

LILY BOND: Welcome, everyone, and thank you for joining this webinar entitled, 2016 Legal Update on Digital Accessibility Cases. I'm Lily Bond from 3Play Media, and I'll be moderating today. And I'm thrilled to be joined by Lainey Feingold, who's 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, and she's recognized for negotiating landmark accessibility agreements. And in 2014 and 2000, she was honored with a California Lawyer of the Year Award. And her book about structured negotiation is now available from the American Bar Association.

And with that, I'm going to hand it off to Lainey, who has a wonderful presentation prepared for you.

LAINIEY FEINGOLD: OK. Great. Well, thank you. Thank you, 3Play Media for inviting me. And thank you, everyone, for being interested in this topic. I have up here on the main slide my website, which is llegal.com. I also have my Twitter name, which is [llegal](https://twitter.com/llegal), and if you have any questions that don't get answered, you can put them on Twitter. And if you mention [@llegal](https://twitter.com/llegal), I will try to get to them. I'll also be giving out my email address.

Now I'm going to figure out how to advance the slides. Got it. OK. So I don't want anyone to have to worry about taking notes, so I do legal updates on my website. And up here, I have the web link for it. It's a shortened Bitly link, bit.ly/LFUpdates. You can also find them just by going to my website, llegal.com, and there's a high level path for legal updates.

The most recent update is from about four months ago, so some of the material presented here will be on there. I will be doing a new legal update within the next couple weeks. If you're not already on my email list, and you want to be on it, I'll notify you when it's up, and I also put it on Twitter. And that way, the cases and the settlements and the regulations that I mentioned during this presentation, there will be links to all of those in the updates. So you can join my email list at lf@llegal.com.

And Lily gave me an introduction. That was great, Lily. Thank you, I really appreciate it. I just want to mention one thing about my website. I put up here the llegal.com/topics, and that is a way to get into all the content of the website, which includes all the agreements I've negotiated

in structured negotiation ever since 1999 when we did our first agreement with Wells Fargo, Citibank, and Bank of America for talking ATMs. In 2000, I did an agreement along with Linda Dardarian, my co-counsel, as well as the clients in the blind community, which we'll talk about in a minute, with Bank of America. And that was the first web accessibility case I did on online banking.

So in the Topics category, you can look up agreements. You can look up press releases. You can find out everything we've done with Major League Baseball. If you're interested in talking prescription labels, there's a topic for that, as well as a legal update topic and an accessibility law and regulation topic. I have a lot of content on my website, and I really encourage you to explore it and hopefully find things that are useful to you.

And as Lily mentioned, my book is now out, and I've put up here the web address for my book is llegal.com/book. It's called *Structured Negotiation-- A Winning Alternative to Lawsuits*. And it's the method that I've used with the blind community since 1995. It's really two decades when we first wrote to the banks and said, rather than file a lawsuit, because you don't have talking ATMs, we'd rather work with you to resolve these claims. And the banks said yes, and I tell the story in the book how that happened. And from there, we've gone on to negotiate-- I've done about 70 agreements in this method. A lot of them are discussed in the book.

The American Bar Association published it, but it's not just for lawyers. And at llegal.com/book, you can learn more about it, and there's a 10% discount code. You can see what people have said about it in advance.

So the fine print of this program is that we're only going to be talking about recent developments, because so much is happening in the legal space. It's general information, and since I'm a lawyer, I have to say, it's not legal advice. Hopefully, you'll get some idea of where the law is on digital accessibility, but if you think you have a particular problem, if someone has sent you a letter, if you want to send someone a letter, you need to talk to-- you need to talk to a lawyer. This is not legal advice.

There's two themes of this presentation. I know what it's like to go to a webinar, and so much information is given, and at the end, you're like, oh, my god. What was that about? So there's two themes I hope you'll keep in mind throughout, and I hope you'll find at the end that the content has fit within these two themes. The first theme is, where is the law?

And I have a-- sorry-- picture of a law book everyone knows. OK, the law is in a law book, or the law's in the law library, or the law's in a courthouse. I wanted a picture of a courthouse. Every single courthouse I found on Google Images had a big set of stairs up to the front, and I like the images to reflect disability rights when I speak.

So I found this great image, a very earnest young boy cutting a ribbon to a ramp to a courthouse. I believe it's in Kentucky, and he's being applauded. So that's where we usually think about the law. But in this presentation, I really want you to think about the law as being in your back pocket. I have a picture with scissors and tape measure and pen, and the law is not just something for the books or the library or the courthouse.

The law is for all of you. If you're on this webinar, you're interested in digital accessibility. Maybe you're having an issue with your team members. Maybe you're trying to get more money to put resources into accessibility. Maybe you're a blind person, who just can't get what they want out of their local online retailer. Maybe you're a deaf person, who needs captioning and is unable to get it on a website that you really rely on.

So the law is not just a hammer. It's not just something to fear. It's not just something in the books. It's something that all of us should be able to use, and I hope at the end of this presentation, you'll be a little more fluent in how to talk about the law in a way that we can all use.

And the second theme is theme number two, what is accessibility? So for those of you new in the field, we use a shortcut, A11Y. Like Lily mentioned, that's the hashtag for the Twitter, because the word, "accessibility," is too long for Twitter, and there's 11 letters in between the A and the Y, and they look like Ls, so we call it Ally.

