

LILY BOND: Welcome everyone, and thank you for joining this webinar entitled "The 2017 Legal Update on Digital Accessibility Cases," presented by Lainey Feingold. I'm Lily Bond from 3Play Media, and I'll be moderating today. I'm thrilled to be joined today by Lainey Feingold, who is an internationally recognized disability rights lawyer and a pioneer of the collaborative dispute resolution method known as Structured Negotiation.

Lainey works primarily with the blind community on technology, digital, and information access issues. She is internationally recognized for negotiating landmark accessibility agreements, and in 2014 and in 2000, she was honored with a California Lawyer of the Year Award. Her book about Structured Negotiation was published in 2016. And this year, Lainey was the individual recipient of the John W. Cooley Lawyer as a Problem Solver Award, and was selected as one of 13 Legal Rebels for 2017 by the *ABA Journal*. And with that, I'm going to hand it off to Lainey, who has a great presentation prepared for you.

LAINY FEINGOLD: All right. Well, thank you, everyone, for being part of this webinar. Thank you, 3Play Media, for inviting me. This is, like Lily said, the Digital Accessibility Legal Update for today. There's a lot of information that I'd like to share with you, and there's only 45 minutes, so I'm going to talk fast. And we will leave room for questions.

I have up here, on the home slide, my website, which is LFLegal.com. There's a contact page on the website. And if any questions you have don't get answered during this webinar, feel free to reach out to me. I also have, up here, my Twitter handle, which is [@LFLegal](https://twitter.com/LFLegal). So if you are tweeting and you include that, I could follow up with you through Twitter.

OK. So those of you who have heard me speak before know that I'm a big believer that we all need to put the law in our pockets. And if you're on this webinar, I consider you an accessibility champion because you have some role that brought you to a webinar to learn about how the law is advancing accessibility in the United States.

So I illustrate this idea with a picture of a pocket with some tools, like a scissors or pen, pencil, tape measure. And I see the law the same way. That no matter what your role, whether you're higher ed or private sector-- whether you're in policy, web development, usability-- it's important because so much is happening in the legal space right now that we're all able to talk about the law.

So how do we talk about the law? And can we shift from talking about the law as something to fear to something to motivate? And that's really one of the reasons I do these presentations. Because so much conversation about the law is the law is a hammer and it's bad and it's being misused, and this and that. I like to try to shift that from fear to motivation and to talk about what you need to know in your role, whatever it may be. In the accessibility world, what do you need to know about the law? So that is the goal of this session.

And jumping right in, let's talk about, what is accessibility? And I have a picture up here of a march that was part of the run up to the Americans with Disabilities Act that was passed in 1990 that says, "injustice anywhere is a threat to justice everywhere." It's a Martin Luther King quote and the people in the picture have visible disabilities using that quote. The reason I use this is because accessibility is a civil right and/or a human right. I know, in Canada, people refer-- and other countries, people tend to say human rights, civil right, for disabled people.

That's why we're in the legal space. Accessibility is good for many things. We'll talk about those in a minute. But at its core, it's the civil right and the human right of disabled people.

Why do we say that? Why is accessibility in the legal space as a civil right ? And the reason is because, as you know if you're on this session, with accessibility, you have participation, inclusion, and equality. And that's the first thing, when I think about how should we be talking about the law. We all know accessibility is more than the checklist. It's very important to remember that accessibility is about people being able to participate and being included in whatever it is that you're offering through your digital content, whether it's through a website, a kiosk, or a mobile app.

And the picture illustrating this is a happy young couple, one with a disability, one without a visible disability, chatting, just to illustrate the idea of inclusion and participation. And it's easy when you're-- whatever role you're in-- and you're in that particular piece of accessibility, making sure that alt text is in, or making sure that job evaluations include web accessibility. Whatever piece that is, it's good to remember the big picture that we're talking about participation, inclusion, and equality. That's why we're in the legal space.

Without accessibility, you have what we have in the slide, a woman sadly looking in from the outside. Because in fact, that's what happens. People are left out. They're excluded. And that is why accessibility is in the legal space, because that is discrimination.

So accessibility, at its core, is a right to information. That's what makes it a civil and a human right. That's what allows people to participate.

In the legal spaces we'll talk about throughout this presentation, the law is looking at the right to information in a whole variety of sectors, including education, transit, voting, various types of services, finance, health care, retail, employment, community, and sports and entertainment. And the law has touched on all these and many other sectors. Big picture, what we're doing when we're all trying to make content accessible and technology accessible is make sure information is accessible.

And the other piece of the civil rights concept is the right to participate. So it's not just random information, random sectors. It's your ability to be a student, to be a shopper, to be a patient that has the equality with patients, shoppers, and students without disabilities. To be a customer, a citizen, an employee.

