

3Play Webinars | 2020 Legal Update on Digital Accessibility Cases with Lainey Feingold

KIM ROBBINS: Hello, everyone. Thanks for joining this webinar, entitled "2020 Legal Update on Digital Accessibility Cases with Lainey Feingold." I'm Kim Robbins from 3Play Media, and I'll be moderating today's session. I'm joined 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 the California Lawyer of the Year award. Her book about structured negotiation was published in 2016. And with that, I will hand it off to Lainey, who has a wonderful presentation prepared for you today.

LAINIEY FEINGOLD: Thank you, Kim. Thank you, 3Play, for having me back for the legal update. Thank you to everyone who was able to plow through all the incredible content now available online to be here today. And thanks to those who are going to listen later. So this is the digital accessibility legal update. On the title slide, I have my name, Lainey Feingold, and my website, which is lflegal.com, as well as my Twitter handle, @LFlegal. You're also welcome to tag me if you have questions about the presentation. If we don't get to them today, then I'll try to answer them through Twitter or otherwise.

Yeah, so this is the legal update. I want to emphasize update, because there's so much happening in the accessibility space that we can't possibly cover every case, or settlement, or advocacy effort that's out there. So I invite you to look at my website, lflegal.com, where there is a Legal Update tab. And I often summarize the talks in articles with links to cases. The most recent one was done this July, so there's a legal update there from July that has links to a lot of things that I'll be talking about today.

I think I started doing the legal updates in this way back in 2014. So if you are a law nerd, as they say, or an advocacy advocate and you want to see what's been happening for the past many years, you're welcome to do that.

I have in bold also on this slide, no legal advice in this presentation. I am a lawyer. I've been a disability rights lawyer since the '90s. But I do these talks as public information. Please don't take it as legal advice. If you think you have a legal claim to pursue or you want to know how to handle a legal claim that's come to your organization, use this as information, but be sure to talk to your own lawyer.

So with that, let's get started. So why are we here? Why law? On the background of this slide-- as in the title slide, I forgot to mention-- you'll see two dolphins. Dolphins are kind of my spirit animal, or my logo, or I guess it's my brand, even though I work for myself, by myself, so I don't really have a brand. I use a dolphin to emphasize that you don't have to be a shark to be an advocate. And I don't just mean lawyers.

If you're on this call, you are, in some way, an advocate for accessibility. You might have to advocate with your team, or internally, or to get more money from your organization. Or you may be outside as a disabled person advocating for accessibility. Or you may be a lawyer in any part of the table. So I like to use the dolphin metaphor, and I do whole talks about this if you're curious, about why collaboration is a real advantage in advancing digital accessibility, which is not to say lawsuits are not an advantage. We'll be talking about that a little later.

I believe collaboration is a great tool. And we'll talk a little bit about some of the successes. But whether it's a lawsuit or a collaboration, which I call structured negotiation, which as the introduction Kim gave said, subject of my book-- all of these things are tools to use the law. But why are we talking about the law to begin with in accessibility? And the answer to that is really quite simple-- accessibility is a civil right of disabled people.

And if you have to leave now, this is the most important thing to take away, really, that accessibility is a civil right of disabled people. And I've been saying this for a long time, as, of course, have many others. And I always find that there's always someone new who hasn't heard it. So that might be you listening to this, or that might be you needing a reminder. I'm a big believer, and the reason I do these kinds of talks, is that I think we all need to understand how civil rights and accessibility are intertwined. And I think we all have the desire to put the law in our pocket and use it in a positive way.

In this slide, I'm illustrating it with a picture from the Capitol Crawl, which was an advocacy effort. I really invite you to look it up-- Capitol Crawl, it'll come right up. In the run-up to the ADA 30 years ago, disabled people, like you're seeing in this picture, left their wheelchairs behind. This shows two of those people-- one, a black woman, one, a white man-- crawling up the steps of the Capitol without their chairs to emphasize that accessibility in the physical landscape is so crucial.

And without ramps and without all the architectural elements of accessibility, there is no inclusion in access. So the woman in the front is wearing an ADAPT t-shirt. ADAPT-- if you don't know, look that up, too-- an advocacy organization in the disability community. So accessibility is a civil right of disabled people, just like having a ramp to get into a court building, having digital access to court documents, for example. So we'll be talking a lot about the details. But the most important thing here is accessibility is a civil right of disabled people.

And why is it a civil right? It's a civil right because accessibility is about inclusion, participation, and communication. And without digital accessibility, people with disabilities are not included, cannot participate, and cannot communicate. So you can just think this. A lot of people on this call, you're all in different roles, you're all in different sectors, but I bet if you sat down and thought, how does accessibility allow me to include people, allow for participation, have two-way communication, I'm sure whatever your role is and whatever your field is, you will find that this is true.

And the choice, the alternative is exclusion. So I have a picture here of the accessibility cookies. I often show this picture for different reasons. The reasons I'm showing it here today is that these cookies were actually baked for me in New Zealand for a talk that I did. And it says, "Bake accessibility into your organizational culture." And if you put cookies into my website search box, you'll find a lot of articles about the cookies and other food analogies. I have a post called "Accessibility is Delicious."