So what is accessibility? In terms of all of you in the audience, you all know there's many, many roles that make accessibility work. There's coding. There's usability testing. There's training. There's policies, and there's advocacy. And accessibility advancement wouldn't be-- we wouldn't be where we are today without all of these things.

But in this presentation, I hope you come away with understanding that accessibility is also a civil right. So the law that's in your back pocket that you can take out when you need it is that accessibility is a civil right, and I illustrate this slide with a picture of a demonstration in the run-up to the Americans with Disabilities Act. There's a big banner in the front. There is disabled people marching down the street. And the banner says, "Injustice anywhere is a threat to

justice everywhere."

And that is the core of the Americans with Disabilities Act. That is the core of how the law works in accessibility. All the roles matter-- the coding, the usability testing, the policy-- all of you listening to this have some role that is integral to making sure accessibility is part of our digital landscape.

The law's role is to remind us all that accessibility is a civil right, so the best place to start is with the US Department of Justice, because the Americans with Disabilities Act-- which did get passed, thanks to the advocacy of the people you just saw marching in the picture, as well as so many other people-- the Americans with Disabilities Act is enforced by members of the public, as well as the United States Department of Justice. And so that's where I'd like to start with the accessibility overview.

I know I have to talk fast, because there's a lot happening in the legal space. We're going to touch on the highlights, so you'll have in your back pocket how to talk about the law and civil rights. If there's specific detailed questions, we can take them afterwards.

So the first slide I have under the US Department of Justice says, "Champion," because the US Department of Justice has been a champion for accessibility. To illustrate this slide, I have this really powerful wheelchair rider woman from the Paralympics in 2012, who's a champion, and so is the Department of Justice. That woman's name is Hannah Cockroft. I think she's British.

Why do I say the US Department of Justice is a champion? Because the Department of Justice has said for a long time, over 10 years, that the ADA covers websites, that even though the ADA was passed in 1990 before there was much of a web at all, they have been consistent in saying that the ADA covers websites. The Department of Justice investigates web barriers. They go to court for web accessibility.

The Justice Department has been involved in a lot of important court cases. The case that the National Association of the Deaf brought against Netflix, H&R Block, Peapod, Harvard MIT, which is pending, which we'll talk about in a minute-- the Justice Department has been involved, going to court, telling judges, we're the experts in the ADA, and we say the ADA covers websites.

In their settlements, they talk about mobile applications. They recently put up a page, which I

have a screenshot of here, that said, [ada.gov/access-technology](https://www.ada.gov/access-technology). [ADA.gov/access-technology](https://www.ada.gov/access-technology), and that is a page they put up, I believe in May of this year, where you can go. They have an Enforcement tab. You can [AUDIO OUT] investigations that are completed, not ongoing, completed, what they've been involved with in court. You can get technical assistance.

You can see throughout this page, if you spend any time on it, that the Justice Department believes that the ADA covers accessibility of web, mobile, and other digital. They believe that the Web Content Accessibility Guidelines 2.0 AA is the standard, and that's not surprising, because the Americans with Disabilities Act is a sweeping anti-discrimination law. And it's all about participation.

And the reason I say accessibility is a civil right, because accessibility is about participation. It's about the ability of disabled people to go online, fill out forms, get video content, take classes, absentee vote, many other issues we'll talk about in a minute. So when you're thinking about the law and how to talk about it, we're lucky in this country to have an ADA and to have a Justice Department who understands that if you can't participate digitally, you can't really participate.

I was invited to speak at an accessibility conference in Sweden this year. I don't know if anybody's on here from Funka Nu, which is a great accessibility organization there. And people really wanted to know what was happening in the United States, because there is a lot of ways in which the law is moving accessibility forward in the US that's not happening in other countries.

So we can't go into the specifics of all that the Justice Department is doing, but I did want to bring up something that's happened in the last, I think, six weeks. The Justice Department made public its investigation of UC Berkeley. And I put a little symbol of UC Berkeley's logo, which is, "Let there be light," which I kind of like, because accessibility is opening up digital content, so everyone has access to it.

So the Department of Justice, like I said, they investigate accessibility complaints, and they recently announced that they were investigating an accessibility complaint filed by the National Association of the Deaf in connection with UC Berkeley's online content. So there's a couple points I want to mention about this. It's ongoing. There's no resolution of it yet.

The first thing is that the investigation is under Title II of the ADA, which is the state and local government part of the Americans with Disabilities Act. So the Department of Justice has the

right to investigate under the ADA. UC Berkeley has a very strong accessibility department. They have an accessibility evangelist named Lucy Greco, who really does so much wonderful work at UC Berkeley.

Nonetheless, the investigation has been undertaken, and I really encourage you all to read the letter. Hold on one second. Yeah, it's a letter that the US Department of Justice sent to UC Berkeley on August 30, and just a few highlights of it-- it covers the iTunes channel, the YouTube channel, and the massive online courses of the university.

It started with captions, but it went on to talk about audio description, the needs of blind people when they access digital video, as well as people with mobility disabilities. So it's just one thing to think about that the Department of Justice has the ability to look at all aspects. UC Berkeley has a good policy for accessibility, but in the Justice Department's letter, they're finding that the policy wasn't enforced. And even though there's very good resources at UC Berkeley, the people who put content connected to UC Berkeley online weren't required to use those resources.