I put in a dater because someone recently asked-- I don't know if that's even the right word-- someone recently asked me about accessibility for online dating sites. I mean, that's about participation in 2017. You cannot have participation without accessibility.

To be a member, to be a job applicant. So these are-- and to be a fan. I'll talk about in a minute. I worked on a structured negotiation with Major League Baseball and their accessibility initiative, and learned how important it is for people with disabilities to participate as fans in the online world.

So why be afraid of that? I think remembering the participation and the equality part is the first step in being able to talk about the law not as a hammer and a fear thing, but as a motivator.

Beyond disability rights, we all know the value of accessibility for seniors. This is what they call a Venn diagram, where seniors, people with disabilities, is an overlap. As we get older, we're taking on some of the qualities that people who've had disabilities their whole lives had-- vision, hearing, cognitive, other things like that. Accessibility helps with that.

There's a series of videos-- if you haven't seen them, I really recommend it-- that the Web Accessibility Initiative puts out. It's called *Essential for Some, Useful for All*. And you could just put those words into Google, and they'll come up. And they're very, very short, I think three-minute videos talking about why accessibility is a civil right. For disabled people, it's essential, but it's useful for everybody. So these are all things that we can use when we have the law in

our pocket to talk about what's the value of accessibility.

Of course, we all know that improved search engine optimization-- you put captions on your video. It's easier for people to find things. Privacy and security is a high-level issue at most sectors. I mean, look what just happened with Equifax. It should have been a higher priority.

Accessibility is about privacy and security too. Because without it, disabled people can't independently access digital content, and they have to share a pin or financial information passwords. So beyond disability civil rights, privacy and security is an aspect of accessibility. It's a brand builder. It's a way to distinguish yourself. And it's a way to reduce legal costs.

So basically, I like to think about the law and share the law. How do we get that theory of accessibility as a civil right into the practice? There's the foundation, which are the laws and regulations. There are the advocates who are using those laws and regulations. There are the strategies. How are those laws and regulations used? And you add those all up, and you have accessibility wins.

I've been working on digital accessibility in the legal space since the late 1990s. My first settlement agreement in structured negotiation, which is a process that avoids lawsuits in favor of real communication and relationship building, we did our first agreement with Bank America in the year 2000. And they've been an accessibility champion ever since.

And we have a lot of laws and regulations supporting accessibility. We have advocates, some people like myself, who have been in it for a long time, some new people. And we have a lot of strategies.

So let's just talk quickly about the foundational laws in the United States. There's two categories. There's federal laws and policies, and then there are state laws and policies. So we could spend a whole hour just on this one discussion of what is a foundation for accessibility in the US. I'm not going to do that, just going to give you a quick overview.

Of course, the Americans with Disabilities Act, the ADA, is the foundation. The ADA requires effective communication of information. So if you're communicating through a website, the only way for that communication to be effective is if it's accessible. Same with a mobile app, same with information on a kiosk. The ADA prevents discrimination, which is back to the civil rights idea of inclusion and participation.

So the ADA is three parts. They call them titles-- Titles I, II, and III. I is for employment, II is

public sector, and III is private sector public accommodations. Things like restaurants and stores and doctor's offices, private colleges, higher education. I know a lot of people on this webinar are probably from the education sector. It could be covered by Title II if you're wholly a public school or Title III, or both if you're getting some private, some public. So the ADA is there as the foundational law embracing the civil rights of disabled people in the United States.

There's sections 501 and 503 of the Rehab Act, which governs federal employment. Anything that's federally funded has to be accessible under Section 504. Airlines have their own disability law called the Air Carriers Access Act, which has its own requirements for website accessibility, which are already in effect. We have the Communications and Video Accessibility Act, which deals with browsers, mobile, some on ramps to the internet.

And we have what most of us know as Section 508 dealing with federal procurement. The basic idea there, in terms of putting the law in your pocket, the federal government is not going to buy things. And with Section 504, the federal government is not going to spend money on things that people can't use if they're disabled. That is a core part of our legal system.

There's also, not on this slide, but as long as we have the Affordable Care Act-- which save that for another presentation-- there's a specific regulation implementing Section 1557 that requires health care programs delivered through technology to be accessible to disabled people. So we have a very, very strong foundation. Oh, Affordable Care Act, I did put it on there, sorry.

We have a very, very strong foundation, but do we have web regulations? Do we have regulations under the ADA that requires websites to be accessible or tells people precisely how to do that? As you know under 508, we do have regulations saying that websites and other digital content have to meet the Web Content Accessibility Guidelines. Airlines have to. Other particular regulations.

But under the ADA, we do not have regulations. And we are not going to have them as long as the current administration is in office, because the ADA web regulations, which the federal government said in 2010, the Department of Justice-- oh, we want to regulate websites. We want to see if we can be more specific about what's required.