And the multi-ingredients here-- the M&Ms, and the coconut, and the chocolate, and the walnuts-- are really for two reasons. One is because there's so many aspects of really getting a long-lasting accessibility program. Many of you are in roles doing those things-- coding, and training, and design, and marketing, and quality

assurance, and management, decision-making. But the other reason that there's so many ingredients and I'm showing the cookies here is because there's so many roles. There's so much work, and there's so many roles that go into accessibility.

And whatever your role, you have an opportunity to think about, am I using the opportunity that I have in whatever role it is to include to allow for participation, to allow for communication? Or am I doing something that's actually excluding people? And I like putting that lens at the front of this talk, because too much talk about the legal space today-- and we'll talk about it a little, but it's going to be at the end-- is how many lawsuits? And what are lawsuits about? And how much money? And it's not about this.

And this is about people. This is about including people, thinking about the advocates that brought the ADA to us. So these are the civil rights reasons, but civil rights aren't just some vague concept. They're actually part of laws.

And here in the United States, the most important law in this space is the Americans with Disabilities Act, which turned 30 this year. And I just have a couple dates. We could do a whole hour on the ADA, which we will not. But it was passed in 1990 with a strong inclusion mandate and strong language about effective communication. And in the digital age, there is no effective communication without digital accessibility.

And let me stop there for a second. I use the phrase digital accessibility, because as we'll see, the law is touching more than just the web. There's web accessibility, making the web accessible; app accessibility, making apps accessible; kiosks-- kiosk accessibility.

But digital is everywhere. I did a talk with Lucy Greco, who's a web accessibility evangelist at UC-Berkeley, and she was talking about, on campus, making sure disabled people could use a washing machine-- the disabled students-- because there was so much digital involved. There was an app to pay for the wash and all that.

So we say digital accessibility. So in part, you don't want your organization to get stuck in just thinking about web, because people are thinking about web because there's so much talk and chatter about the web cases. But digital is throughout your

organization anytime that anything is technology.

So when the ADA was passed in 1990, it recognized inclusion, nondiscrimination. And 1996 was the first time that there was some reference to technology and the web, which I thought I had so handy. And did I? Yes, I did.

So in 1996, the US Department of Justice wrote to Senator Tom Harkin and said, auxiliary aids and services, which is this idea in the Americans with Disabilities Act that you have to make sure that people with disabilities have-- this phrase, auxiliary aids and services, it really just means tools to effectively communicate.

Auxiliary aids and services include tape text, Braille materials, large-print materials, and other methods of making visually-delivered material available to people with visual impairments. So of course, that can include the web. And this whole letter is about, I'm responding to you about the accessibility of web pages.

And I highlighted-- so it says, covered entities under the ADA are required to provide effective communication, regardless of whether they generally communicate through print media, audio media, or-- I love this-- computerized media, such as the internet. So this was in 1996.

One thing that just really frustrates me is when people say, well, this is new. We don't know what to do. Is there coverage? Since 1996, the US Department of Justice has recognized that the ADA, in its broad language, can impact-- what was that phrase I just said? Computerized media, such as the internet.

2000 was another highlight date. And that year, the US Department of Justice filed a brief in the federal court system in the United States. And one of the headings in that brief was "A Commercial Business Providing Services Solely Over the Internet is Subject to the ADA's Prohibition Against Discrimination on the Basis of Disability."

And that was a case called *Hooks versus OKbridge*. It was about an online bridge program. It wasn't about accessibility. It was about that OKbridge had kicked out someone who was playing bridge, and they claimed he was kicked out for behavior. He said that he was a person with a disability protected by the ADA. He had bipolar disorder. And the company was saying, well, the ADA doesn't apply to websites. And the Justice Department came in and said that.

And closer to home for me, 2000 was the very first settlement agreement in the United States covering websites. That was something that I was involved in. I got involved in this field in the mid-1990s-- 1995-- when blind people came to me and my colleagues and said, we can't use any ATMs because there are non accessible to blind people.

And we worked in collaboration in the process that came to be known as structured negotiation. I write about the early stories in my book. And we'd work with the banks. It was very collaborative, very information-sharing, and relationship-building. And towards the end of the ATM discussion, one of our clients, Roger Petersen, came to us and said, good job on the ATMs. But there's this new thing called online banking.

And because we had the relationship with Bank of America, we were able to work with them and say, this is something we've got to deal with, too. And in 2000, Bank of America became the first organization in the United States to sign a web accessibility agreement with its blind customers. And they've gone on to become accessibility champions for the past 20 years.

And again, this is something that when people say, oh, it's new. We don't know what to do. I'm like, in 2000, we had the very first web accessibility agreement that referenced WCAG 1.0. And these are all on my website. All the settlements I've done are in a Settlements tab. I have an article on the 20th anniversary, which was this past March, of the very first agreement.