So the letter can be found. If you go to news.berkeley.edu, and you search for justice, the very first thing that comes up is a letter. And I encourage you to read it, because it's eight pages. No, it's 10 pages. It gives you a sense of what the Department of Justice is looking for when they want to make sure the ADA is enforced in higher ed when it comes to video.

Again, it's news.berkeley.edu. At the very end of the letter, the Department of Justice, which does recognize the good work that UC Berkeley has done, says that we hope to work together with you to resolve our concerns about accessibility for UC Berkeley's online content. They also say in there that they can file a lawsuit if that doesn't work out, but I just want to give a shout out to working together to resolve concerns regarding accessibility. That's what structured negotiation has been based on. That's been my work for 20 years, working together.

I should say I'm not involved in any way with the UC Berkeley investigation or their response. The faculty has put out a very good response to this. So it's something to pay attention to in terms of what the Department of Justice is doing.

So I say the Department of Justice is a champion, but many of you on this call are wondering, well, what about the regulations? We don't have any regulations under the Americans with Disabilities Act requiring web accessibility. And my slide for this is like no news, my picture.

There's the word "News" with a red arrow through it. For those of you following it, you know that in 2010, the Department of Justice said, hey, we want to regulate about web accessibility. And it's now 2016. We don't have any regulations.

The status of the private sector regulations, which is Title III, the picture I have here is this woman sitting on a suitcase waiting for a train in Grand Central Station or something. It's from 1960. She has high heels and a 1960ish kind of dress. And it looks like she's been waiting for a long time and that she'll be waiting still, and that's kind of where we are with private sector Title III regs.

The current status is that they're not supposed to come out until 2018, so that's basically, what can we say about that? We can't hold our breath for Title III regulations. The state and local government website regulations-- for that slide, I have a picture of a road going nowhere into the horizon with a U-turn, a U-turn sign on the pavement.

And the reason for that is because we thought we were going to get the Title II regulations out sooner, but in May of this year, the Department basically did a U-turn and said, we've got to start all over again, and currently pending is what they call an advance notice of proposed rulemaking. The comments on that are due on October 7, which is about a week from now. And I have a post on my website.

I made a short form for this presentation. If you just go to bit.ly/LFwebcomment, you can see my post-- I believe it's still on the home page-- or you can look on the legal updates, or you can look in the topics under Accessibility Laws and Regulations. And in that, I talk about what kind of comments could be filed. Several disability organizations are collecting comments-- the American Council of the Blind, the National Federation of the Blind. The government-- it sounds ridiculous, but we still need to show that accessibility matters. So that's the status of the state and local government websites.

When the Justice Department did their U-turn, they said in their advance notice that the Department has taken the position that Title II covers internet website access. So even though they're going through this whole regulatory process, they make it very clear that the Department has taken the position Title II covers internet web access.

They also said the Department believes that Level AA conformance of the Web Content Accessibility Guidelines is the most appropriate standard. So I get frustrated when I hear, well,

we don't know what to do. There's no regulations. We do know what to do. The Justice Department has said, the ADA covers web for state and local government and Title III, and that WCAG AA is the appropriate standard.

So does it matter that we don't have regulations? I say no, and I say yes. The ADA already covers digital. That's the takeaway. That's the law in your back pocket. That's a civil right. ADA's a civil rights law. Justice Department says it covers digital.

On the other hand, we're sick of excuses. There shouldn't be any more excuses, and until we have regulations, there will probably continue to be excuses. So for that reason, I think it does matter, and it's very frustrating that the process has taken this long.

Regulations would heighten the profile of the importance of accessibility. All of you on this call understand the importance of accessibility, and I just want to give a shout out to so many people who care about digital access and what the law is saying. But if there were regulations, there would be fewer excuses and a heightened profile. So yes and no, regulations matter.

Just real quick on other-- oh, and last reason. Yes, they matter. Take lawyers out of the accessibility equation. I love my work. I love advancing digital accessibility. I love working with the blind community, but the truth is accessibility is better left to the policymakers, the coders, the usability testers, the designers, the creative class, which lawyers aren't usually part of. I can't see the audience reaction, but usually, when I say that, people are like, yeah, take lawyers out of the equation.

Lawyers tend to be risk averse, and accessibility requires creativity just like the rest of the web does. So if we had regulations, and it was just like nothing to think about, just something that was done, that would be a good thing.

Other regulations-- Section 508 has been undergoing a refresh. The most so-called refresh-- I say so-called refresh, because it's taken so long, it's stale-- on September 14, which is just a couple weeks ago, the Access Board, which is the federal agency in charge of the 508 regulations-- and again, 508 just applies to Federal Procurement. Federal Procurement. It's not state and local government. It's not private sector. It's Federal Procurement.

Those regulations on September 14 went from the Access Board to a government agency called the OMB, Office of Management and Budget, which is seen as a good step like, oh, this is like the next step towards finalizing them. They're at the OMB. On the other hand, the

reason the Justice Department had to do a reverse U-turn on the Title II regs is because they got stuck in the OMB. So hopefully, the 508 regs will get out of the OMB, and they will require WCAG 2.0 AA compliance and other more modern requirements than they have now.

