

## **Ken Carden**

### **Disability Lawyer, Dallas, Texas**

*Interview conducted by*

*Jason Fournier*

*On March 26, 2018 in Dallas, Texas*

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### **Biography**

Ken Carden graduated from Texas A&M University in 1970 and was commissioned into the United States Regular Army as an infantry lieutenant. He was injured and retired as a T-5 paraplegic, now using a wheelchair.

He earned his law degree, graduating from Southern Methodist School of Law in 1975. Kenneth became a successful trial lawyer with over 300 jury trials, and is licensed to practice of law before the United States Supreme Court, the Fifth Circuit Court of Appeals, all Federal District Courts of Texas, and all state trial and appellate courts in the State of Texas and the State of Illinois.

His practice consists exclusively of disability civil rights law under the Americans with Disabilities Act, the Fair Housing Act, the Rehabilitation Act, the Texas Architectural Barrier Act, the Texas Fair Housing Act, and the Texas Human Resources Code.

Ken is an avid sailor and lived on a 34foot sloop named Makaila from 1985 to 1990. He sailed from Galveston to Grenada, until he lost his boat in Hurricane Hugo while in Puerto Rico. He is now working with Galveston Community Sailing to bring the life-time sport of sailing to the disabled and to develop Sea Scout Base, Galveston, into a U.S. Sailing Paralympic Sailing Center.

### **Topics Discussed**

- Brief career background
- Brief background on college career

- Why the Army?
  - Where Ken has practiced and practicing criminal law, then disability law
  - Different cases he has represented or filed
  - Sections 2 and 3 of ADA law
  - How did injury happen?
  - His own feelings on being disabled as well as others
  - What is the future of ADA law?
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### **Fournier**

This is Jason Fournier interviewing Mr. Ken Carden for the UT Arlington Texas Disability Oral History Project. Today's date is March 26, 2018 and I am here at 1409 South Lamar in Dallas.

I am here today to speak with Ken Carden about...his role as a disability attorney and the strides he has made in the disabilities community.

I want to thank you for participating in the university's oral history program. One of the things I wanted to talk about first was you being in the Army as a U.S. Army Infantry Lieutenant. What made you go down that path of wanting to join the Army?

### **Carden**

<topic> Brief career background </topic>

I just grew up knowing that that's what I was going to do, I knew forever...just what I wanted to do. I grew up in a military family, my dad was in the Air Force. We lived all around the world and I had always been around people in the military. I was one of those people who didn't know what racism was until I went to college [Texas A&M].

### **Fournier**

So, you retired as a T-5 paraplegic? How did that happen?

### **Carden**

<topic> How did injury happen? </topic>

I was on a motorcycle and a little old lady turned left in front of me and I put my bike halfway through her car. It was line of duty as determination because it was on Fort Benning, Georgia. They [Army] retired me and I thought it was rather short-sighted that they didn't want an infantryman lieutenant that they couldn't infantry train anymore.

### **Fournier**

That was something you disagreed with?

**Carden**

Not then you couldn't. Now I think that they are allowing many people with disabilities back in, couldn't be an infantry lieutenant of course. They could find you another job, but I don't think I wanted any job to be honest.

**Fournier**

How did you at first deal with the fact that you were going to be in a wheelchair? What were your thoughts?

**Carden**

At the time? well I didn't. They told me that I would walk until I got to Fort Sam Houston in San Antonio and I was lying in bed. There was a first sergeant lying next to me who had broken his spine in a parachuting accident and was permanently disabled. They told me I was going to walk again until one day this doctor walked in and said, "Lieutenant, I've got some bad news for you" and I said, "What's that doc?" and he said, "Well, you're not gonna walk again and we're going to retire you from the Army." And I said, "no, you're not!" But the first sergeant had already made his peace. I guess my family, growing up was "do what you've got to do" and my Daddy's attitude was that if you're not happy doing what you're doing, quit and do something else. It is all attitude.

**Fournier**

So, there weren't really any type of struggles knowing that you weren't going to walk again? I guess it would be safe to assume that you took it pretty well, all things considered, and...