It's now 2017. Between 2010 and 2017, there were no regulations put out under either Title II, state and local government, or Title III, private sector. And there aren't going to be any,

because they are officially on inactive status.

So the question is, does it matter? I wrote a lot. Between 2010 and 2017, I put out a lot of pieces. Initially, I said it didn't matter because the ADA already embraces participation and inclusion and prevents discrimination. And so therefore, the ADA already requires websites to be accessible.

But what we don't have is anything specific saying, should we have WCAG 2.0 AA, any details like that? Because web was not around in 1990, barely, when the ADA was passed.

But then I realized, well, it would be helpful. I know many of you listening to this webinar, it would be super helpful for you to have regulations so you could point-- just with one finger, you could point to the people who are funding you or the people making decisions about priorities and say, hey, there's a regulation. It's required.

Well, we don't have that. It would be useful, but it doesn't matter because the ADA-- and you'll see in a minute, courts are recognizing this by and large-- the ADA already prevents discrimination. So my one-liner for this is that the web regs are inactive, but the ADA isn't. And that might be one of the most important things to put in your pocket because there's a lot of misinformation out there.

People say, oh, no. There's no regulations. We don't have to do anything. And we'll see in a minute, a couple scattered courts are saying, well, yeah, that's true. But most courts are saying that's not true.

So the web regs are inactive. The ADA isn't. The fact that there aren't regulations is no excuse for anyone to be ignoring accessibility.

And I just want to read one quote from one of the cases about this. A recent case in New York, where the judge said, the court will not delay in handling this case on the off chance the DOJ promptly issues regulations it has contemplated issuing for seven years, but has yet to make significant progress on. The interpretations of laws and regulations is a task suited for judges. I'm paraphrasing this. It is unlikely that the DOJ will resolve this issue in a timely manner.

And that was a judge in the *Blick Art Materials* case we'll talk about in a minute, who was faced with the question, well, there's no regulations, should this case be thrown out of court? And the judge said, no, for the reasons that I just read you. So the web regulations are inactive, but the ADA is not.

In addition to all the federal laws I just mentioned, states have laws that support digital accessibility. Many states-- and you'd have to look for your own state. I know some states, not others, so I'm not going to be talking about any particular state.

And also, this is a good opportunity for me to say something I should have said at the beginning, which is this presentation is intended to give you an overview of the legal space around digital access, give you some tools to put in your pocket, but it's not intended as legal advice. If you feel you need a lawyer because you have a claim against inaccessible content or you received the claim for inaccessible content, you need to get legal advice. That is not this presentation.

So what you need to look for in your own individual states are laws requiring that state-funded Information Technology, IT, or some people call it ICT-- Information Communication Technology-- many states have requirements that state-funded technology-- again, underneath the legal stuff is the core value. If the state is going to spend money on technology, that technology has to be usable by everyone. The state is not going to allow entities, colleges, schools, state programs, to pick and choose who has access to the information.

So many states have state-funded IT requirements. They have separate state procurement requirements for accessibility, like Little 508s, they call them, that mirror the 508 in the federal government. Many states have anti-discrimination laws that prohibit discrimination against disabled people. Those have been used in court cases to say that state laws are violated when web content is inaccessible.

And then there are local laws. New York City has a lot. You had New York City. In Massachusetts, there's been some local laws. There are constitutions in states. So the state is another whole font. And this is illustrated with the image of a state map of different colors because every state has different requirements and you need to look at your own state.

It's important in this space to look for roll-backs. We're already starting to see some states being afraid-- again, letting fear rule the day-- changing requirements of state laws. I'll just mention, too, that I'm aware of, in Arizona, they recently changed their law to say that the anti-discrimination law doesn't apply to websites, which is really, in my view, tragic. They did have a situation in Arizona, where there were a lot of lawsuits filed, and there's many ways to deal

with lawsuits being filed. But changing the law for everyone isn't fair, in my mind. But that's what Arizona did.

Oklahoma also passed something. These both happened this year. Oklahoma's is more of a notice requirement, where the disabled person can't use the legal system unless they give an opportunity to the company, which is concerning because the ADA and these state laws have been around for a very long time. And those of you on this call who do this work, know that every time there's an opportunity of new content, new platforms, and new versions, there's an opportunity for accessibility. So these notice requirements are concerning and you should pay attention in your own states to what's happening.

Also on the federal level, there is an effort to roll back the Americans with Disabilities Act. It's called HR 620. I would take a look at that. It does not apply to websites. It has to do with architectural cases, but it's something those of us who care about accessibility need to pay attention to.

OK. Beyond the US, there are laws, a growing body of laws. So much of the web is global, and accessibility has to be global, too. Just three real quick things on that. The Convention on the Rights of People with Disabilities, which has been ratified by over 150 countries, not including ours, has Article 9, which deals with web accessibility and accessible technology.