Federal airlines-- some reason, they got their web regulations before anybody else. Airlines, by and large, are not covered by the Americans with Disabilities Act. They have their own law called the Air Carriers Access Act. It's governed, instead of by the Department of Justice, it's mostly the DOT and the FAA. They have regulations that are currently in effect requiring WCAG 2.0 AA compliance.

The good thing about the ADA is that private advocates can enforce it too, and a lot of the advancements we've made in recognizing accessibility as a civil right has come from private advocacy. So in the rest of the presentation, I want to talk about what the private advocates-- some in conjunction with the Department of Justice, but often organizations, individuals, with disabilities, who are enforcing their rights, who are taking the law out of their back pocket and using it-- and the rest of presentation is organized by rights.

So the first one is right to health care. The reason for that-- back to the theme. Accessibility is a civil right. It's not just let's make the website accessible for the hell of it. It's let's make the website accessible, because without accessibility, you don't have access to health care. You don't have the information you need to take care of your health.

So a couple-- again, we're talking about the recent developments in these areas. So a couple of recent things on access to health care. Rite Aid and Humana are the most recent companies to agree to talking prescription labels. It's not web access, but I'd like to include it. One of the best talking prescription label methods is a digital method. It's called Script Talk. It's made by a company called Vision America.

There's other companies. AccessaMed has a digital audio label. There's other companies that are making products. Rite Aid and Humana participated in structured negotiation to work on providing information to their blind clients, members, patients, members of the public, who can't read a prescription label.

In my book, I talk about how we use structured negotiation with all the major pharmacy retailers in the United States. This is just the most recent-- Walgreens, CVS, Caremark-- and how the process of structured negotiation allowed these companies, instead of fighting and

saying, oh, the law doesn't require it-- the law does-- looking at the civil rights aspect and saying, hey, we're giving out prescription bottles that blind people can't read the information.

So I talk about that in the book and how we were able to convince those companies to do accessibility. There's two great settlements with Kaiser and Sutter that my colleague, Linda Dardarian, at Goldstein Borgen in Oakland, as well as disability rights advocates worked on. I didn't work on them. They were both done in structured negotiation. So they are included in my book. They have a lot of good information on policies in the health care setting, kiosks, website, mobile apps, accessible prescription information.

If health care is not accessible, if information is not accessible, health care is not accessible. There's a case pending right now against Health and Human Services, against Medicare, for not having-- this is hard to believe in 2016-- but DREDF, and Brown, Goldstein & Levy in Baltimore, a civil rights firm, are doing a case to make sure Medicare information is sent out to participants in accessible formats and is accessible online. Again, I'll have links in the legal updates to all of these cases, where you can read the settlement agreements or the press releases or the legal complaints, whatever the status.

Another big right to health development is the new ACA regulations, Affordable Care Act regulations. Section 1557, which now requires accessible information and communication technology, you can read those by putting that into Google, Section 1557 of the Affordable Care Act regulations. They will be in my next legal update. I don't think they're in the current one, because they're very recent. And that should push the issue of accessibility further.

There was also a good recent settlement on health care kiosks in Massachusetts. The Massachusetts attorney general has really been a champion of accessibility. The National Federation of the Blind did a case with the Mass AG against a company, who manufactured health care kiosks that aren't accessible things like read your blood pressure, things like that. The good thing about this agreement is the vendor is part of the solution.

When I started in structure negotiation with talking ATMs, and we brought in the banks, and we brought in the vendors to sit around the table and come up with solutions. So it's very important that this health care kiosk settlement includes the vendors. One thing I want to say about health care that's not a case, as far as I know, but it just really drove home to me the importance of accessibility as a way to ensure privacy and independence.

So when we first started working on banks, on online banking in the late 1990s, that was one

of the reasons I think that banks were willing-- I don't know if any of you in the audience or in any of those banks-- I really give a shout out to all my negotiating partners who have really improved accessibility using the law without having to do lawsuits. With finance, I think one of the reasons that people could understand accessibility is because it's about privacy.

If you can't do your own online banking, someone's seeing how much money you have. If you can't get your own money out of a talking ATM, you're having to rely on a stranger. The same is true now for health care. And so much private information is digital, and there's a real need for it to be accessible. We talk about wearables. There's also something I read about called ingestibles, where you can swallow something. It takes a little picture of what's going on inside of you and sends it to a mobile app. And I always like to bring that example up of accessibility is a civil right to access information in a private and confidential way. And that is a crucial part of it in many of these areas of law.

So if you ever have to take an ingestible, that's going to send money to your-- money. That would be something, too. It's going to send information to your iPhone. You better be able to read that by yourself, and that means that the iPhone has to be accessible.

Right to financial information is still a way in which the law and the civil rights aspect of the ADA is intersecting. We did recently an agreement with Bank of America, who has been a wonderful partner in digital accessibility, like I said, from the '90s. Our most recent agreement with them was about their mortgage information. One thing I just want to say here, and it's true on every slide, and if I had more time, I could talk more about this, is that our mortgage information case with Bank of America started with an individual blind person, who could not get her mortgage information in a format that she could read.