**Carden**

All things considered, it bothered me for about a day, as I remember. And then we just started to figure out "what do I do next?"

**Fournier**

The woman that cut into you, did they get her with any traffic violation or anything?

**Carden**

I don't have a clue. I don't remember any....the last thing I remember was getting on my bike, and the first sergeant saying, "Lieutenant, you know you can't wear that field jacket with your blue jeans." And I smiled at him and I said, "I know first sergeant." But it was cold out.

**Fournier**

How long of a gap was it between getting medically retired from the army and then deciding you were going to do law?

**Carden**

I believe that was one of the things I decided I was going to do while I was still in the hospital at Fort Sam. Yeah, like figure out what you're going to do next and go do it. And I figured I'd just go to law school. At the time, Perry Mason was playing the new series where he played the police investigator where he had a van and a lift in it. And I just decided I'd go to law school. That way, I don't have to work for anybody else. Never did like working for other people very much. So...that is what I decided to do. Army decided they'd pay for it and I said alright.

**Fournier**

Montgomery GI Bill, I take it?

**Carden**

I don't know. It's been too long ago. I think it was the disability/retirement. It was all part of that.

**Fournier**

What made you want to go to A & M? Oh, wait, did you go before?

**Carden**

<topic> Background of college career </topic>

I had graduated from A & M. I was an honor graduate from A & M. I was commissioned into the regular army and regular army is different that it is today. They don't have the distinction today. It is different. They used to have two different officers. You had the Army Reserve, and the regular Army, and the regular Arm was people who graduated from WestPoint and certain other people who had graduated from A & M. It is one of those special places I like, VMI, Citadel and they took the top 10% of graduates, and if they applied, you could be commissioned in the regular Army.

**Fournier**

What made you want to go to SMU?

**Carden**

I was accepted to I think 4 law schools in Texas. I didn't apply to any out of state. It was St. Mary's in San Antonio, Baylor in Waco, SMU in Dallas and Texas in Austin. And I was not going to be a T-Sip, even in law school. And my grandparents lived in Fort Worth, so I decided to go to SMU. Pretty much, that was the decision. It was closest to my grandparents. I didn't, I wasn't going to Austin, and ...

**Fournier**

It was all based on proximity.

**Carden**

Pretty much. SMU was a lot better law school than either Baylor or, uh, San Antonio. Uh, that is what I did. I just decided that's what I'd do.

**Fournier**

Where are you originally from?

**Carden**

<topic> Background of college career </topic>

I was born in Missouri. Like I said, my dad was in the Air Force, and I think we lived in one place for 3 years at a time, and that was pretty much the extent of staying in one place.

**Fournier**

What was one of the coolest, or fondest places you went while you were a military brat?

**Carden**

Japan, but I didn't go to Japan until I was already at A & M. I went over there one summer. I had a job on the beach as a lifeguard. Ya, it was a tough job. It was a great summer. After 2 weeks, I was the head lifeguard on the beach. They had a bunch of high school kids and me, and one motor pool sergeant who was like 24 and would rather be up to his elbows in grease than work with, herding a bunch of high school kids, and he said, "Carden can do it" and I said "sure", so I got a raise, and it was a great job. I was in charge of the beach. I had to make up schedules and everything for the kids. I had to drag the beach in the morning. Yacht club was right down the beach from where we were and if it got cold and rainy and nobody showed up, I'd close the beach and go sailing.

**Fournier**

Ah. So that is where the love of sailing first started? Or did it start before then?

**Carden**

No, that's where it started. I'd never been sailing before. As a matter of fact, when I came back to A & M, and A & M had just started a racing team, so I joined the A & M racing team. We raced in the SE Sailing Circuit against people like Tulane, Florida, and, uh, we were enthusiastic, but we weren't good! We used to go to Tulane about twice a year and race sailboats. When my buds had a dad who had a Cal-40 on Lake Ponchartraine and we all crashed on the Cal-40 and stayed for free. We lost every sailboat race, but we beat the hell out of them at the parties at night.