2008 was the *Target* case, which many of you heard of, which was one of the first federal cases that said ADA covers websites, as long as there's some connection to a physical place. And that was a big thing in the space. And notice it was eight years after big organizations had started to take on the mantle of accessibility.

Then in 2012, we had the *Netflix* settlement, which was the first case that was litigated-- first case to say, even if you're not connected to a physical place, like Netflix isn't, you still have to be accessible. So the *Target* case was about blind people being able to use the site. The *Netflix* case was about deaf people being able to get captions.

And throughout that time, from 2000-2012, we did many dozens of settlement agreements and structured negotiation with a variety of companies that we didn't have to fight with because they agreed to collaborate and became champions.

And that brings us to 2020, which is where we are now. And we're going to talk about what's happening in the space now. But that gives you just a little flavor for how long this Americans with Disabilities Act, and the civil rights concepts baked into it, have recognized the right to participate in the digital world.

So what about regulations? I'm going to say first, yes. There are regulations, because the regulations under the ADA as they've existed and been modified since 1990 recognize the effect of communication and the fact that you need accessibility to get effective communication. So you can read these in the ADA regulations. You can just look them up yourself.

And they have examples of, again, that auxiliary aids and services examples. Not everything, just examples-- accessible electronic and information technology, other effective methods of making visually-delivered materials, i.e. what we see on the web, available to individuals who are blind or low vision. Similar services, acquisitions, modification of equipment, and effective communication that ensures that people with disabilities-- I really like this part, too.

In order to be effective, auxiliary aids must be provided in accessibility formats in a timely manner in such a way as to protect the privacy and independence of the individual with the disability.

These are the ADA regulations as they exist. I am very fond of saying that privacy and accessibility go hand-in-hand. And it's rewarding for me to see so many large organizations recognize privacy rights and starting to understand the interplay, because if you don't provide accessibility, you're not giving disabled people privacy and security. Very simply, you have to ask for help if you can't do it independently.

So are there regulations that impact this that courts will look at? Yes. Are there regulations that say, organizations must meet WCAG 2.1 AA by a certain date? No. But consistently, the courts have said, even without regulations that specifically talk about web accessibility, lawsuits can proceed when individual disabled people are faced with a lack of access.

So in the US, we have more than the Americans with Disabilities Act, in terms of laws. We're talking about how first, we have civil rights ideas. Then the civil rights ideas and values are incorporated into laws.

And just real quick, because I would be remiss without at least a rundown, Section 504 and Section 508 are about how the federal government spends money. And the bottom line of that, in the put the law in your pocket, is that we don't want a government that spends money on some citizens and not others simply because they're disabled. So these laws are being used for digital accessibility.

Airlines have their own law. It's called the Air Carriers Access Act. That also requires accessibility. There's state laws-- I have a little puzzle of the state here, because frequently, we're seeing more and more lawsuits around rights given to people in various states. Many states have anti-discrimination laws that protect disabled people from exclusion, which is another word for discrimination. Many states have state-funded laws, just like 504 and 508, that are about if we're going to spend our state's money, it has to be done in a non-discriminatory way.

So these are different legal theories that are being used in the cases. Under the Americans with Disabilities Act, the person bringing the lawsuit cannot get money for themselves. Under some of the state laws, the person bringing the lawsuit can get money for themselves. So we're starting to see more lawsuits in state courts.

In fact, I think I might have seen something that said there's more suits filed under California law than under the ADA, but don't tweet that, because I'm not entirely sure. But there's a lot of California cases, because we have a law about damages for the disabled person bringing the lawsuit.

Otherwise, you can get a change under the ADA, and you can get your lawyers paid for. But under the ADA, you cannot get money for the disabled person. And then there's a lot of other legal theories-- false claims. If an organization says, we're accessible, and they're not, or unfair business practice, or consumer protections. So beyond the ADA, there's a lot of strong legal foundation for supporting accessibility. And what else? I already have the question marks. We don't really know tomorrow how lawyers are creatively use some of these laws.

And beyond the US, the Convention on the Rights of People with Disabilities-- a very strong treaty-- was not signed by the US, but with the new administration, that is something that may well happen if we can also get the Senate back. There's two resources for looking at the global laws. If you're a global organization, it's really important to stay up. And there's not really one good central source. If you know of one, please put it in the chat or the Twitter.

I have a post on my website, LFLegal. You can find it in the popular posts. And the Web Accessibility Initiative has a post on international law and policies. Both need updating, and hopefully, that's going to happen so we all have one place to go.

But I have a picture here of a globe with a focus on the US, which is not really what I intended. But what I liked about this picture was they're all puzzle pieces, because websites are everywhere. I'm always saying, accessibility is global. The laws are interrelated. We're all learning from each other. The laws in the EU-- I think just this week, the requirement that accessibility statements be on websites of the public sector went into effect. So I'm not going to talk about the details of international law, but it's really important to remember that there is a growing push for the legal side of accessibility around the world.

