ELISA LEWIS: Thank you, everyone, for joining us this afternoon for the 2022 Digital Accessibility Legal Update with Lainey Feingold. My name is Elisa Lewis. I'm the senior inbound marketing manager at 3Play Media, and I will be moderating today's session. I'm a white female with dark brown hair and glasses, and I'm wearing a royal blue t-shirt with the 3Play Media logo.

And I want to welcome Lainey Feingold. Lainey is a disability rights lawyer who has worked in the digital accessibility space since 1995. Lainey, along with her blind clients and co-counsel, helped negotiate the first web accessibility agreement in the United States more than 20 years ago.

Lainey has also been named a legal rebel and problem solver of the year by the American Bar Association and has twice received a California Lawyer Attorney of the Year Award, all of this for her work in digital accessibility and structured negotiation. Lainey serves as a consultant for Disability:IN, which is a nonprofit working with Fortune 1,000 companies on disability inclusion initiatives. So with that, thank you, Lainey, for being here, and I will hand it over to you.

LAINEY FEINGOLD: Great. Thank you. Thanks to all of you who joined today, all of you who will be listening in the future. This is a title slide that's up here now. And I have my name. I have my website, which is LFLegal.com I do a lot of writing about what's happening in the legal space as well as collaborative problem solving, so I invite you to check it out.

I have my Twitter handle, which is @LFLegal, which is now also my Mastodon.social handle as I try to see if I can live in another social media space. I'm still on Twitter because we have a wonderful accessibility community there as well as disability community. So if you're going to do any social media around this talk, you can do it on Twitter or LinkedIn or mastodon.social.

Yeah, so in the background of this slide, there is a smiling dolphin. And that dolphin is kind of like my spirit animal, represents my philosophy. It's my brand, to say that when we're advocating for digital accessibility, we don't have to be a shark. We don't have to be a shark. And when we're talking about the law, we don't have to be a shark, either. So you'll see the dolphin at various places throughout the presentation.

In terms of my visual description, which I like to offer for people who can't see the screen or who may be on the phone or driving or in some ways don't see me, I'm a white woman. My most salient visual feature is my gray hair, gray going to white. And I say that because, like Elisa said in the intro, I have been in the digital accessibility space since 1995. I've seen a tremendous amount of growth and improvement, and I bring all that to my talks, trying to take the long view as well as the immediate view.

So let's get started. Today's roadmap-- this is a road driving out of Berkeley, California, where I live and where I'm doing this presentation to all of you, wherever you are. So the roadmap is-- we're going to talk about, what is digital accessibility, why accessibility is a civil right. What are the laws around accessibility? What are the regulations? What's on the horizon? How are the laws implemented?

And I think there's one more. Best practices to stay ahead of the legal curve, like the curve in the road, and how can we talk about the law and digital accessibility? And what should we avoid when we're talking about the law and digital accessibility?

So I have my timer on for about 44 minutes, and that is going to be my goal so we have time for questions. Like it was said at the top, you can feel free to put questions in the chat or the Q&A. If I don't get to everything, 3Play and I will talk about a way to communicate some of the answers back to you.

So a few disclaimers before we start. This is not legal advice. Nothing I say is legal advice. Please don't take it as legal advice. If you are a person with a disability who thinks you have a claim around accessibility, you should talk to a lawyer. If you are an organization, a company, a school, a government agency who has received a claim, you should talk to a lawyer-- so not legal advice.

The public talks that I do are a way to share what's happening in the legal space with people who need to know, which is all of you. I saw the role list of who's on this call, not names or companies, but just roles. And it's really gratifying to see so many people involved in accessibility really wanting to understand what the law is. So I'll try to deliver something for you.

This is an update. There's a ton to talk about. Just talking about what's happening in the last year, let alone past years, I can't even do everything in the past year. So we won't talk about all cases. We won't talk about our laws. It's an update. I invite you to look again at my website, LFLegal.com

There's a legal update tab in the high-level navigation, and I write about big things that happen in the legal space. It goes back to about 2014, when I used to do twice-a-year summaries of everything that's happening. Now so much is happening, I usually focus on one case or one law. And many of those articles are updated. So I invite you to look at that.

Words matter. So this is a picture here of Emily Ladau, who's an author of the book *Demystifying Disability.* And I have the book cover there, which is a really beautiful cover, with images of lots of people with different types of disabilities. And I put that there because in this talk, I will be using interchangeably what they call "people-first language" and "identity first." Sometimes I'll say, "people with disabilities." Sometimes I'll say, "disabled person."

If you're not familiar with that issue and why some people prefer one or the other, I really invite you-- and even if you are familiar-- really invite you to check out Emily's book. I start with this now because, once, I did a talk, and someone gave feedback and said that I shouldn't be allowed to do talks because I didn't use people-first language.