**Fournier**

Switching back gears, just for a minute. I do eventually want to get to the sailing part, but, going to SMU, and being disabled, how were the accommodations back then, in the mid-70s?

**Carden**

The accommodations were poor. I mean, they didn't have any. What they did do was if they had a second floor classroom and they had a room on the lower floor, they'd put it on the lower floor. That was the accommodation they made.

**Fournier**

Did you try to get other stuff started or propose...?

**Carden**

Nah. I wasn't terribly concerned about it. I wasn't a member of the disability community at the time. I didn't know anybody else in a wheelchair. I didn't really meet anybody else in a wheelchair until a good bit of time later. I guess I could go back and figure out exactly when it was. I was working at the DA's office and I was trying a fella named Jonathan Bruce Reid, and my girlfriend and I had gone to celebration and I came out of celebration and there was this fella in a van and he waives me over, and his name was Shorty Powers, and he started an organization named POINT. Paraplegics on Independent Nature Trips, and he wanted to know who I was and he wrote my name and number down in a book. And the next thing that I knew about that was I was trying Jonathan Bruce Reid and my clerk from the Dallas County District Attorney's office, at a break in the trial, said, "Ken! Ken, there is this fella on the phone and he wants you to take scuba diving. I think you should do it!". So, Shorty signed me up for scuba diving and we took the class. That was a long trial, and when everybody else graduated and went for their open dive and I had oral arguments the following Monday and we, uh, wasn't worried about diving, I was getting ready to argue that Jonathan Bruce Reid ought to be executed, so...that's what I did. I never took a test dive...took a check out dive until I was living on a boat down in Georgetown in the Bahamas. You get off shore and nobody gives a damn about filling up your tanks. And if you've got tanks, they'll fill them up. They don't ask to see a card.

**Fournier**

What was, just out of curiosity, Jonathan Bruce Reid being tried for?

**Carden**

Capital Murder. Jonathan Bruce Reid killed a cafeteria worker at Highland Park High School in the middle of a robbery. He was, uh, he came in...Jonathan Bruce Reid was a fella, I think he was about 40, and he spent more of his adult life in the penitentiary than out. He had come in to rob them and the lady was counting the money. He was like "put it in the bag! Put it in the bag!" and she was moving too slowly and he put the gun up to her chest and pulled the trigger...killed her. Grabbed the money, ran out to the car, and his little running buddy said he said, "Oh my god, I just killed that woman. It's going to be the chair for me for sure." I told him during a break, "Don't worry Jonathan, it's not gonna be the chair for you. We don't use that anymore.". Haha.

**Fournier**

Lethal Injection?

**Carden**

Yeah. I remember during the middle of a trial, they stopped lethal injection someplace because some district judge had said that the drugs they used had to be safe and effective. Because of some FDA regulation. I put the newspaper down in front of him and said "Look Jonathan! It's going to be safe and effective!" I screwed with him all trial long. He told his lawyer to keep me from doing that or he was going to jump over the table and strangle that little son of a bitch in the wheelchair.

**Fournier**

With your law career you've been practicing law for about 42 years now?

**Carden**

Since 1975.

**Fournier**

Yeah. About 43 years. So, number 1, what would you say, would disability law be the primary bulk of what you've practiced, or have you...

**Carden**

<topic> practice of criminal and disability</topic>

I was a criminal lawyer. When I got out, I went to work for myself. I was a criminal defense lawyer. And I did that for 5 years. I eventually formed a partnership. It was called Carden McNight Hunley. It was over by what used to be Lee Park. I don't know what they're calling it these days. When that partnership broke up, I was tired of defending criminals because they're criminals. I got off far too many of them. I decided I would go work for Henry Wade, who was the District Attorney for Dallas County, Texas. I sat outside his office and told him that he was going to hire me. One day, I went into his office and he said, "Carden I can't hire you, I can't hire anyone who can't kick the spittoon into the jury." I told him, "Chief, if that becomes an issue then I'll throw the damn thing into the jury." Kathy who was his secretary liked me, so I knew that I would get hired sooner or later. Later that week he told Kathy to let me know later that week I needed to come to work.