OK. So we have civil rights ideas, and values, and ethics, principles. We have them baked into laws. And then we have implementation of those laws. And that's what we're going to spend most of the rest of the time talking about. I have the cases in two categories. The first category is recent wins, and the second category is things I'm watching to pay attention to that are going to happen next.

So I'm going to give myself a time check. OK, we're good. Recent accessibility wins. The first one is citizenship-- seems appropriate for an election year. And the National Federation of the Blind and other organizations have done wonderful work this year in making sure disabled people have the right to privately and independently cast their ballot.

And there's more and more online voting, absentee voting. American Council of the Blind has also been involved in this effort. Brown Goldstein and Levy, which is a great law firm out of Baltimore, as well as other lawyers, part of the NDRN network-- they've gone to many states. This frustrates me, because why states are pushing

back on accessibility of voting information seems so-- you talk about civil rights-- Massachusetts, Michigan, I don't have all the states. But if you go on the National Federation of the Blind website, I think they have all the states that they're working on.

So citizenship-- that's been a big win in accessibility in these voting cases. And they're not over yet, because some of the cases, they did something for the election, but then they're going to go back and maybe do something else.

And the other one is American Sign Language. Just this week-- just this week-- well, this image shows Joe Biden with three sign language interpreters during the debate-- one for him, one for the current president, and one for the moderator. And the National Association of the Deaf this year had to do lawsuits.

This is both a citizenship thing and a health thing, because there's been a lot of press conferences around COVID. And the National Association of the Deaf had to do some lawsuits to get sign language interpreter on those COVID-- just reminded me. I left something out in the next section. But I'm going to remember right now, in the next section. And accessibility has been so important to health, especially highlighted in the time of COVID.

So there were cases, which I call accessibility wins, around having sign language interpreters. Also captioning-- there was just a decision this week in the 11th Circuit Court of Appeals, which is one of the appellate courts in the federal system-- a person sued Florida. The case is called *NAD versus Florida-- National Association of the Deaf versus Florida*-- for not captioning legislative hearings, both archived and current.

And the state of Florida tried to get the whole case thrown out of court, saying the ADA didn't cover captioning, or you couldn't bring a lawsuit against the state under the ADA, which is something that has been resolved, as far as I know, for 30 years. But the 11th Circuit just this week said that case can go forward. So it's not resolved yet. We don't know who's going to win. But it's a win for the principle that you can use the ADA to protect your rights to find out what the government is doing on your behalf if you're a deaf person. So that's citizenship.

HBO Audio Description-- the audio description, for those of you who don't know,

provides access to blind people for videos, movies by providing extra information of visually-delivered aspects of the video during pauses in the conversation. So HBO just recently joined Netflix and others, part of an effort in structured negotiation that the American Council of the Blind and Disability Rights Advocates, which is a nonprofit disability group in California and New York, have been doing to make sure that there is access to movies.

I was involved in the structured negotiations several years ago for audio description in the actual movie theaters. And it's just one of those structured negotiations experiences that continues to make me a true believer, because we had a sample showing with maybe 5 or 10 blind people at a movie theater where the head of the whole company-- it was Cinemark, who became a great partner. And we saw this private showing, and there was such a bond between the moviegoers and the moviemakers. And we were able to get audio description in all the Cinemark theaters in the country.

Now comes COVID, and nobody's going to movie theaters. So to me, this is a reminder that your accessibility program has to always be a step ahead of where the technology is now, because now everything is streaming. So that's what's happening in audio description.

Amazon employee-- there was a recent settlement of a lawsuit-- a remote customer service job employee who was blind. I put a picture here of a wheelchair user who's welding, only to say that no matter what the employment is, this welder who's using a wheelchair probably has digital aspects of his job training or applying for jobs or checking benefits. There's so many-- and there's other employment cases, too. These are just the most recent ones.

There's no employment without accessibility anymore, especially during the pandemic. People are working from home. But even when people go back, if we ever 100% go back, digital accessibility is key to employment of disabled people.

Patreon-- we did a good partnership with Patreon, where they agreed to work with the Web Content Accessibility Guidelines, as well as the Authoring Tool Accessibility Guidelines, which is a standard for authoring tools, that I think might be the first case where a company stood up and said, yeah, we want to look at these standards,

too. So you can find that settlement in the press release on my website.

Beyond the web, this is a picture of a kiosk from the Social Security Administration. And there was a recent settlement that the NFB did, along with Disability Rights California, to make sure these kiosks are accessible. I have an article on my website. You can look up kiosks in the search box, and it's dated 2018, so it comes up a little lower in the search results. But I update it whenever I hear about a new kiosk case. And I recently updated with resources about how you can make your kiosk accessible, and some vendors that do that work.

So beyond the web, the ADA and the state laws are being used to say, inclusion, participation, and communication isn't just about websites-- isn't just about websites.