And one-on-one, of course, you want to know what the person you're speaking with or you, yourself, prefer. But when you're talking to a big group, people prefer different things. So that's why I use language interchangeably. Same with A11y, which is short for "accessibility" because there's 11 letters between the a and the y. And sometimes you'll see A11y on the slide.

I'll say "accessibility." I might say "usability," "inclusive or universal design." Your organizations may use those words interchangeably. Mostly I say "accessibility" because accessibility is usability for people with disabilities. So that kind of language matters. Don't get too hung up on the precise word, "accessibility," "usability," "inclusive design," "universal design." There's a lot written on why some people prefer one versus the other. I may have my preferences, but in this talk, I'm going to be using them interchangeably.

So let's get started. So what is digital accessibility? I know you're in this call because you have thought about digital accessibility. Many of you are in direct roles with the word "accessibility" in your title.

I think it's really important to understand why you're listening to a lawyer, why the law is part of the accessibility conversation, to have a big-picture view of digital accessibility, beyond the particular roles that each of you play, beyond being a developer, a designer, a content creator, a policy person, a manager, a librarian.

So a little bit on digital accessibility framework for thinking about digital accessibility and why the law matters in digital accessibility. So a couple of things-- digital accessibility is the bridge. This is a picture of the Golden Gate Bridge because I'm in Berkeley, California. And out my window, I see, luckily for me, the Golden Gate Bridge.

Digital accessibility is a bridge connecting disabled people to technology and content. And it's all people with disabilities. Blind people need accessibility, deaf people, people with cognitive disabilities, motor disabilities, speech impairments. So all people with disabilities are on one side of that bridge, and all technology and content are on the other side, not just websites.

The law, for various reasons we might get to or not, is very focused on the websites, but all technology and content needs to be accessible-- apps, workplace, learning software, kiosk, podcasts, anything you can think of. And I like the bridge idea because, in all your jobs, whatever they are, people with disabilities are on one end. The technology and the content that you are creating is on the other. And our work in accessibility is to build that bridge between them, which, as I say here in the final bullet, that makes you a bridge builder.

So I have a couple of extra roles to give you on top of your actual work that is relevant to why the law is a piece of this. One of them is being a bridge builder. Digital accessibility is the door. This is a picture of a locked door.

I have used the bridge analogy in the past, but talking about digital accessibility as a door comes from something that I saw just in the last month, which is this quote that says, "We are not focused on things like accessibility. We want to do it all, but first, let's get everybody in." And that is a quote from Noam Bardin, who's the founder of a Twitter alternative called Post News.

And when I saw that, I was like-- and I'm not the only one-- I was like, you can't get everybody in if you don't do accessibility from the start. Accessibility is always part of minimum viable product because the product is not viable if people with disabilities can't participate in it. So I put a big red X over that. And I think it's really important that, in the work we do, we see each other as we see ourselves. We see each other as door openers, as door openers. Like, the closed door just turned into a door with light coming through.

Digital accessibility is privacy and security, another reason why the law is involved. If something is designed to be independently used or read or created or consumed and it's not accessible, then security and privacy is broken for people with disabilities. So accessibility, we often say, is like privacy and security. We have to have it in from the start.

To me, it's like privacy and security, and it is privacy and security. Digital accessibility is essential to diversity, equity, and inclusion, which is another aspect of the whole legal picture, not just because disabled people deserve and are entitled to a seat at the table, but because every category of people that are part of the DEI belonging equation, there will be people with disabilities in that category.

Disabled people are Black, are Brown, are Asian, are LGBT. So disability is part of the human condition. Any aspect, any grouping of people is going to include disabled people. And accessibility is a civil right of people with disabilities. So if you have to leave now and there is only one thing you can take away from this talk, this is probably the most important, that accessibility is a civil right of people with disabilities.

Why do we say accessibility is a civil right? Because accessibility barriers are like stairs. This is a picture of the Capitol Crawl, which was an action in the run up to the ADA, where people who used wheelchairs left them at the bottom of the steps of the Capitol and climbed up. You see in this picture, there's a photographer at the top. There's a young white man, crawling up on his hands and knees. There's a Black woman, crawling up backwards on her butt.

This is a photo by Tom Olin. If you're not familiar with the Capitol Crawl, I really encourage you to read about it, not just because it was essential to the passage of the Americans with Disabilities Act and a reminder of the advocacy that created that act, but because the work we do in digital is the very same thing as stairs. So without accessibility, there's no participation. There's no inclusion. There's no communication. That is why accessibility is a civil right.

Accessibility is the difference between exclusion, the closed door, and inclusion, which-- I have to give you another role, bridge builder, door opener, civil rights enforcer. So civil rights are very important, obviously, in issues we've talked about.