The Web Accessibility Initiative has an international page that they just updated, which you can find at w3.org/wai/policy. They list a lot of international laws. And on my website, I try to keep up with-- the easiest way to find it on my website is put the word Japan in the search box because it's the only article. And it was originally written in 2013. And you'll see the full site when you get the slides tomorrow. But like I say, you go to LFLegal.com, you put in Japan, and you can find it.

So accessibility is about people. And without people, all that foundation is just a foundation without a building. And without strategies, we just have a foundation without a building. So we have to have strategies for enforcing the foundational laws, which remain strong even though we don't have ADA regulations.

There are several strategies. Those of you've heard me present, or read articles I've written on my website, know I like the tool box idea. This is my classic red toolbox, which, when I do these talks live, I carry around a toolbox. Because there's many tools in the advocate's toolbox for making sure things are accessible.

And let me just say, this is a presentation about the legal space, but each of you are using a tool, whatever your role is, to make the space accessible. And ideally, accessibility doesn't need the law. That would be ideal. And the civil rights of disabled people would be recognized in the creation and the development of content and technology and technical tools.

But right now, the legal space is still needed, and there's many tools in the advocate's toolbox. There's three basic strategies that have been used in the United States. Federal agency complaints, lawsuits in both federal court and state court, and structured negotiation. These are three different strategies to use the foundation, to make sure the foundation isn't just a foundation, but turns into a flourishing building of accessibility.

Usually, I would start with structured negotiations or federal agencies. But the truth is, there's so much happening in the legal space right now in court cases, so I'm going to start with these lawsuits. So the picture I put on here to illustrate structured negotiation is a handshake. I always use a handshake.

And I always try to find pictures that have some disability reference, so this is a prosthetic hand with a hand that's not prosthetic, about to be the handshake. So that is the idea of structured negotiation-- handshake instead of the hammer. But we're going to start with the hammer stuff because there's so much going on with the lawsuits.

So the first slide, just real quick, because we could, again, spend many hours talking about the foundation. But the foundation with the lawsuits is strong. And some of them are Target, which was an early case in 2006 that, out of California, many of you already know, said that website had to be accessible as long as it had a connection to a physical place, which the Target store did.

Then, there's the Netflix case, out of Massachusetts, across the country, which found that Netflix, which doesn't have a place, is a streaming service, had to be accessible. Netflix ended up captioning all their videos. I consider that one of the foundational cases.

Miami University is here because there are many lawsuits with really great and important settlements, a few court orders. Miami University is one of them. It's just here as an example. I'll give you a link a little bit later to more, where you can find more educational cases. But the lawsuit filed against Miami University that's in Ohio has a very good settlement requiring accessibility.

There's a lot of important lawsuits about voting access, the right to access information about candidates, and also ballots, absentee ballots going online. So there's been a lot of important lawsuits about that. One in Ohio, one in New York.

On my website, there is a Legal Update tab. And on that tab, you can find articles I've written about the legal update. And some of them are illustrated with the toolbox. And when they're illustrated with the toolbox, it's a summary that I write so people who are just looking right here at a slide with a voting button can actually get links to the settlements and the cases and the press releases. So I have all that up on my website with the names of the cases, links to the press releases, all under the Legal Update tab.

Scribd is another case, foundational, I consider it. Scribd is like a Netflix of books and magazines. It doesn't have a physical place-- was required-- ended up with a good settlement making it accessible.

There's more lawsuits. There's one pending right now against FedEx. There's a good article 3Play just put up recently about that case having to do with training videos, making sure they are captioning.

Sweetgreen is a restaurant. There was a accessibility case against a chiropractic licensing program because they had an online test that wasn't accessible. There's a case pending right now against Greyhound for their web and their mobile platforms not being accessible.

A case against Harvard and MIT that's been pending for a while is currently in mediation. A very good court order came out when the schools tried to get the case thrown out of court about captioning videos. So this is just some of the lawsuits that are pending.

Digital accessibility is about more than websites. And there's lawsuits about more than websites. There was a good settlement against a city in New York for their public sector kiosks, which I have a picture here, that allows you to call 911 or charge your phone, get information about city services. That wasn't initially designed to be accessible. Now it is.

There was a settlement announced this week against the Eatsa restaurant chain, or shall I say a settlement with the Eatsa restaurant chain. The picture here is their mobile device, where you can order everything. The idea of the restaurant is not to have any servers, but to do everything through technology. And again, it's the civil right. The idea in the pocket is that you cannot have a restaurant where people can't order food unless they can use a flat screen

tablet.

So that settlement was just announced this week. I put it out on Twitter. It's not yet in a legal update, but I can send you links to the press release and the settlement if you're interested.