OK, the next one-- we're still talking about wins of accessibility-- I call this the latest credit union skirmish, illustrated by a tug of war, because there have been a lot of cases against the credit union in the past year, some of which I have concerns about the ethics of. The credit unions have been successful in getting courts to recognize that if you want to sue, you really need to have some relationship and actually want to use the site that you're suing about.

The most recent thing about credit unions was a California Court of Appeal case that said the case can go forward even though there are no ADA regulations. So this was San Diego Credit Union. And for some reason, they were still arguing that we need to have regulations for an ADA case to go forward, which we don't.

There were many cases around that issue in 2017, '18, '19. But as we'll see in a minute, the *Domino's* Supreme Court decision pretty much put an end to those arguments. But this was a California case, again, using the state law.

I do want to say that there have been very successful negotiation-- not that I was involved with-- but with a credit union up in Washington state to improve accessibility. So it's not like it's all been adversarial. But there's been a lot of adversary-- not adversity. A lot of adversarialness that I kind of feel sad about, because the very first talking ATM in the entire United States was installed in San Francisco City Hall by the San Francisco Federal Credit Union.

And like I say, a lot of the credit unions have done the right thing, and they've been in negotiation with their blind members. So it's something to watch, but it's also something to keep in perspective.

So cases to watch-- those are some of the recent win wins. Here's what I'm paying attention to. First is *Domino's*. So if you're on this call and interested in accessibility, you probably know that last year, the US Supreme Court had a chance to take up this whole issue of web accessibility. Do we need regulations? Does the ADA cover it? And they chose not to.

And by choosing not to, the decision of the federal appeals court became the decision governing the case. And that decision said, you can pursue a case under the ADA even though there are no regulations. Domino's Pizza was arguing that there are no regulations, so we don't know what to do. It's not fair to us. And the *Domino's* Ninth Circuit decision-- it's really something I encourage you to read-- said, you know, this has been-- I'm pretty sure they say since 1996, as I mentioned earlier. I'm pretty sure that's in the *Domino's* case.

So I have two articles on my website, if you search Domino's Pizza. Actually, there's three-- one is about the Ninth Circuit decision, one is about the Supreme Court decision, and one is trying to give a framework for why *Domino's* is important. It's not just about ordering pizza, it's about the whole principle for all these sectors-- higher ed, and government, and retail-- to be open and inclusive of disabled people. So I encourage you to look at those articles.

What happened after the Supreme Court, and this often happens when you get a high level-court saying something, all the Supreme Court said was, Ninth Circuit Court of Appeal decision stands. And all the Ninth Circuit opinion said was, this case can move forward in the lower court. So I spoke with the lawyers who are handling it, and the current status is that this January, either side will be able to file motions, which are just legal arguments in court. And then they have a trial date, which I think is next-- yeah. They have a trial set for July.

So if the case doesn't settle, the case is still ongoing. Domino's has argued in the past that they think it's enough to have a telephone number. I personally don't think a phone can ever substitute for accessibility. But as I wrote in these posts, if you go

to my website and read them, the ADA does give them the opportunity to make that argument. So we'll see what happens with that.

OK, so we're talking about cases I'm watching, things that you may hear about afterwards and say, oh, yeah, Lainey mentioned that in the update. Walmart self-check-- this is a picture of the self-check. For those of you who don't know, there was a lawsuit against Walmart because two blind people were unable to use these kiosks. They asked for help. And instead of getting help, the employee stole their money.

So this is pending. Walmart tried to get the case thrown out of court, was unsuccessful. And the current status of this-- again, I talked to the lawyers-- is that they're engaged in discovery. They're exchanging things back and forth. Again, another sort of side story to this is Walmart became the first company to do accessible prescription labels for their blind customers. We worked with them in structured negotiation.

And a little piece of this is that whatever your accessibility program, wherever you are in the cookie, try to break down the silos in your organizations, because I so often see an organization who's doing really well on one side of accessibility and running into problems on another, because there's not a global connect.

I'm not saying this is what's happening with Walmart. But when a company does one thing that's positive for accessibility and another thing that is not so positive, we have to look and say, how can we bake it in better? How can we bake it in better so all of digital is looked at?

The \$66 million website-- this is one of my favorite cases. And those of you who are new to this space, this is a case out of California that was brought by Tim Elder, who's a disability rights here. TRE Legal is his website. And the state of California purchased a website for \$66 million-- actually-- for its park system-- reservation, et cetera. And the website was delivered. It was supposed to be accessible, but it wasn't.

So this is a lawsuit under the False Claims Act, which is saying that-- and it's against a vendor. It's against the maker of the website, to say, you said it would be accessible. That is a false claim. That's what the allegation is. You didn't say the

truth when you said it would be accessible. So this lawsuit is to recoup the \$66 million. This is really about procurement.

It was there somewhere in the language, this should be accessible, and it wasn't. How does that happen? So I really invite you-- I do work with Disability:IN, which is a business-to-business nonprofit focused on disability inclusion and accessibility. And their accessibility leadership committee put out a great resource that I helped with last year on accessible procurement. And maybe when I stop and the questions start, I'll put the link in the chat. Or someone can look that up.