If they're not baked into law, they're just an idea, kind of like this raw cookie dough that looks very yummy-- close-up of raw cookie dough with chocolate chips. Looks like you can pick them out of the picture.

All the laws that we're talking about are fundamentally civil rights laws. It's really important to remember that because sometimes, the legal space gets very confused with cases that aren't fair or cases that are-- there's a lot of-- we can talk about this if we have time. There's a lot of cases being filed by lawyers who may not have inclusion as front and center, but the laws themselves are all based on civil rights. And when we're talking about the law to people, we have to remember it's civil rights, because those civil rights are baked into laws.

What are the existing laws? I have a great accent color on my slides. It's called "celery." The basic slide background is blue. The celery is this nice green color. What are the existing laws? Because we'll see in a minute, there's a lot of proposals out there, but right now, right now, there are existing laws. And I love this quote I put on the slide.

It says, "The legal framework gives us permission to dream what is possible." And that is a quote from a disabled woman in Kenya named Lizzie Kiama. I heard her speak at the Microsoft Ability Summit in 2021, which is a free community event that Microsoft does. I really invite you to check it out this May.

The legal framework gives us permission to dream what is possible. We have that framework in the United States now. We have a strong framework that allows us to create a world that we're all going for, where disabled people are included in digital.

So the current US framework, we have the Americans with Disabilities Act. We could have a whole session on the Americans with Disabilities Act. For today's overview, the important thing to know is that the ADA, as it currently exists, is broad enough and flexible enough to embrace the digital world. Why?

Because the ADA is fundamentally an anti-discrimination statute. And if you create content, if you create technology, if you have people applying for jobs with technology that blind people can't use, that's discrimination. That's already in the ADA. It's been there since the beginning, 32 years and counting.

The ADA also embraces the idea of effective communication. Effective communication of website content means accessible content. And this is why there's so, so many cases all across the country-- we'll talk about cases-- where plaintiffs who file lawsuits win, because the ADA already requires effective communication and already is an anti-discrimination statute.

Since 1996, the Department of Justice has recognized the digital application of the ADA. We're going to drop in the chat an article I wrote about this for the ADA 32nd anniversary this summer, where you can read what the DOJ said back in 1996.

So we have the ADA. We have Section 504 and Section 508, which are basically laws that say, you know what? If the federal government's going to spend money, it can't spend it on programs that discriminate. So 504 is when the federal government gives money to organizations. 508 is when the federal government itself buys things or hires disabled people.

This is part of a framework that says, we're not going to exclude. We're going to honor and implement the civil rights of people with disabilities. There's a special law on accessible websites and kiosks for airlines that, by and large, are not covered by the ADA. Section 1557 of the Affordable Care Act talks about accessibility in certain health care contexts covered by Affordable Care Act.

There's laws about making false claims that are being used to say, if you're selling to the government, if you say your product is accessible and it isn't, that can be a violation of a false claim statute, which says, you can't lie when you're selling things to the government. That's the bottom line of it.

The Communications and Video Accessibility Act, the CVAA, is currently in effect on accessibility in various communication contexts. And then we have state laws. I've put a map up here. Every state in the United States is a different color because every state has different laws-- not every state. Every state either has or doesn't have laws, and the states that have laws, they're all different. And even some cities, like New York, has a civil rights statute that covers civil rights ordinance, that covers accessibility.

So the state laws, too, they're about anti-discrimination. They're about states spending money, spending money and making sure disabled people are included. So this is the framework. This is the framework that we have that, right now, doesn't just give us permission to dream but actually do, actually make sure things are accessible.

So that is the current framework, but we have proposals, too-- two big laws that are currently proposed, important to know about. One is the proposed Websites and Software Application Act. I'm not remembering the exact month, but within the last six months, maybe even within the last three or four.

This is a picture of Tammy Duckworth in the Halls of Congress. She's a senator. She's a wheelchair rider. She's a veteran. You can see her prosthetic legs in this picture. I usually don't put the sponsor of a bill into the slides, but I don't think it's coincidental that it's Tammy Duckworth, an outspoken person with a disability, is the main sponsor of the Proposed Website and Software Application Law.

So again, it's proposed. So it isn't passed. It's not required yet, but I think it's really important to remember what's on the horizon because the laws are only going to get stronger. Accessibility is having a moment. There's more and more people in accessibility now. There's more and more of an understanding, especially since the pandemic, of what it means to be excluded from digital when things aren't accessible.

So I don't know if this law is going to pass. I don't know what form it's going to pass if it does, but to me, it's part of the unstoppable wave towards recognition of the importance of these issues. So the Proposed Website and Software Applications Law, it affirms current ADA digital coverage. So it's very clear.