**Fournier**

Are you still with Cirkiel and Associates?

**Carden**

I'm associated with them, when they need a local attorney up here in which I've handled a couple cases for them. I go down to Austin and they're my local attorney's for ADA cases that I do down there.

I worked for the DA's office for about 5 years and I quit and went sailing for 5 years. When I came back, the ADA was just beginning...and I decided I didn't like to do straight civil law. I started doing ADA law because no one else was doing it and have been doing it ever since.

**Fournier**

I could've have misread an article, but you were involved in a case in Houston regarding building regulations?

**Carden**

I've been involved with many cases in Houston. My practice is the state of Texas, but it normally involves Austin, Houston, here, and a couple cases in San Antonio but not a lot. I've been consulted about cases in the Northeast and went to Texas Tech once and had them fix their little basketball stadium before we had to sue them. It's just wherever someone calls me.

**Fournier**

Are there any cases in Austin, Houston or even around here that stick out in your mind regarding ADA and have made some kind of impact?

**Carden**

There's West Village which is over near the Oak Lawn area. They tore down 6 city blocks, leveled em, and built some new shops with apartments over the top of shops; theater, restaurants, and they had a total of 6 accessible parking spaces in the garage. They had sidewalks with no curb cuts, they had a set of stairs in the middle of the sidewalk and we filed that as a class action. We brought in the contractors that built the place, the architect that designed it, and the people that owned it the people that operated it. It's completely accessible these days. That was a class action law suit that lasted far longer than it should have.

What I find is that...how long a case lasts and how much a defendant has to spend really depends on the lawyer they get. Some people get good lawyers that recognize that they will not win the case and settle it quickly. I have no problem with that at all. I was driving around yesterday that I settled with two properties that had promised to bring them up to ADA standards. One of the things I make them do in a settlement agreement is have a registered accessibility specialist review the property after they finish fixing it and send me a letter saying they did what they were supposed to do and it complies with the Americans with Disabilities Act. I usually give them a year to do the report and when I don't get that report, I have my client or I go look at it and found out that they had in fact done nothing. Im in the middle of the process of drawing up lawsuits in both of those cases. I mean how stupid is that? Do they think that we're just lawyers that are going to go away because they gave us money? They're about to get dropped into Federal Court because they didn't do what they were supposed to do. It doesn't comply with the ADA and ive gotten a signed written letter from both of these businesses.



**Fournier**

Is that one of the ones you were telling me about a couple weeks ago?

**Carden**

No, those are off Greenville Avenue in which we've agreed to a settlement and we agreed that they'd have three months to do what they said they would do. One of them...what they said they were gonna do and it fell through evidentially, they just didn't do anything. It would've been a lot easier if they would've called me up and said we're not going to be able to tear down the building and then we would've worked something out, and it wouldn't have cost them anything else.

**Fournier**

For those that are slightly ignorant to law like myself, can you explain what class action lawsuit means?

**Carden**

Class action lawsuit is you file a regular lawsuit and allege in your pleadings that it affects a whole class of individuals. In the West Village case, we alleged that it violated civil rights of those with a mobility disability that can't use the facility. If you can't get out of the car, it's kind of hard to use it. If you can't get over a curb, it's hard to use it.

We had a little restaurant that had those spinning doors, and you can't in those with a wheelchair. You couldn't get in the building unless you went through the back door of the kitchen door, in my lifetime I have been through a number of kitchen doors before the ADA was passed, we're not doing that anymore.

**Fournier**

Is it safe to assume that there is still a lot of work that needs to go into the fair treatment of the disability community in what the ADA is asking for?

**Carden**

<topic> Section 2 and 3 of the ADA </topic>

It's absolutely appalling, when I first started this, I thought I'd be doing this for about 5 years and people would get it. I thought they would start building correctly and removing barriers in existing facilities. I came back from looking at two facilities and saw at least 15 more that had no attempt in compliance, it's just pretty stupid.