It's a really great resource about you can no longer just say, give me something accessible, and expect it to happen. There needs to be systems. There needs to be testing. There needs to be reliability. There's so many things. So this case is plodding along. Again, they tried to throw it out of court, and it wasn't. So motion arguments are due in June next year, and there's a trial set for September of next year.

OK. What else are we looking at? In higher education, a couple things. There's a pending lawsuit against Duke University that was filed in June 2020. That's the most recent one I know about. And this is a case-- I think I have notes here. Yeah. This was a blind student in the business school-- daytime MBA in 2018. It's probably all online now. And she was faced with barriers at every turn-- inaccessible web-- the application, the course descriptions, the recruiting system.

So I get frustrated because there's some really great models on higher education accessibility out there. And I have a bit.ly up here-- bit.ly/HigherEdLaw. With the bit.ly's, you have to have the capitalization right-- so capital H, capital E, capital L. This is a website maintained by a professor-- I think either a professor or I'm not exactly sure what her role is. But Laura Carlson is great, and she maintains this website with links to all the higher ed cases-- the settlements, the complaints.

So I encourage all of you in higher ed to really be familiar with that. There's some really good models. The Harvard-MIT settlement, which was last year-- it's not focused on in this update, because there's so much since then. That is a great model for captioning in higher ed. So there really shouldn't be any more higher ed cases, because the road map is there. But nonetheless, this is happening, and it's something we're watching.

There's a lawsuit pending against ADP for their cloud payroll system not working for blind people. I pulled this logo off Google, and it says ADP, Always Designing for People. And I'm sure they are. And I'm sure that's sort of their logo, and I'm sure they kind of bake that idea into their systems. But they aren't designing for all people. And I have a great image that I use in my structured negotiation trainings of a cat looking in the mirror seeing a lion.

And I think as advocates for accessibility, we need to understand, how do the organizations that we wish would do better, how do they see themselves? And here's an example. ADP sees themselves as designing for people.

So I'm hoping that the lawsuit that was filed-- I think it was filed just this past September on behalf of the Lighthouse for the Blind in San Francisco and two blind employees by disability rights advocates-- I'm hoping it'll spark ADP to look at their motto and then build on that. And just because a lawsuit is filed doesn't mean there has to be adversarialness. Parties can always sit down, always sit down and talk.

And I just have another image here. This is off the Disability in Stock Photos, which I recommend, which has disabled people at work. So just a reminder that everybody needs a payroll system. Everyone needs training. It's all digital.

OK. There's a case pending against Gimlet? "Jim-let"? Not sure how they pronounce it-- which is now part of Spotify, for podcast accessibility for deaf people. That is recently filed this year. I don't think anything's happening on it yet. How can deaf people get the content? How can they participate in podcasts, get the communication? So we're going to find out more. As far as I know, it's the first, and might be the only, case about podcasts.

Winn-Dixie is on appeal. I've said this for the last-- I think it's been on appeal for three years. It was the first ADA trial about web suits about this grocery chain. It's been argued and waiting for the judges to decide for probably a year and a half, if not two. So we'll see what happens with that.

OK. A few things to beware of. The beware slides. First, beware of the Online Accessibility Act. Sorry, going very fast. I always want to give as many resources to you as I can, but I know it requires me to talk very fast. So I'm appreciative there's

also captioning for this webinar.

The Online Accessibility Act was introduced into Congress to amend the ADA. I have an article on my website where I go through the entire act, and why it is actually an act that will hurt digital inclusion and digital accessibility. I won't go through it all here, but I invite you. It's on the home page right now, or you could just look up Online Accessibility Act LFLegal at Google, and you'll find it. I personally don't think it's going to go anywhere, and I hope it doesn't go anywhere for all the reasons that I lay out in the article. So that's one of the bewares.

The other is, beware the overlay. I'm actually doing a talk this afternoon for Alicamp in Australia-- we've already recorded it-- about these one line of code software companies that promise ADA compliance in 48 hours, one line of code. And probably the most depressing slogan of one of these companies that I heard about is, set it and forget it. And you know what? You can't do that with accessibility. It's not done in 48 hours. It's not set it and forget it.

So I really encourage you to read up on these overlays. I have an article on my website, which is in the most popular category of articles. It's really important that those of us in the accessibility community understand what these are, because they have very big sales and marketing budgets. And organizations-- private, and nonprofit, and government-- are starting to use these more and more.

And the reason I'm giving you reference to my article is that at the end, I link to 10 other articles, including the technical articles, by people like Adrian Roselli, and Carl Groves, and others, who really explain from a technical point why these overlays don't work. I interviewed several blind people who are quoted in my article. So I really am wanting to sound the alarm on these things, and I think we all need to learn as much as we can about them.

Ethical accessibility. I did a talk for Accessibility Toronto, that's going to be online, about the ethics of accessibility. And I like this picture I found online. I forgot what this game is called. Someone could maybe put it in the chat-- kind of blocks all built up. They're all blue, but there's a red ethics block and the hand about to pull it out, where everything could come tumbling down.