You don't have to wait around for this to pass to know that you have legal requirements, best-practice requirements, ethical requirements to be accessible, because this law specifically says it. And then it expands ADA coverage to cover people in organizations that develop and maintain technology, not just the way the ADA is currently framed about businesses and government agencies.

It requires the Department of Justice to issue broad accessibility regulations. Again, we don't have to wait, and we shouldn't wait until there are regulations, because the ADA, as I said, in its current form, is based on anti-discrimination and effective communication. This law would require more specific regulations, and it does require a study on emerging tech.

We use the word "emerging tech," but most of the tech we talk about has already emerged. So accessibility for VR and XR and Web3 and NFTs and everything, we're talking about it because it's emerged. So there's got to be a way for the law to do a better job keeping up with the technology. And this law and the next proposal are, in small ways, trying to do that.

I do have an article on my website all about this proposed law with links, which we're going to drop in the chat, and it will be on the 3Play Media page for this seminar after it gets published. The good thing about this law is laws are sometimes complicated to read. They did a FAQ. They did a one-pager. They did a plain language explanation. So there's a lot of really good information on that.

There's also a proposed CVAA, the 21st Century Communication Video Accessibility Act, another law that a proposed update was introduced in Congress within the last, I believe, two months. Senator Markey from Massachusetts is leading that. They're calling it the Communications Video and Technology Accessibility Act, the CVTA, adding to our alphabet soup of laws we have in this space.

It strengthens and expands captions and audio descriptions standards and requirements. I haven't written about it yet on my website, but there's a really good article on 3Play's website about it. So we're going to put that in the chat. I recommend you check that out there. I will be writing about it, and you can find it in the legal update section of my website.

Again, it requires reports and regulations about emerging technology, but again, the reports-- I think the first one would be due in three years and then every five years thereafter and the regulations after the report. So things will be well emerged before there might be regulations, which is why we don't want to wait for regulations.

OK. What about proposed regulations? So under the current ADA, we do not have regulations that specifically say, you must meet the Web Content Accessibility Guidelines. We don't have anything like that. I have been saying, literally, for years, if not decades, we don't need that because of the strength of the ADA. However, it is well accepted by myself and others that it would be really good to have regulations.

And I want to shout out to Chancey Fleet, who's a friend of mine, a technologist, blind woman, who gave me the line or said the line that we need accessibility regulations like we need a plumbing code. It just has to be down there so you can point to it and say, this is what we're going to do, and this is what inclusion in digital means. So I wish those of you in the trenches, doing this work, had the regulations. You don't have them yet, but at least right now, there's a slight move for proposed regulations.

So the first one, before we get to the web, is proposed kiosk regulations, another whole area of digital where a lot of accessibility work is happening. There's a picture here of a restaurant kiosk, the kind that sits on the table where you can pay and order. This was subject to a structure negotiation case that other lawyers did. It's written about on my website.

They call them self-service transaction machines, self-service transaction terminals as well as kiosks. So just be aware that the legal phrase is that, too. They first tried to regulate this in 2010, accessibility regulations for these kinds of kiosks. I wrote here, 2010 to '22 is a long time to wait. And the article on my website that I wrote about this, that we'll put in the chat, I actually put in the comments that I and others submitted back in 2010.

So fortunately, the kiosk industry and disabled people and lawyers aren't waiting for these regulations. The current status is that there is a notice of proposed rule making out, which is a step before final regulations. The comment period is closed.

On my website, I have an article called "Kiosks-- The Law is Paying Attention." And I first wrote it in 2018, and I constantly update it whenever there's news. So there's a lot happening in the legal space around kiosks or self-service-- I don't know if I'll ever get used to calling them self-service transaction terminals. But you can check all those out in my article. And I also have resources in there for how to make kiosks accessible.

So will more accessibility regulations blossom next spring? With this pretty picture I have of pink and white cosmos flowers against a sunny sky background with a few clouds. And the reason I ask about the spring is because there's a couple of things that might happen. There are proposed Title II accessibility regulations, "proposed" in the celery accent color.

So every six months, federal agencies in the United States are required to tell everybody what they're going to do next. It's called the unified agenda. You can go online. You can look up "unified agenda," and you can basically look up any federal agency and say, what are their plans for the next six months?

So the unified agenda of the Department of Justice from the spring of 2022-- although it was actually July, but it's called the spring agenda-- they said, next April, they're going to do technical standards for web access for Title II state and local government.

I have an article on my website about this. I think I called it "Deja Vu All Over Again?," although that applies to many regulations that I've been involved with over the years. The proposal is just for websites. It's just for Title II, not for Title III, which is public accommodations.

So I have a picture here of a woman in the rain, with an umbrella, sitting on a trunk, looking down. She's on a train platform. She's looking down, waiting for the train. Now, you can see the train in the background, a little glimmer with the lights out there, in the rain. And I hope it will happen, but we have been here before, also, beginning in 2010. So in my article, you can learn about the history of that too.