So when we talk about the law, and we have a lawyer doing the presentation like we have here, the people, who are impacted by the law tend to get lost. But they are front and center in all the ways in which the law is advancing accessibility. Every single one of the cases I've worked on has started with individual people or blind people's organizations, who have tried to fix a problem by themselves, and wasn't able to. So B of A is doing a great job with mortgage information just like they have with many other things. I have a lot of stories about that in the book.

A recent settlement with the San Francisco Credit Union-- again, this case happened because they had an online banking platform that was accessible. People were being able to use it, and

they did a, what I like to call, a so-called upgrade, so-called because it actually downgraded and broke accessibility. So there was a lawsuit on that. They brought the vendor in-- again, really important to get in the vendors, and they agreed to make it accessible.

There are a lot of-- we're going to talk about this in a second. In the financial information space, there are demand letters being sent by other lawyers to community banking websites. There's no case decisions or orders or settlement agreements out of that, but it is something that is happening in the legal space that some lawyers, who are new to the space are sending demand letters for accessibility for bank websites.

So this is the time of the presentation where I have to decide what to skip and what to just highlight, because I really want to leave time for questions. So we're going to go through the rest of the slides kind of quickly. Right to work is a place where law is intersecting with civil rights of disabled people.

The most important thing I'd like to mention is Yasmin Reyazuddin, who is a blind woman in Baltimore being represented by the National Federation of the Blind and the Brown Goldstein firm, who had a job. The job was so-called upgraded, but she could no longer, because she was blind, use the software. And the Montgomery County is fighting her. She has done a great job, and her lawyers, they had to go to the Court of Appeal. They had to have a trial. They won all along the way. Still not resolved.

Those of you in decision making in this audience, if you have a chance to cooperate instead of create conflict, I urge you to do so, because so much money has been spent by Montgomery County, Maryland, fighting this woman, who all she wants is to be able to work in her job. So if you have a chance not to be Montgomery County, I urge you.

Also, unemployment-- I want to draw people's attention to PeatWorks.org. It's a project of the Department of Labor. It's P-E-A-T, Partnership for Employment, I think and Accessible Technology, PeatWorks. They have a lot of great resources, a lot of good information about how to make online job applications accessible.

A lot's happening in right to transportation. We did a settlement in structured negotiation. Again, they were great partners-- disability rights Texas and Houston METRO. They had a website that wasn't working for people who are blind. They worked in collaboration with us. We did not have to file a lawsuit. There is currently a suit pending on behalf of deaf blind writers in Florida, who weren't able to work it out in negotiations, were forced to file a lawsuit, because

the communication by deaf blind people was not being provided by the Jacksonville Transit Authority.

And just last week, lawsuits were filed in Austin. Uber and Lyft left Austin, because they didn't want to comply with certain local regulations about fingerprinting. New ridesharing companies came in. Their mobile apps were not accessible. They wouldn't work with the community, and lawsuits are currently pending there in Austin about the ridesharing services.

Right to learn-- Department of Education. I know a lot of people on here are, on this webinar, education people. Really important work being done by the Department of Education in the field of accessibility legal space. They have authority to-- just like the Department of Justice investigating UC Berkeley-- Department of Education has the ability to investigate and negotiate and improve accessibility with educational institutions. Also, file lawsuits.

They recently announced-- and this is in the legal update currently-- 11 settlements-- or it might be in the next one, I'm not quite sure-- 11 settlements with educational institutions across the board. I think one is the Department of Ed in Alaska, and then you have a small community college somewhere else. So it's important to look at those settlements and see what the expectations are. It was reported that they're investigating 350 different educational institutions. They've announced about 11 settlements.

The Harvard MIT captioning case, similar to the UC Berkeley investigation. Hopefully, like I said, UC Berkeley and Department of Justice will be able to resolve their issues without it becoming a court case. Harvard and MIT were not, and the National Association of the Deaf represented by the Disability Rights Education Defense Fund have a lawsuit pending. The magistrate judge, which is kind of like a judge but not quite, supported NAD's position, as did the Department of Justice, and it's just sitting in the court system waiting for a district court judge to approve the findings, which we are confident that that will happen.

There's a lawsuit pending against Bar Preparation course in, I think, Texas that is-- again, it's all about people. Blind law students who wanted to study for the bar didn't have access to information. I have a link up here. University of Minnesota, Laura Carlson does a really great job. She has a website. I made a shortened link for it-- bit.ly/HigherEda11y. And she puts up all the higher ed cases, the complaints, the settlements. There's a lot of really good resources there.

I'm going to skip over these two. Just want to mention real quickly, there's a lot of cases

happening now on the right to vote, because as voting moves online, most of these cases are about voting information, as well as absentee voting online that if ever accessibility was a civil rights issue, it's in voting, where if you don't have accessibility, you don't have the right to vote. So those cases are proceeding. They're going in the right direction. There have been some good court orders. There have been some good settlements. I will have links to those things in the updates.

Accessibility is not just about serious things like voting and transit and health care and finance. In the legal space, we did a structured negotiation with Denny's. They were a wonderful negotiating partner, and when they were approached, and we told them, you have information on your website about nutrition and other things that your customers want, but it's not accessible, they worked with us. On the other hand, there's a lawsuit pending about online accessibility to another company, another restaurant, Sweetgreen's lawsuit.