There's a case pending against Lincoln Center for [INAUDIBLE] at camp programs. And there's a settlement-- I believe it's settled-- with the state of Arizona, because they didn't have the right to text to 911, so deaf people didn't have access to 911 services.

So I just want to quickly go over four highlights. There's four new wins that I want to share. I've got this smiling girl with her thumbs up. A case against Winn-Dixie out of Florida, which was a first trial, as many of you know. I have two articles about this up on my website you can find in the Articles section.

First, the judge issued a good order saying, I'm not throwing this case out of court. Then they had a trial. And that's why this is historic because it was the first trial under the ADA about web accessibility and the judge ruled for the plaintiff.

It was one of those cases, where the website did have a connection to a physical place. Ruled for the plaintiff, said that Winn-Dixie, which is a grocery chain, had to have a policy that conformed to WCAG 2.0, training, deal with third party vendors, make sure theirs is accessible. The Winn-Dixie case is on appeal now.

So it's a good, strong case. The way the legal system works, people can appeal. It's frustrating to me because Winn-Dixie is a grocery store and I did a negotiation through structured negotiation with Safeway several years ago, where they agreed to make their online grocery ordering system accessible. The Department of Justice did a settlement with Peapod grocery delivery, so there's really no excuse for Winn-Dixie, and hopefully it will be upheld on appeal.

Hobby Lobby was out of California. Judge refused to throw the case out, saying the web accessibility claims could continue. Blick Art Materials, this is one of my favorites. And like I said, I have a post on my website. It's called "Companies are Losing Web Cases-- Spend Money on Web Access, Not Lawyers," which is my basic idea.

The Blick Art Materials, a long decision. I really recommend it to you. The judge is 96 years old. And his understanding about what web accessibility is really about was very powerful to me. I'm just going to read you one little sentence.

He wrote, "it would be"-- no, no, I'll read you two sentences. "Today, internet technology enables individuals to participate actively in their communities and engage in commerce from the comfort and convenience of their home. It would be a cruel irony to adopt the interpretation of the ADA espoused by Blick, which would render the legislation intended to emancipate the disabled from the bonds of isolation and segregation obsolete, when its objective is increasingly within reach."

I just love that because that gets to the core of what's in your pocket, that the internet has such potential for disabled people. And the founder of the internet, Sir Tim Berners-Lee, recognized, right at the beginning, the inclusive nature. And that is what accessibility is all about.

So Five Guys is another new win, where the judge-- again, some of these cases are not finished yet. When we say win, companies hire lawyers who decide to fight, which is a choice. They try to get the cases thrown out of court. These are examples where the cases were not thrown out of court. Typically, after that, they settle.

There is one new loss. Domino's Pizza was successful in convincing a judge that the case should be thrown out of court for various reasons, including the fact that there were no regulations. But these other cases said it doesn't matter that there aren't regulations because the Justice Department has said, since the '90s, that the ADA covers websites. So this Domino's Pizza case, also on appeal. On appeal.

So there's more cases. There's a lot of cases pending-- against McDonald's, Redfin real estate, restaurants, Blue Apron. Well, Blue Apron is a food delivery service. Red Lobster, Panda Express, Cheesecake Factory, two restaurants with the name Texas in them, and more.

So there's lots of lawsuits. And I have a picture here of a roller coaster because I just want to give everyone permission not to keep track of every single lawsuit because even I, who try to keep track as much as I can about things, can't keep track of all these lawsuits. And there's going to be some wins and there's going to be some losses, but the big picture is that the law is embracing accessibility. Most of the cases are being initially won by the plaintiff and then settled, court ordered. Not all. There are some losses, like we just said.

Let me just tell you a couple of big picture things. Some courts are saying you need a

connection to a physical place, which is called the nexus. There's appellate courts. There's 11 different appellate courts in the United States in the federal level. Three of them say you do need the connection, three of them say you don't need the connection. That doesn't add up to 11, but some courts say you need it, some courts say you don't. Like I said, the foundational cases of Netflix and Scribd have said, for several years now, that you don't need the physical connection.

Another big picture. The one court, like I said, said you need the regs. But most courts are saying the fact that there aren't web regulations doesn't prevent someone from bringing a case under the ADA. And again, that's federal. There's still a possibility of bringing state cases.

Both of those cases have to do with art supplies. So the one court that said you need the regs-- actually, that's not true. The courts that say you don't need the regs are the art supply cases, like Hobby Lobby and Blick Art Supplies, right? So think of art supplies when you're thinking of inclusive accessibility.

Big picture three is don't be distracted by the losses because the legal roads are leading to access. And the picture I have here is kind of a bumpy road, but that's how it's going to be. It shouldn't be preventing your policy, your departments, your web developers from doing accessibility. Because even in these few cases where the companies are winning, they're spending a ton of money fighting accessibility when accessibility has all the advantages we talked about earlier.