Again, we need the regulations. They're really important. And-- not but, and-- no one should wait for them because the ADA and the Justice Department activity and the lawsuits all point in the direction that civil rights demands accessibility. So that's one proposal that might happen in the spring.

Then there's the Department of Ed 504 regulation update, which I've illustrated with a bottle of molasses, dripping. "Slow as molasses" is the expression. And I hope that happens. They did a press release in May, the Department of Education.

They said-- I'm reading now from their May press release-- "45 years--" 45 years-- "after publication of the regulations implementing Section 504 of the Rehab Act of '73, the landmark disability civil rights law, the US Department of Education announced plans to gather public input on possible amendments to those regulations--" possible amendments to those regulations-- "to strengthen and protect the rights of students with disabilities."

The Department of Education is really doing wonderful work right now-- we'll talk about that in a bit-- around accessibility. I'm sure they want to do the regulations. I hope they will. They asked for written suggestions from the public how to improve the current regulations. One big area of improvement needed is around digital. So they asked for comments by June, but they said they will still take comments. So I invite you to check that out. We'll put the links in the chat.

The unified agenda says that the NPRM, the notice of proposed rulemaking, will be out in May 2023, so springtime flowers. I don't know. Then there's another one, proposed Health and Human Service Regulations 504 update.

I illustrated this with a picture of a woman, a young Asian woman in a hospital, looking up at screens. And you see a smiling doctor, a smiling white doctor, talking with no captions. And then there's another screen that has a lot of text. I don't know if there's any audio. So there is a need for accessibility in health care, of course.

Will they do a proposed update to their regulations? They said, in the spring unified agenda, that in September, they would put out a notice of proposed rulemaking about accessible medical equipment, auxiliary aids and services, which is a legal term for accessibility, but they didn't do it. Promise not kept. So it's out there. Will it happen next spring? I don't know.

But short of regulations, I just want to touch on federal agency guidance because sometimes the federal agencies in the United States cannot get out a regulation because of various bureaucratic or political-- I really don't know, but they can issue guidance. And there's three really important guidances that have come out this year that you should be aware of.

One is the Department of Justice Web Accessibility Guidance, which came out in March. Then in May, the Department of Justice and the EEOC did a really good guidance on the dangers for disability inclusion of artificial intelligence hiring tools. And then the HHS and DOJ did one in July about telehealth.

So the web guidance basic for people new to the issue confirms the ADA coverage of websites, important; educates developers and decision makers, important; talks about web accessibility as a DOJ priority; offers resources, barrier examples, and fixes.

It mentions WCAG, Web Content Accessibility Guidelines, as helpful guidance. But, again, it's not a regulation, so it's not a specific requirement you can point to, like the plumbing code. But it doesn't have a clear statement about web-only businesses or academic institutions.

And most sadly for me, really, is that it only talks about the web. But it's out there and good for anyone who's still hearing feedback, internally, from your organizations that, well, this isn't required, and it's a gray area, and there's no regulations. No. It's a DOJ priority, and ADA coverage is confirmed. So that was that guidance.

And the hiring tool guidance is, I think, much stronger, with a broad impact. It talks about how algorithms and artificial intelligence can lead to disability discrimination in hiring. Those are things like resume scanners that don't acknowledge employment gaps or interview software that is requiring eye contact when people with some kinds of disabilities don't make eye contact, can't make eye contact. Many blind people I know don't have eyes. They have artificial eyes and aren't making eye contact.

So the algorithms and the artificial intelligence issues are described. It clearly states, "Employers must avoid using hiring technologies in ways that discriminate against people with disabilities. This includes when an employer uses another company's discriminatory hiring technologies." This is critical. This should come with a flashing light that says, procurement, procurement, procurement.

Most companies, most organizations, schools, governments, aren't building their own AI hiring software. They're buying it from someone somewhere else. So there's a lot of good resources on procurement. It should be top of the list to make sure your organizations are baking in accessibility into their procurement process.

It doesn't mention higher ed admissions and test-surveillance software. That raises a lot of the same issues as employment. I have an article on my website where-- I think we'll put it in the chat-- you can read about that guidance. Again, it's not a regulation, but it's guidance from the agencies charged with enforcing these laws, so really important in your internal advocacy as you're trying to use the law to advance accessibility. And I have links to the guidance and my thoughts on it.

But telehealth guidance, again, based on the nondiscrimination provisions that are there and are good for whatever comes our way, talks about captions, the need for ASL and captions in telehealth, need for telehealth to be screen-reader compatible. The picture I chose is a doctor or health professional talking to a guy on a screen. Both of them are African-American. The guy does look a little sick in the picture, and the doctor is taking notes and giving the advice. So that's the telehealth guidance.