Right to entertainment-- the biggest news there is that Netflix did a settlement with disability rights advocates on audio description. As I mentioned, the Justice Department, when they look at captioning, they're also looking at audio description. And disability rights advocates did a good settlement, and those of you on Netflix can now easily search and see what videos are described.

Really quick, I want to say there's a lot-- as you saw from this presentation, there's a lot of different strategies that advocates are using to take the law out of the pocket and make sure civil rights are enforced in the online space. There's the Department of Justice, Department of Education, individual complaints, structured negotiation, lawsuits, settlements. All of these strategies result in agreements designed to make accessibility stick.

And I have a photo here of a DNA strand, because I like to say, we're trying to get accessibility into the DNA of organizations. In the book, I talk about our negotiation with Major League Baseball, who's a wonderful partner, spearheaded by blind fans in Boston, blind Red Sox fans, who are known to be Red Sox nation. Well, blind Red Sox nation is as adamant.

And they say themselves, accessibility is now part of their DNA. So how does that happen? It's not just about coding. The agreements, the best agreements have the following components. Not everyone I've mentioned has all of them, but more and more, most of them have many of them. Some of them have all of them, regardless of whether it's structured negotiation, lawsuit, Justice Department cover web and mobile, as well as online platforms.

Department of Justice, one of the things they did to prove their championship is they did a good settlement several years ago with EdX about their online learning platform. And so platforms as well as web and mobile kiosks. Anything that digital touches should be part of the policy.

WCAG 2.0 AA is a standard. It's going to be in the new 508. The Department of Justice is using it. We've used it in all of our settlement agreements, except the early ones, where we used WCAG 1.0 before there was a 2.0. So WCAG 2.0 AA is a standard in all of these agreements.

Have a web accessibility coordinator. Use an independent consultant. Train all staff. Repeat. Train all staff, not just the coders. So many of the legal cases start when a disabled person calls customer service, has a question about online access, and are told, don't you have someone who can help you with that? Don't you have somebody who can read that to you? Isn't there someone available to you?

So training all staff-- look at the entire organizational structure, and make sure people know what is accessibility. How do disabled people use digital content? Add accessibility ability to performance evaluations. This is something that has been showing up in the agreements more recently. If someone's responsible for accessibility, evaluate that person on it. If you're responsible, want to be evaluated. Know that you want to do better. Put up a policy. Have a home page, accessibility information page.

This is one of the reasons I want lawyers to be out of the field. Too many lawyers are risk averse. They say to their clients, don't say anything about accessibility, because you might get sued, because you're not doing enough. My experience is the opposite. When somebody calls me about a company or a government, and they say, I can't access this, the very first thing I go for is check the website. See if there's an accessibility information page.

ETrade-- we did an agreement with them. They're a wonderful partner. They agreed to put accessibility improvements in the release notes for the mobile app.

Tell the world what you're doing. Have an email and a phone number that people can call and that gets answered. Use a testing tool. Usability testing-- a very, very important part of all this. It is in most of the agreements.

I don't really have time, probably not coincidentally, to talk about all these new lawsuits and

demand letters that are coming into the space. We don't know yet if they're going to have the best practices that we just went over, whether they're going to bake accessibility into the DNA, whether the law is going to really be used to advance civil rights. A good place to keep track of this, Seyfarth Shaw is a national firm. It represents a lot of companies.

They have a very good blog that you can find at adattitleiii.com, and they just reported this week that there's been 106 federal lawsuits on accessibility since January of 2015. Most of those cases are settled. We don't know what the settlements are. The settlements aren't public.

Some of these cases have been successful. There was a case filed in California against a luggage company on web accessibility, which ended up to be the first case where a judge actually said that the California damages statute applied to web accessibility violation. That'll be in the update. I put some of the list here.

There's been suits against NBA, Ugg Boots, Brooks Brothers, but I don't really want to talk about that, because I don't want lawsuits that aren't for the purpose of advancing civil rights. I don't know if these lawsuits are or aren't. But I think it's really important that the takeaway be the law is a really powerful tool and has been to protect people's rights, to advance digital content and their rights-- rights to health care, rights to financial information, right to read.

So the jury's out on these new players and these new cases, how that's going to play out. I promised Lily I'd be done at 11:45 my time, and I'm four minutes late, so I'll just leave up the last slide. I'm on Twitter, [@lflegal](https://twitter.com/lflegal). You can join my email list, lf@lflegal.com. The DOJ's ADA page is ada.gov, and you can get all their updates. They post all their settlements and complaints.

And then the last thing I put up here is book events with three balloons. I currently have scheduled a book event in Berkeley on October 16, my official launch at the Ed Roberts Center. So those of you in the Bay Area are welcome to come to that, and I'll be speaking at Harvard Law School as part of their program on negotiation on November 15. So if you have any questions about those or want more details, you can email me, and I give it back to Lily to send me some questions.

LILY BOND:

Thank you so much, Lainey. What a great presentation. So many people are writing in really great questions, and I want to encourage people to continue to do so as we go through Q&A.

A reminder that this presentation has been recorded, and you will receive a link to view the recording and the slide deck and all of the links in this presentation.