And the other thing-- there's one website. You might have one court district that says, oh, websites need a nexus, but you're running your websites in all 50 states. So the idea of fighting it instead of putting money into building accessibility doesn't make sense to me. So again, spend money on access, not on lawyers who have a pile of money.

I see we're running out of time, so I am going to skip ahead. Just real quick on the government agencies, you can file complaints with the Department of Justice. The DOJ has supported accessibility for a long time. They have a website called ada.gov/access-technology, where you can look at all the work they've done. Obviously, in this administration, we're, I doubt, going to see a lot of good affirmative work, but thus far we haven't seen any rollback from the Department of Justice.

State's attorney general, there's a lot of activity in the Department of Ed. There's 1,700 and counting complaints filed in the Department of Ed. This picture of a-- I think it's a barrage

because a reporter referred to it that way. Meanwhile, these school districts are settling their claims and building accessibility in. You don't have to wait for the Department of Ed to come knocking.

Strategy three is structured negotiation, which, of course, I wrote a whole book about. The book is not just for lawyers. It tells a lot of web accessibility stories. But I am actually going to make an executive decision to skip talking about structured negotiation, even though Kaiser Permanente, Major League Baseball, Anthem Inc., San Francisco Federal Credit Union, HEB-- they've all improved their technology in this process. Bank of America, Lyft, the Motley Fool, and E-Trade.

But I want to talk to you more about what are the best practices coming out of all this legal activity. So good strategies make access stick. And the law is starting to get more specific about what is required, but we don't have to wait for the court cases because we've had these settlements that-- like we said, Miami University or Bank of America or hundreds, really, of settlements on web accessibility since before the courts started looking at this.

Now, the courts are looking. And these are all things you can do to make accessibility stick in your organization without waiting for the law to come knocking. So I want to just go over those best practices.

First of all, the settlements. The Department of Justice recognizes that your accessibility program has to apply across the board-- web, mobile, learning platforms, kiosks. Don't do a great job at making sure your mobile app is accessible and forget your website because people are approaching your content from all different platforms. So best practice includes an audit of all your available technology, as well as your content and the platforms to see where you are.

You need to have a Web Accessibility Standard. WCAG 2.0 AA is the standard. The federal government is using it in 508. The airlines are using it under the Air Carriers Access Act. Courts are starting to recognize that is the standard in all the settlements that I've been involved with, all the settlements in other-- the National Federation of Blind does a lot of really important work in this space. They're using WCAG 2.0 AA. That should be your standard.

You need to have a web accessibility coordinator because you have to have somewhere for the buck to stop. But where should it be? A whole other hour could be spent on this, and maybe 3Play has done this already.

One thing I like to say is don't put the web accessibility coordinator in the law office because accessibility, again, should be a motivator. It's creative. It's a way to bring more people into your business and more students into your school.

And if you stick it in the law office or you get too many lawyers involved, it's going to become something of a checklist and a compliance matter and something that's constricted and narrow. So decide where to put your web accessibility coordinator.

Jeff Kline has a really good book-- he's out of Texas-- on this, with a lot of discussion of how to decide where to put your web accessibility coordinator. Hire an independent consultant if you need one, train all staff. In the Winn-Dixie case, the court recognized that staff training needs to be part of the accessibility plan.

Several of the agreements in settlement suggest that if you have performance evaluations and accessibility is part of someone's job, put it in there. Make it real. Don't have accessibility be an afterthought. Post a policy, have a home page accessibility information page. That's another thing in the Winn-Dixie case.

One of the parts of the court order-- again, it's on appeal-- but it said no later than a certain date, Winn-Dixie shall make publicly available-- a direct link from the winndixie.com home page-- a statement of Winn-Dixie accessibility policies to ensure that people with disabilities have full and equal enjoyment of the website. And it goes on from there.

So on my website, I keep a running list of accessibility information pages. You can find the link to the article on the home page or you could put Hitachi into the search box. That's the only article that references Hitachi.

Really important to have information that's easily findable on your website, where people who have a problem can both call or email. You should have both channels. And make sure who's ever answering the phone or answering the emails will understand the basics of accessibility and know how to escalate it within your organization to get to the right person. So many of my structured negotiation cases started when people called, tried to fix the problem themselves, and didn't get a proper response. So I think that's critically important.

Use a testing tool and do usability testing. Disabled people need to be part of the process. Accessibility isn't a checklist and an automated testing tool is important, but it can never be a

standalone thing.