Beyond the US-- I'm sorry we don't have time to do the framework beyond the US. I have a picture of the globe. It's hard to stay current on the global stuff. I myself have a hard time. Three resources that I have-- I have one on my website at LFLegal. You can search for "global" or put in "European Union," and you'll find it.

The Web Accessibility Initiative has resources, and G3ICT has a really good portal on international laws. I cite the other ones in my article. So you can start there, but, again, everything's moving towards more and more requirements. Obviously, different in different countries. Different countries have culture.

Shout out to Kenya, who just passed the first ICT, information communication technology, regulations in that country. So a lot is happening, and I think the important thing for us to know is this is not just US. We are all part of a global community, and our work can be really hard, whatever our role. And for me, personally, thinking about the big picture that we're all, as a global community, moving towards more accessibility really helps.

So how are the laws and regulations being implemented in the United States? Without implementation, again, the cookie dough is still raw. I have the same cookie dough with the chocolate chips because the Civil Rights are baked into the laws, but then the laws have to be implemented. So who implements? What are the strategies to make that framework, make those dreams real?

People with disabilities, every single day, are using those civil rights to get what they need from your organizations, content-wise, job application-wise, job improvement-wise, advancement-wise.

So instead of seeing things as complaints, see them as opportunities to play the Civil Rights enforcer. And I'm sure if you go through your phone input and your calls, you will find many leadership companies do this. Who's calling, and what are they saying? And people aren't going to call up and say, well, you have a WCAG violation or you're violating this Section of the ADA.

No. They're going to call up and say, I can't find this. I can't see this. I don't know what to do. I got stuck when I had to enter my birthday, one of the things that I'm so frustrated about. The date picker wasn't done with accessibility. So people with disabilities, very important to see as enforcers of these laws.

Government agencies are doing a good job. There are lawsuits, and there's structured negotiation, which is a collaborative process that I've been using, as I said in the introduction, since the mid '90s, when I first started working on talking ATMs.

I do have a book, and I talk about those stories, how we convinced Bank of America to be the very first bank to do a web-accessibility agreement-- and they have been champions ever since-- how we worked with Major League Baseball to make sure the statistics online and the radio shows were available to blind people. So if you want to hear some stories about that, I have them in my website.

Lots happening in the enforcement area-- just very high level. I'll start with education. Just in the past year, University of Illinois, Chicago was a great settlement, in-structure negotiation done by lawyers and clients in Chicago that dealt not just with students but with employees. I've written about this on my website.

California Community Colleges had a big case. *Payan versus California Community College System* almost went to the Supreme Court, didn't go to the Supreme Court. The amount of money being spent by the community college system to fight this, they could have done the access 10 times over. So that's happening.

UC Berkeley is the most recent. Just in the last month, the Department of Justice announced that it settled with UC Berkeley over a complaint that was pending for seven years, originally filed by the National Association of the Deaf, around the failure to have captions. The settlement is extremely broad and extremely quick. There's just one thing I want to read you about it.

The UC Berkeley platforms covered by the settlement are their massive online open-course platform, which is called UC Berkeley X, the Berkeley.edu website and any subdomain that may be accessed by the general public and controlled by Berkeley entity, any podcast channel, any podcast channel or account controlled by a Berkeley entity, hosted on a third-party platform like Apple Podcasts or Spotify, and any other audiovisual channel or account controlled by a Berkeley entity hosted on a third-party account. Every six months for 42 months, UC Berkeley is having to report on this.

I have an article, not quite published, for my website where I'll be describing all this, but that is the most recent one. And one good thing about these settlements-- use them as your roadmaps, because when the Department of Justice and Berkeley sits down and negotiates and comes to an agreement, that is a roadmap for what's expected under these laws.

Before UC Berkeley, the most recent one was Harvard and MIT. So I invite you to look at those*Berkeley Unified* was a K-12 case done in structure negotiation by lawyers here in Berkeley. And that had to do with the online learning platform that Unified School district, K-12, was using during the pandemic. And the Department of Ed has a digital accessibility team. I talked with some people on it this week in preparation for this talk.

And you should rely on Department of Ed digital accessibility team. They do a lot of technical assistance. They work with vendors. That's why I put their logo up here. So a lot happening in the education space. There's some resources that we'll either put in the chat or we'll put on the page.

And employment-- I want to just say about employment that in November 2022, the labor force participation for disabled people was 38% versus non-disabled, 76.9%. Accessibility can change that. So there are things happening in the legal space.

First of all, there's a lawsuit against Twitter for their refusal to allow remote work. And every time we talk about remote work, we have to talk about accessibility. There's a case against the FBI by a blind FBI agent who could not use the software he needed for his work. And there's a great settlement I've written about on my website with ADP that really partnered with the blind community to-- there was a lawsuit, but then they pivoted to structured negotiation to be more collaborative.