And I just wanted to mention that we have several upcoming webinars, one specifically about the ADA's application to modern technology, which will fit nicely with this presentation. And you can register for those on our website. And Lainey, a lot of really good questions here. To begin, someone asked, do you think companies see accessibility as a hindrance to developing and marketing new products?

LAINNEY

FEINGOLD:

If I was speaking to an audience here, I'd be like in the image of, ugh, choking myself. I hope not. I hope not. It shouldn't be. I think that's all of our job. I think all of us, everyone on this webinar is a champion in your own way, or else you wouldn't be here. And our job is to say, man, we are in a country that recognizes that not everybody accesses digital the same way. Not everybody sees a screen. Not everybody hears video. Not everybody has hands to use a keyboard.

And that can encourage creativity, and that can enhance the options and the wide availability of whatever is being developed. And there's a strong message that comes the other way. Oh, my god, accessibility-- it's a burden, and the law is coming down and blah, blah.

But it's our job to see it in a different way, and that's why I like doing these presentations, because it makes me sad when the law is seen as a real negative when I know from 20 years of working in collaboration in this space that when we do bake in accessibility, companies like it. They're excited. Major League Baseball took the baton and ran with it. Bank of America, Weight Watchers, so many of the companies that we've worked with, when they understand it from the disabled person's perspective and not as some force outside that is trying to interfere with their business, they like it. They like it.

LILY BOND:

Thank you, Lainey, for that very refreshing perspective. Another question here-- what would you say is the biggest change regarding the law and post-secondary education in the recent year?

LAINNEY

FEINGOLD:

In the recent year? OK. Well, people should know I take on this job of doing the digital accessibility-- I say job. It's not really a job. But I myself haven't done higher ed cases. I do know that the Department of Education's investigation, I think [? had ?] their investigations. And like I said, there was a report out that 350, I don't know, complaints or investigations opened have been filed. So I think this just heightened attention.

Higher education institutions are covered by the ADA either if they're private or if they're government. And so the ADA has required accessibility for a long time. But obviously, there's heightened attention to it. All of you wanted to be on this webinar. Some of that has to do with the new players coming in and having a different approach and filing more demand letters. I also think that we have more and more disabled students, more and more people growing up in the age of the ADA, recognizing their rights.

I certainly see that in law school. When I started in, there were not that many blind lawyers. Now there are more and more younger blind lawyers, who are insisting on their rights, who are doing this work both for themselves and for clients. So I think that those all contribute to the heightened awareness of this.

LILY BOND: Thank you, Lainey. Another question here. The UC Berkeley letter is specific to the three MOOCs, and the DOJ didn't look at the materials behind the password, because they were looking at a specific complaint. Do you expect the DOJ to push farther on the internal materials?

LAINIEY FEINGOLD: This I don't know. I don't know. I do know that when the Department of Justice decides to get involved in something, within their jurisdiction, they can pretty much do what they want. Before I used to do digital accessibility, I did a lot of architectural access work. And we did a lot of work with stadiums on behalf of wheelchair riders. And there was one case that we were doing, and all of a sudden, the Justice Department took an interest in it, and there were a lot of things they were looking at. But they didn't start out looking. So I don't really know what they're going to do here.

Like I said, UC Berkeley does a lot of things right already. They have Lucy Greco. They have great departments. The letter recognizes that that they have the resources. It's just a question of getting the resources. What they say in the letter-- it's requiring the professors and other content providers to use the resources that are available.

LILY BOND: Thanks, Lainey. And one more UC Berkeley question before we move on to some other topics. Someone asked, UC Berkeley indicated that they would remove some of their non-compliant content rather than make it compliant. What can be done to prevent that all or nothing approach?

LAINIEY I say, boo, hiss to that. That was a very unfortunate response from-- I mean, I should tell

FEINGOLD: people I am in Berkeley, and I can practically see the Campanile, which is their symbol, from my house. So I'm not involved in the case in any way, but I have a soft spot, and I know that UC Berkeley has done a lot of work, good work. So this is one of the problems when you get into a confrontational system. People take a confrontational stance.

And I hope that that was just something that was said but not really meant and that they will now get down to working in collaboration and leveraging the resources that they have and the good work they've done to meet the requirements that the DOJ has spelled out.

LILY BOND: Thanks, Lainey. Another question-- on our campus, we have two camps. One camp is not as concerned about making the deadline, and the other is terrified. Do you think it's better to wait for the discovery from the DOJ or to take proactive action now to prevent DOJ discovery?

LAINEY It's too bad we don't have a poll, because I would say, what do you think I'm going to say?

FEINGOLD: Everyone would know that I'm going to say be proactive. Be proactive. I just don't understand, honestly, in this climate where you have strong government, strong advocates. Each advocacy effort that's undertaken sparks more, because people say, hey. I mean, back to the earlier question, I think the Harvard and MIT lawsuits also elevated the education, the higher ed accessibility issues.

So I think it's-- I don't know what it's called in higher ed. In law, it'd be malpractice, not to be proactive. But again, I'm not giving legal advice. But I think when you are proactive, and you meet your students with accessibility, and you think of it as a process of inclusion and doing well by your students, people are going to want to do it.