So in accessibility, we have a lot of ethics issues. I'll be writing up the points from my

Accessibility Toronto talk. But starting to think about not just our ethics of doing accessibility work, but how accessibility fits into ethics that responsible companies already know about. We already talked about privacy, autonomy. One of the things about these software companies is they make disabled people download particular software, instead of letting them use-- I mean, particular assistive technology instead of letting them use what they want.

So there's a lot of ethics issues in our space that we need to be aware of, one of which, of course, is the lawsuits. I've written a lot about the lawsuits. I don't really have time nor desire to talk about them here. But if you put ethics into my search box, you can see what I think about the vast number of lawsuits that have been filed since 2017.

And what makes a civil rights lawsuit, which I so believe in and have been so crucial to accessibility, some of which we talked about today, versus lawsuits that I don't really believe are accessibility lawsuits, and I don't really believe they're true to the mission, and foundation, and ethics of the ADA. So you can read about that.

The numbers. Like I said, the numbers-- most people start with that. I'm going to end this portion of the conversation with that. I learn a lot about the numbers from Usable Net. They do a report. They explain how they get the numbers. There's a lot of lawsuits filed. I don't think they're going to let up.

If you really want to know the numbers, if that's motivating to you, you can research them. And most of the other talks, almost all the other lawyers, they do these talks about the ADA and they start with the numbers. They come from a place of fear. I really don't believe fear is a good motivator for accessibility. I don't think that's what the law is about. I don't think that's what the ADA was passed for. So that's what I'll say about numbers.

What about the crystal ball? What might the Biden-Harris win mean for digital accessibility? I just have some ideas. First of all, for those of you who didn't see that tweets and LinkedIn on this, the President-elect transition webpage has a wonderful accessibility statement. Warms my heart, because I have been negotiating accessibility statements and structured negotiations since 2003, 17 years ago. Have a post on my website about statements that I've been keeping up, first published

2013, and I amend it when I hear new things. You can learn a lot about statements.

And it gives me confidence, not just in Biden-Harris, which I have confidence in, but in their listening to the disability community, because a statement like this doesn't come up out of thin air. It comes up because of advocacy of disabled people working with the administration, and the administration-to-be's willingness to listen.

We're going to have a better Department of Justice. The Department of Justice-- I went back and I read the posts that I wrote five days before Trump got elected and one week after. And I invite you to read those if you're kind of curious. And I was. The first one came from a place of fear, and the second one came from a place of hope and power.

But whatever, the Department of Justice has not been a civil rights Department of Justice. And so we can expect to see more resolution of ADA claims, more action in the courts protecting rights, Project Civic Action, which they did a little with as the Title II working with state and local governments on accessibility. We will probably see more than that.

We're going to get better judges. We may get ADA web regulations. The Obama administration put them out at first in 2010. If you're curious about the history, there's a lot on my website about that. Now, we have to be careful that the regulations we get aren't in response to lawyers who might be using the ADA in ways that we don't respect.

So if we're going to get regulation-- we haven't pushed for regulations under the current administration, for these reasons. But there's a possibility that we'll get regulations, better 508 enforcement, the Affordable Care Act Section 1557, which requires accessibility in health care covered by Affordable Care Act,

Department of Education-- we didn't really talk about that today. But Department of Education as a place to resolve and handle accessibility claims, I think we're going to see. Of course, Betsy DeVos won't be there. So we can look to the Department of Education.

And every agency-- digital is everywhere. The EEOC for employment cases, HUD-- there was a report done by the Equal Rights Center last year about how web

accessibility has become a barrier to housing because people can't look for housing. So every federal department that gets someone who has a more open and inclusive idea is a place where we can see more for digital accessibility.

Time for questions. Yeah. I have my closing page. I have a picture of my book. It's called *Structured Negotiation, A Winning Alternative to Lawsuits*. And I have my Twitter, @LFlegal. My contact page-- I have a mailing list that's very sporadic. Maybe not 10 times a year do I send something. You can find it on the Contact page. I put a link to LFlegal.com/speaking because I redid my website.

Thanks to Natalie McLeas, who is a wonderful developer, we redid the Speaking page, because I do like being a bridge to communities and organizations about the law. And I do these kinds of talks. I can do it in a more focused way. So for organizations, so the Speaking page, and always feel free to email me, lf@lflegal.com. So, Kim, back to you.

KIM ROBBINS: Thank you so much, Lainey, for a wonderful presentation. We have a ton of questions that are coming in, and I know we only have five-ish minutes, so we will try and get to as many as we can.

So the first question is, when the event is over-- and I'm assuming this is for live events-- when the event is over and the recording is posted on Facebook and YouTube government channel, are the captions from the CART services required to be corrected? Of course, we want them to be corrected, but legally, are they required to be corrected? And if so, is there a timeline for those corrections?