And then earlier, there were a ton of cases on hiring portals. So employment is a place where accessibility is the key to changing these employment statistics. Kiosks, there's a really important case pending right now. The trial was the first week of November. Three weeks later, they had closing arguments. It's a class action injunction about the Quest kiosks, which I have in this picture, the check-in kiosks.

Of course, any time you talk about kiosks in health care, you're raising the privacy issues. So the American Council of the Blind is doing that case. There's a lawyer named Matt Handley in DC who's litigating that for ACB. And then there's also a case pending against Labcorp. So expect to hear more about kiosks and legal requirements, and I will add those to my article as soon as we have the news.

What are my favorite cases? With the fireworks in the background. I just want to share a couple. There's this case, *Panarra versus HTC Corporation,* which is VR captions. This is a case against a company that bills itself as the Netflix of VR, where they have thousands and thousands of VR content. And that's why I have an image here of people playing games with a VR headset on.

That case is pending. There's discovery. The question-answer part is closed. Both sides have asked the court to let them win just on the papers and maybe have a little trial later about other issues, but it's the first big VR case that I'm aware of. So I'm following that closely.

Podcast accessibility. As I said, the UC Berkeley-DOJ settlement specifically requires podcasts-- I think it's the first time I've seen that in a DOJ action. But the litigation case is *National Association of the Deaf versus Sirius XM.* That's being fought out in court. And I'm following that because podcasts now are-- they were emerging. They're emerged, well emerged.

The $66 million website case, which I always illustrate-- if you've heard me speak before, you might have seen this picture of someone burning money because that's what this feels like to me.

The state of California bought a website for $66 million, and it wasn't accessible. This is a false claims case, where the suit is against the contractor and the web developer and the subcontractor on the project named US eDirect for telling the government that it was accessible, but it was not accessible. It is going to trial, if it doesn't settle, in May or June of 2023. Obviously, we're going to need a legal update next year around May or June because a lot can be happening.

Do disabled people ever lose their cases? Yes, they do. Yes, they do. Other people, people I trust and respect, often write about cases that the disabled person has lost. Does it matter? Yes and no. I don't think it impacts the foundation, which is why I put a picture of a crumbling foundation here with a big X.

So in California, there was a case that got a lot of attention because it was about, could you have a web-only case? I used up my 45 minutes. We had a little bit of a delay. Let me go a couple more. Yes, the court in California said, you can't have a web-only case right now under California law-- not the ADA, under California law.

Does it matter? There's many parts of the country where you can have a web-only case. Who has a website only in California? There can be other ways. Lawyers are creative. So yes, there are cases that get lost. There's a lot of cases filed. It doesn't shake my belief in the foundation.

Best practices for staying ahead of the curve. Just really quick-- understanding the accessibility cookie. The accessibility cookie is an example-- a picture here of yummy cookies that were actually baked for talk I did in New Zealand-- to show that accessibility takes a lot of roles. All of you are in those roles, on top of being bridge builders and civil rights enforcers, and a lot of parts of your organization.

Engaging disabled people is probably the most important thing you can do to stay ahead of the legal curve, engaging disabled people as employees, contractors, your ERGs. We could do a whole talk on that, too.

Don't wait for a legal claim. I've had 27 years of experience seeing how much it matters for people with disabilities and decision makers to be in relationship with each other. That's really what structured negotiation is all about. That is the ticket.

Transparency and feedback, testing, ethics, training, shifting left on design and development, procurement-- I do another whole talk on that-- policy and culture, shifting culture, HR, marketing, communications, collaboration-- all these things matter. Accessibility is not a checklist. No shortcuts, no overlays. If you're unfamiliar with the overlay issue, please visit OverlayFactSheet.com and OverlayFalseClaims.com.

And of course, the law. The law is a piece of it, but the law is a salt, which is why I have this close up of salt crystals to say, yes, we want to talk about the law. But like a cookie, if there is too much law, then the cookie-- if there's too much salt, the cookie does not taste good. If there's no salt, the cookie is not sweet. And that's how I think about the law.

So I think I'm going to stop there with the salt picture. I have a few more ideas, but I'll ask 3Play. You want to take questions instead?

ELISA LEWIS: Yeah. Thank you, Lainey, and thank you, everyone for the great questions coming in. We definitely are not going to get to all of them, but, Lainey, maybe we can chat after the session and see if we can compile some answers for the folks on today.

The first question that we have-- someone is asking, "Does the ADA or CVAA cover social media content, especially where an organization fails to utilize the accessibility features present on the social media platform, for instance, alt text and closed captioning?"

