining more control, or leading to further abuse, or to take advantage of the person with a disability.

In this situation, Ms. Twiggs may have been dependent on the daughter or the boyfriend to take her to the pre-trial diversion meeting. As such, they may have had the key to imprisoning Ms. Twiggs....

## **Civility and Professionalism**

When two Black men were arrested in a downtown Philadelphia Starbucks because of their race, the CEO of Starbucks, Kevin Johnson, delivered a personal apology and promised change. Included in his statement was the following:

Now there’s been some calls for us to take action on the store manager. I believe that blame is misplaced. In fact, I think the focus of fixing this: I own it. This is a management issue, and I am accountable to ensure we address the policy and the practice and the training that led to this outcome.

It is not enough that Judge Ehrlich resigned and was removed after this incident. Broward Chief Administrative Judge Jack Tuter and Chief Judge of the Florida Supreme Court, Justice Canady, own it. The damage that is done when a judge can victimize Sandra Faye Twiggs is immeasurable. It is the chief judges' responsibility to ensure that *all* judges must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

The court staff and the public defender owns it. They have a duty to the public to complain when a judge acts abusively towards a litigant. The fact that Broward Public Defender Howard Finkelstein heard of the video from the courthouse blog, and action was not taken by his lawyer in that courtroom is troubling. Public Defender Howard Finkelstein owns it.

All court staff must be trained as to their obligations to report a judge to the chief judge or the Florida Judicial Qualifications Commission without penalty when any judge demonstrates conduct that does not demonstrate the integrity and professionalism required in the profession. Further, all staff and judges must be trained to ensure that persons with disabilities are treated in matter which affords them an equal opportunity to participate in the judicial process with or without accommodation. It is our responsibility to ensure that we uphold the concept of fairness and equity in the rule of law.