LAINY FEINGOLD: I don't know. Again, I would be surprised. But if you send me an email, I can ask people who may know better that question. Again, it's about effective communication. I have an article on my website-- if you look up 65%-- where someone once asked me, if captions are 65% accurate, do I meet my ADA obligations? And that's a question that comes from a place of fear and a very narrow focus on compliance.

So that doesn't really-- that doesn't answer your question. But yeah, send it to me by email. And if I find anything, I will let you know. And I'll make it public.

KIM ROBBINS: Definitely. Thank you. The next question we have, and I know you did touch upon

this in the presentation, but any thoughts on the Online Accessibility Act introduced in the House?

LAINY Everything I know and think about that is in my article. So you can just go to my
FEINGOLD: website, Online Accessibility Act, and you can see everything I think.

KIM ROBBINS: Great. Next question we have is, what is a good source for international or non-US geo-accessibility guidelines around communication?

LAINY What do you mean, geo?

FEINGOLD:

KIM ROBBINS: I think this probably just means geographic accessibility guidelines that are not US-specific.

LAINY Oh. That reminds me, I didn't mention the CBAA, which my favorite thing about that
FEINGOLD: right now, it's really been an impetus for accessible games. So let me throw that in. I also didn't get back to what I left off the slide, which I really feel bad about, which is a CBS announcement this summer that their talking label program is built in-- built in-- to their standard mobile app, which is really exciting. We've been in a long-term structured negotiation, great relationship with them. So that's another COVID-based thing that I wanted to say.

On the international, like I said, I don't think there's any one great source. And many of us are talking about, OK, I have my list. The Web Accessibility Initiative has their list. I might not have mentioned that Disability:IN has a global list, too. Right now, you kind of have to look at all of them to piece together the most current in each country.

But I would really recommend Twitter for things like that. If I need to know something about a certain country, I'll put it on Twitter. One of the things-- I just updated my piece on the overlays because there's a woman in France, Julie Moignette, she wrote a great piece about the problem with those companies in France and different French companies. So if you have a specific question, you should go to a lawyer. But you could also start by going to Twitter.

KIM ROBBINS: Twitter's a great resource. We use it all the time. The next question we have is, can you comment on the two recent California decisions where judges concluded ADA

applies to websites, even without a nexus to a physical location?

LAINY Yes. Yeah. I think maybe next year, 3Play, we might have to do an hour and a half
FEINGOLD: for this talk.

KIM ROBBINS: We'd love that. That'd be great.

LAINY I should have highlighted that. The ADA has this thing, place of public
FEINGOLD: accommodation. And that's what's created some confusion in some courts about applying the ADA to non-physical places. I always say, OK, that's called the nexus argument. Yes, there's some parts of the country where there's still a requirement under the ADA that you have the physical place connection.

But so what? You're not going to have a separate website for every different Circuit Court area in the United States, all 11 of them. So I don't think it's all that important under the ADA. But in California, the business establishment is a little bit broader in the words than place of public accommodation. So I think that's why you're seeing more cases in California, and you're seeing less angsting around the physical place issue.

KIM ROBBINS: Right. Right. So I know we're out of time. I am going to squeeze in one last question, if that's OK with you. So is a mobile app-- and a lot of people asked about mobile apps, so I wanted to make sure I get this in-- is a mobile app in scope of the ADA? Could you suggest accessibility guidelines or standards, such as WCAG 2.1, for a mobile app? [INAUDIBLE]

LAINY Yes. I'm very sorry I didn't say that when I talked about *Domino's*. The *Domino's*
FEINGOLD: case was, and is still, about apps and websites. And I think that the most recent usable net statistics say about 20% of the cases are on apps. So again, we don't have any specific regulations as website. We have effective communication. So apps would apply.

And the WCAG 2.1 does a little bit more in mobile. And of course, Apple and Android have developer guidelines for accessibility. So between the WCAG 2.1 AA and the Apple and Android, you should be set on learning how to do things.

And also, there's a ton of great training going on, especially everything's online.

Kim, are we able to save the chat questions? And I'll try to answer some on social media, or people can email me if they really have a burning question with understanding this. I'm not giving legal advice to individual companies or people, but I'm happy to do some follow-up, because I know that was a lot to cover. We didn't have a lot of time.

KIM ROBBINS: Right. I am fairly confident we can save the chat. If anyone still has a question and your question wasn't answered, yes, feel free to email us at 3playinfo@3playmedia.com. Or Lainey, we can coordinate, we can compile a list of questions together if they were not answered today.

LAINIEY Yes. Save the Q&A, too, because there's a good thing on captioning lyrics of songs. I
FEINGOLD: think some of that's going to be resolved in-- we're going to learn something from that podcast case. But these are the kind of questions I could maybe find someone to answer for you. So yeah, save them all. I can't promise I'll answer them all. But thank you all for being accessibility champions and caring about using the law in a civil rightsy sort of way. So thanks a lot.

KIM ROBBINS: Thank you so much for your time. I hope everyone has a great day, and we will hopefully talk soon.