When the Department of Justice drew up the regulations implementing the Title 3 of the ADA and Title 2 of the ADA, Title 2 has to do with government access to government goods and services, Title 3 is places and public accommodations. They drew up a set of regulations called the Americans with Disabilities Act Accessibility Guidelines (ADAAG), the ADAAG basically is a building code that is accessible. If you've got a parking space 8 feet wide, you put a 5 foot access aisle so that people in a wheelchair can usually get their door wide open and be able to transfer in and out of their car. If it's a van then it has to be an 8 foot access aisle so they can get the ramp up and down. The doors to a bathroom have to be so wide so that a wheelchair can get through, it's just a series of things. If they build them at the start, it costs

almost nothing if they build it under a previous code. If they don't build it that way, it costs them a huge amount of money so it's just really ignorant not to build it right in the first place.

ADA was passed July 26, 1990, the regulations went into effect January 26, 1992. For 25 years, the ADA has been the law of the land. People are still building facilities that don't even come close in compliance.

**Fournier**

What's your assumption of why [people do not build in compliance]?

**Carden**

I don't know a lot of it is just ignorance. You have existing facilities that were built before January 26, 1992 and they're called existing facilities. There are a lot of people today, even 25 years later, that feel they are grandfathered in and don't have to comply. What the ADA actually says is that you have to remove barriers that prohibit access to people with disabilities. The government will give you up to 10,000 dollars tax credit a year, 50 cents on the dollar, or 5,000 dollars free money to implement accommodations.

**Fournier**

I guess it just comes down to the bottom dollar, not wanting to spend the money to make the accommodations that they're supposed to by law?

**Carden**

I think more than anything its ignorance. You have to wonder how someone can settle a case where it is pointed out to them, your facility does not comply with the ADA. It's all spelled out in the final agreement on what they're gonna do and then they just...don't...do...it. I don't know how you get around that mindset. The ADA allows me to sue the landlord that owns the property and the public accommodation that leases from the landlord. I can sue both or I can sue one and not the other, the problem is that if they're going to make changes to the property, I have to sue the landlord because they own the property.

I've found that places like Taco Bell and Chili's are doing it right and doing it well. It's just the existing ones that haven't been brought up to standard. Do we have to sue every single one before they do? Here I am 25 years after the passing of the ADA and I'm still doing this stuff. I don't even sue anymore unless they've had a letter telling them what's wrong and telling them how to fix it. I also work with an organization called Don't Dissmybilities, in which they try to get businesses to fix what's not in compliance. I'd rather sue someone that's had notice than someone who hasn't.

**Fournier**

You've been able to practice in a multitude of courts and under many acts, how does one go about being able to do that?

**Carden**

Go to law school, get a license. For me, there was no one doing it when I started, I'm all completely self-taught. No one was giving seminars on the ADA when I started because no one had done it before.

**Fournier**

Is it the same process to be able to practice in all the different courts?

**Carden**

Once you've passed the bar in the State of Texas, if you want to join a federal court all you have to do is be sponsored by a lawyer in that court and different districts have different requirements.

**Fournier**

What is your reaction to someone that stares at you being in a wheelchair and what are your hopes for the future regarding ADA law and how businesses/society goes about honoring the ADA?

**Carden**

<topic> Future of ADA Law </topic> I have never experienced any real personal discrimination of being in a wheelchair. People don't look at me any differently because I think it's the attitude that I carry myself with. I'm not sure where the ADA is going to go. It's been 25 years and I just don't get it, how can someone not know what's going when we're building brand new facilities that don't comply with the ADA?

When Lone Star Park was built it didn't even come close to compliance. That was a partnership with the City of Grand Prairie and how you could build a brand new facility like that and not even come close to compliance is beyond comprehension. It ended up costing them a hell of a lot of money to tear it out and do it over, but they did only after we filed a lawsuit and gone to court. The biggest problem we have now is getting people to make complaints and what I try to tell people is that if you don't make complaints then it's not getting any better for anyone else.

J- I want to thank you for taking time out of your day to talk and I look forward to talking more with you.

**(Interview concludes with personal reminisces and small talk)**

*End of Interview*