And vendor contracts-- look at your RFPs and look at your contracts because some of these lawsuits, court orders, are starting to recognize that it is your responsibility as a site owner or an app owner or a kiosk owner. If you have contracts with third parties, the content and the technology they deliver to you must be accessible. I'm pretty sure that's in-- yeah, in the Winn-Dixie injunction, again, it said no later than a certain date, Winn-Dixie shall require third party vendors who participate on its website to be fully accessible to the disabled by conforming with WCAG 2.0 criteria.

These are things that have been in the settlement agreements that the blind community has negotiated, either as result of lawsuits or structured negotiation, for many years. And the courts are starting to recognize, yeah, to bake accessibility into the DNA of an organization, you have to touch upon all these things, including the vendor contracts.

Higher ed settlements have the same basic best practices. Technology and audio fix-- there's been a lot of attention on higher ed video, as video becomes a more important learning tool. Library systems, course materials, learning management systems, requirements about training of instructors, making sure instructors aren't using inaccessible tech, and having a coordinator in the IT department dealing with the vendors. A recent settlement with a community college had vendor indemnification, which meant if the vendor delivered something that was inaccessible, it was going to be the vendor's responsibility.

If you want more law-- because obviously, 45 to 48 minutes isn't enough to do it all-- I think there's three important resources. For the higher ed updates, Laura Carlson at University of Minnesota keeps up a website that has higher ed cases and press releases. There's a link here. You'll have it in your materials tomorrow. It's bit.ly/highereda11y. That's for higher ed updates.

I do my legal updates. You can find the ones that are up there now in the Legal Update tab. If you want to be on my email list, you can go to LFLegal.com/contact and sign up. And I also recommend the Seyfarth Shaw ADA Title III blog, which is www.adatitleiii.com.

Seyfarth Shaw is a firm that represents companies in web accessibility cases. They do a very good job with this blog. They have a lot of good information. It's hard for all of us to keep up, so I think between these three things and following on Twitter, you'll get more law if you want

it.

Again, my book, it's called *Structured Negotiation, a Winning Alternative to Lawsuits*. We didn't really get to talk much about structured negotiation, so you could read the book. It has stories of a lot of the cases I've done and blind people that I've worked with.

And I'm going to turn it over for questions. If there are no questions, I can go back and do some things. This is my stay in touch slide. So I do encourage you to, if you're on Twitter, I'm @LFLegal. If you want to sign up for the email list, you can go to /contact.

On my website, I have a speaking page. I'm going to be doing a lot of events this fall. So those of you in the places I'm going, which include New York and Oklahoma City and Toronto and Sydney, perhaps I'll see you in person. And on the speaking page, you can also see the archives of talks like this. 3Play Media is so generous. They make their archive available. That will be on the website, as well as other talks I've given.

So I turn it back to 3Play for questions. And if there aren't questions, we'll go back over some of the things we didn't have time for.

LILY BOND:

Thanks so much, Lainey, for a really phenomenal presentation. So Lainey, the first question here is, what strategies would you suggest when you're met with the perception from a supervisor or upper administrator that we don't need to address these issues until we get a complaint?

LAINIEY

FEINGOLD:

Yeah. Well, that's a great question. And I think one of the best ways to change people's mindset is to get them in a room with disabled people. So if that's a possibility, you could have-- in fact, the judge in the Blick-- the 96-year-old judge-- in October, is going to have a technology day so people can come to court and he can learn more about the technology.

So I think one of the reasons structured negotiation has been such a successful method in this space is because the companies, the government agencies, we've worked with have been able to establish relationships and see-- I started doing this work with talking ATMs and I could see the light bulbs go off in the bankers heads when they saw a blind person try to use an ATM that didn't talk. And it takes it out of the abstract. So that's one possibility.

The other thing is it just costs more money to wait because if you do get the lawsuit, not only do you have to hire your own lawyer to respond-- and hopefully you hire a lawyer who

responds in a collaborative way-- but you have to pay that lawyer. But under the Americans with Disabilities Act and other discrimination statutes, if the company or the school loses the case, they have to pay the lawyer for the disabled person. That's called fee shifting, and that's how it works for all what they call protected classes, like race discrimination, gender discrimination. So the legal costs alone are reason enough to start being proactive.

LILY BOND: Thank you so much, Lainey. There are a couple of questions here about caption quality. Someone is asking, what does the ADA or any of these lawsuits say about caption quality? I believe the FCC requires a certain percentage point. And someone else is asking whether automated captions would be considered accessible.

LAINIEY FEINGOLD: You know, I'm not an expert on caption quality. I do know-- and I could try to find out some information about this if people want to email me-- I know there have been a lot of cases about remote video interpreting and quality issues around that. I mean, the basic legal requirement is for effective communication.

So again, it's not some abstract thing-- oh, are we off the hook if we do automated captioning? But does it effectively communicate what's in the video? And too often, like YouTube auto captions, they just don't do that. Again, it's not a checklist. It's about real people and it's about real communication.