LAINEY FEINGOLD: Well, like I said, the ADA, as it's currently written, is-- when we use the ADA, we talk about discrimination. We talk about exclusion. So there's no reason-- I mean, social media is a communication. We talk about effective communication.

So I think the combination-- I mean, we didn't get a chance to talk about-- I left the picture of the dolphins up here because collaboration and communication is important. We didn't get a chance to talk about-- I just lost my train of thought. Sorry. I was going very fast.

There's a lot of lawsuits. Oh, we didn't get a chance to talk about the numbers. There's lot of lawsuits. And as the social media platforms, like the questioner said, more and more makes accessibility an option and available to posters, especially government agencies and companies and people using social media, what is the excuse?

So it's easier in that kind of case to prove discrimination when it's right there, available for it. So I think, in terms of your internal arguments, that, yeah, we're communicating with social media. We can't leave disabled people out of our communications. That's what the law boils down to.

ELISA LEWIS: Thank you. We've also had a couple of questions around some of the proposed bills that you mentioned earlier in the session. Someone is asking, "Do you have any idea when this may come up for congressional action?" And someone else is asking, "Does this mean that it's appropriate to cite the ADA in accessibility policy or procurement requirements?"

LAINEY FEINGOLD: I really have no idea what's going to happen with these bills. I don't have a crystal ball. I'm not a legislative expert. I do know the disability community is wholeheartedly behind both of these bills, which is important to know.

In procurement, let me just throw out a couple of resources. Like I said at the top, I have done work with Disability:IN, and they have a procure access initiative. And if you go to the Disability:IN website, under what we do, you can find procure access. And there's resources there. The G3ICT has a lot of good procurement resources. The Partnership on Employment and Accessible Technology, PETE, PETEworks.org, they have a lot of good resources on procurement.

So it's not just a question of saying, must meet the ADA. The procurement contract language-- and if anyone's interested in this, I do talk some procurement-- it has to be very specific.

Yes, you want to cite the law, but you also want to say, what are the goals? And who does it need to be accessible for? And how is it going to be tested? And how are you going to handle bugs once the contract is signed? So there's a lot that goes into accessible procurement, but the ADA does provide a strong foundation for it.

ELISA LEWIS: Thank you. Someone else is asking, "What advice would you give someone who works for a federal contractor, who is working very hard to work collaboratively with the proper human resources personnel to progress disability inclusion but is not making progress with the company's position on disability inclusion?"

LAINEY FEINGOLD: I don't like to keep mentioning all of the different topics I can talk about, but I do have an entire talk on accessibility persuasion. And I think that that is-- the reason I share the legal updates is because I think that is part of our persuasion tools, but it's not the only one. And the law is like-- there's really two parts, and it depends on who you're talking to.

So some, the Civil Rights and the do-it-for-the-right-reasons part is really impactful. And for others, they want to know-- we don't really have time to get to this. There were 4,000 lawsuits last year. In November, on web accessibility-- and I get my numbers from UsableNet. So if you need the numbers, if you're trying to convince in a company where those numbers matter, then I would look at those numbers.

In November, there were over 300-- I don't have the numbers handy right here, but over 300. Many of them are for repeat offenders, and many of them were about companies using overlays. So you really have to know who you're talking to. One of the slides we've passed over is a picture of a cat looking in a mirror and seeing a lion. And that's to say, every organization sees themselves in a certain way.

Maybe the whole Civil Rights thing is the most important, maybe privacy and security. There's many different ways, and we all have to be convincers on top of doing all our other jobs. But I think the law is really there to help. And I hope this was-- I know there was a lot, and we went fast. But there's a lot in the law that we can use in convincing others, including-- thank you, 3Play, for always letting me do this talk and always making the recording available afterwards. So you can see if something is useful in your persuasion.

ELISA LEWIS: Perfect. Thank you. And I do want to be mindful of time. We are coming down to the hour here, so we are going to wrap up today. So thank you, Lainey, so much for a fantastic presentation. Thank you to everyone for joining us and for asking such great questions. Thank you again, and we hope that everyone has a great rest of the day.

LAINEY FEINGOLD: Yeah. Let me just throw in one thing. I do have an email list. Last year, I only sent six emails. I'm hoping to do better next year. And as I write the legal articles, like when I write the UC Berkeley one, I will try to send out to the list. So on my website at LFLegal.com/contact, you can sign up for the email list.

And just to say what's on the last slide that's been up there for people who don't see it, it does have my website again, LFLegal.com It has the Twitter and mastodon @LFLegal, and it has a picture my book, which is called *Structured Negotiation-- A Winning Alternative to Lawsuits.* And yes, there's lots more to talk about, and we'll hopefully have other opportunities. So thank you, 3Play. Thank you, audience.

ELISA LEWIS: Thank you.