When you think of it as, oh, let's wait for the DOJ to knock on our door and fight them, people are not going to want to do it. It's human nature, which is why I like structured negotiation. I talk in the book about when you create a collaborative environment, everybody tends to be collaborative. It's hard to be confrontational when people around the table are trying to work out solution. And that's what I've seen doing this work in this way for 20 years. That's what I try to convey in the book, how we do that. So I'm all for proactive.

LILY BOND: Thanks, Lainey. Another question here is, how should we read all of these DOJ and OCR settlements? Should we take them as legal requirements when they differ from what the ADA and Section 504 have written?

LAINEY I should have mentioned Section 504. I apologize for that. Section 504 has to do with federal

FEINGOLD: funding, applies to most higher ed institutions. Many states, I think most states, have what they call little 504s, where state-funded entities have to be accessible and provide accessible content. I can't-- I think all of these-- I don't see it as conflict. The question sounded like, oh, the OCR complaint settlements are different than what's required.

The law gives a broad umbrella, and I hope the takeaway here is it's a broad umbrella of inclusion and civil rights. When you have the settlements, there are ways of drilling down and making sure those broad obligations are in force. So I think everything that's out there is an educational tool that we all need to be familiar with to make our products and services better.

LILY BOND: Great. Thank you, Lainey. Another question here. Have there been any lawsuits regarding copyright and accessibility? For instance, breaking copyright law to make an item accessible?

LAINNEY That's a good question. I'm not an expert in copyright, but there is a lawyer who is, and he might have even done-- I don't know. I don't know if Blake Edwards ever did a session for you. **FEINGOLD:** But if you want to-- I'm not aware of any, but if you want to send me either an email or a Twitter question, I'll try to find out for you.

LILY BOND: Thanks, Lainey. Another question here-- are you saying that WCAG is where a company should aim to be, but is still not a legally mandated guideline?

LAINNEY That's a good question. I think the law, it's not a guideline in that it's not a federal regulation. **FEINGOLD:** And the courts have not really had a chance to drill down into what accessibility really means, because most of these cases are settling once-- like if there's an early ruling, there was a great case that was brought against Scribd-- it's like the Netflix of books-- by the National Federation of Blind and the district court. It's a great decision. It's in the last legal update. I really recommend reading it, because the judge really got-- this is a civil rights issue. You can't say you're a library full of books and online and not make it accessible.

So most of the cases are settling before a judge is ruling what is required, but we know the ADA requires accessibility, and we know that the Justice Department says the way to do that is WCAG 2.0 AA. All of our settlements have that standard. All the settlements I'm aware of reached by other people have that standard. So yes, it's what you should be aiming for and striving for and hitting.

LILY BOND: Thanks, Lainey. I think we have time for a couple more questions. Someone is asking, are there settlements or decisions which speak specifically to the accessibility of marketing

materials?

LAINY
FEINGOLD:

I'm not aware of anything where that is called out. I mean, it's interesting, because we have done-- one of the negotiations that I worked on, the first response we got to the letter-- and in structured negotiation, we don't file a legal complaint. We don't file a negative press release. And I talk about it in the book. I have a chapter on media.

We have an opening letter that we invite participation and negotiation, and one of the responses I once got-- well, our website is really just a marketing tool. We have a vendor. We don't really consider it information like online banking or health, explanation of benefits. But in fact, it was content, and a lot of things that are considered marketing-- these days the line is very blurred between content marketing.

You have rewards programs that are encouraging people to sign up for this or that. So the line is very blurred, and in that case, we worry, well, because we're in a collaborative process, I think, to convince the company. Well, yeah, we think of it as marketing, but in fact, that's not really a relevant distinction when it comes to accessible content. I think if we had been in a lawsuit, maybe there would have been a fight about that. But fortunately, there wasn't.

LILY BOND:

Thanks, Lainey. And I think we have time for one more question. Thank you, everyone, for typing in these great questions. Final question-- the more research that I conduct about technology accessibility, the more information I find about visual or auditory impairments. Are there additional needs that we should also be considering for individuals with differing abilities, not just hearing and vision?

LAINY
FEINGOLD:

Yes. That's a very good question, and a good place to start on that is the WebAIM website, webaim.org, Jared Smith. They have a really good section on how people of different disabilities use the internet, so just two quick things. There's a woman I know, who doesn't have hands, and she gets super frustrated by Dragon Dictate and without an accessible website and thinking about how people are using speech input are using the site. That's one issue.

And there's a lot of work going on right now for cognitive disabilities. The Web Accessibility Initiative has a cognitive task force. You can look it up like that. I think it's Cognitive Task Force or Cognitive Disability Task Force that is really looking at ways to make web content-- and honestly, I think this is going to help people with and without disabilities-- simpler, easier to access. And there's a book by a law professor in New York named Peter Blanc called

eQuality, small E, capital Q, *eQuality* about the law and cognitive disabilities and where that might go.

LILY BOND: Thank you so much, Lainey. And thank you for your really thoughtful responses to these questions and just a really great presentation. It was wonderful having you on the line, and thank you, again, for joining us.

LAINY Well, thank you very much. I really appreciate 3Play Media, and I appreciate the whole
FEINGOLD: audience for caring about this issue. Thank you.

LILY BOND: Agreed. Thank you, everyone, for attending, and I hope everyone has a great rest of the day.