So I think it's very important to look at it and say, would this be effective for me? If you're not disabled, like, oh, would this be effective for me? If you see big differences between what's being said and what's in the captions, then you know it's not good enough.

LILY BOND: Thanks, Lainey. Someone else is asking if an organization hires an outside developer to make their website, does the legal onus lie primarily on the organization or the developer?

LAINIEY FEINGOLD: Well, yeah, that's a third party vendor issue, where the judge in Winn-Dixie said that require third party developers to make the site accessible. I had a situation that I was working on a case once and they hired someone to build the mobile app and they had some language in their agreement, their contract, that said deliver an app that meets the law. And the app was totally inaccessible and they had to go back. And sometimes, there's even lawsuits.

So I think the most important thing here is to make sure your contract is very specific about what you want. I got a new website-- was it this year or last year? I think it was last year. And I have a-- I love my developer at Purple Pen Production, Natalie MacLees. And she's a real

accessibility expert. And so we just built into our contract that I wanted the site to meet WCAG 2.0 AAA because I'd like to be a model. Most companies use AA.

And that I wanted the site tested by disabled people throughout the process. So we had a specific thing. So it's very important for it to be very specific, so then if it gets delivered, doesn't meet those specifications-- have it tested before it's delivered, have it tested by disabled people-- then there might be a claim by the organization against the vendor. But you can't just assume. You have to really spell it out.

LILY BOND: Thanks so much, Lainey. Someone else is saying, you mentioned MLB accessibility. Can you talk a bit more about what was covered in that? And was captioning streamed sporting events addressed?

LAINHEY
FEINGOLD: That's a good question. When we did the agreement, which is public on my website-- in the Settlements tab, you can see all the agreements I've done. We had one agreement and then we had another agreement.

And in those, I believe there was-- well, let me just say the end of the story is Major League Baseball is now a leader in captioning sporting events. But my recollection of it-- and you can email me offline about this-- is that the agreement itself put captioning off for a later date and wasn't a specific-- it was a requirement to begin and to look into it, but not a specific requirement.

But at the end of the day, they did do the captionings and they really are a leader in the field. And I think they actually-- Major League Baseball Advanced Media is their digital part-- I think they actually offer their services in this to other sports giants that all should have accessibility.

LILY BOND: That's great. Thank you, Lainey. Someone else is asking, we've found that products that are considered WCAG 2.0 level AA compliant, or claim to be, still may not be accessible to all users. This is a significant issue that undermines our efforts to persuade versus threaten. Do you have any advice for this?

LAINHEY
FEINGOLD: Well, again, I think that the stamp of approval for WCAG 2.0 AA has to go hand in hand with user testing. Like we say, oh, disabled people or clients or users, depending on what space you're in, has to go hand in hand because sometimes it does happen that you can technically meet the standard and have usability issues.

Also it's really important, like I said, to have an accessibility information page and a fluid

ongoing process because maybe something's accessible, maybe it gets broken. Maybe you don't know until somebody uses it and has trouble. So you really have to have it be an ongoing process.

And I think we just have to do a better job of holding the vendors feet to the fire. I mean, now that more and more courts are recognizing-- see, the ADA specifically says that you can't discriminate either directly or by contract, or other, I think they call it, method of administration.

So the ADA, the law, the foundation-- again, back to the brick foundation-- says you have to make sure that your contracts don't end up having you be a discriminator. So we just have to hold the vendors' feet to the fire more on that. Write it really specifically in the contract and then--

I'm not a contracts lawyer, and I don't represent companies. This isn't legal advice, but it seems to me that the more specific you are on what the vendors are delivering, the more legal rights you'll have if the vendor screws up.

LILY BOND: Thanks, Lainey. Someone else is asking, can you please sum up the Section 508 refresh going into effect beginning next year and who it affects?

LAINNEY
FEINGOLD: Yes. I'm sorry, I did kind of gloss over that. Yeah, the 508 refresh, which took about 10 years, but they did get it through, which is very good, has to do with federal procurement. Federal [INAUDIBLE] probably one of the most significant is that it did adopt WCAG 2.0 AA for both websites and electronic documents.

There's a lot written on that. There's a website, 508.gov, I think it is, where you can get all the details and they have a lot of implementation issues around that. But it's about federal procurement. It's not about federal spending. It's not about private sector. It's not about states. It's about what the federal government buys.

LILY BOND: Thanks so much, Lainey. But Lainey, thank you so much for really just a phenomenal presentation. Everyone appreciated it greatly, so thank you for being here.

LAINNEY
FEINGOLD: Well, thanks for having me. And thanks again. Like I say, everyone who signs up for a 3Play Media webinar, I put in the champion category. And thank you all, because, you know what, accessibility isn't really happening in the legal space. It's happening in the work that you're doing. So thank you all, and be in touch.