

LAINY
FEINGOLD: Good morning, everybody. Welcome to the first session of A Future Date. We are really grateful for all the volunteer organizers who put this together and for 3Play Media, who's doing the captioning. This is a Digital Accessibility Legal Update that was originally slated for CSUN at 2020. And I'm Lainey Feingold. My Twitter is up here-- @LFLegal. I'm a disability rights lawyer. I've been in the accessibility space since 1995.

I have written a book about the importance of collaboration and accessibility. It's called *Structured Negotiation-- A Winning Alternative to Lawsuits*. I do a lot of work with Disability:IN, as an accessibility subject matter expert. And I do a lot of talks and trainings like this, so very glad to be kicking off this conference and kicking it off with my co-presenter, Tim Elder.

TIM ELDER: Hi, Lainey. Thanks so much. It's thrilling to be here with you, although virtual. I'm disappointed we couldn't be there in person with the CSUN convention. But I'm so glad that we have this opportunity to really get this information out and do this legal update.

It's also exciting to be here with Lainey in particular. My name is Tim Elder. We are the TRE Legal Practice. We are a law firm located in San Francisco. We primarily focus our practice on civil rights cases on behalf of disabled individuals.

We tend to focus on technology access issues that benefit people with disabilities. We've done anything from mobile apps to websites to ride sharing. We pursue structured negotiations in Lainey's footsteps. And we also use litigation, all tools within our tool box

LAINY
FEINGOLD: OK, so I just want a slight reminder that this is the Digital Accessibility Legal Update. There's a lot happening in the legal space. It's literally impossible to cover everything in one hour. I have a tab on my website, which is LFLegal. A high-level nav is legal update.

So you can go back and look at updates back. I think I have them back about six or seven years. So what you'll get today is a high-level snapshot of what's happening. And if we don't talk about something you're interested in, you can always reach us afterwards. Again, we have our Twitter up here-- @TRELegal and @LFLegal.

And we'll give more contact information later. So we want to start with a dedication. We want to dedicate the session to two people and one group of people. Jim Thatcher and Joseph O'Connor are two leaders in the digital accessibility space that have died in the past year.

They were such a part of my education around accessibility, beloved by this community, part of CSUN where this was originally presented. So I have pictures of Jim and Joseph up here. And if you don't know who they are, I really encourage you to read more, because you'll get just a beautiful taste of what this community is about.

And we also want to dedicate this to the health care workers. I have a picture of people all in personal protective equipment who are working tirelessly, many of whom are dying to save our lives in this environment, which has caused us to do this presentation virtually.

So it just feels appropriate to bring them into this presentation that we're doing virtually. And I think Tim and I will also share along the way, it's just impacting accessibility a little bit to think about so much going virtually now. So I want to hand it over to Tim to get us started with some of the rules.

TIM ELDER:

OK. What presentation from lawyers would be complete without disclaimers and caveats? So just a couple quick ground rules. We will refer to people with disabilities in the tradition of person-first language. But we may also refer to people as disability first.

There is competing views. Some people believe the person should be emphasized first. Other people with disabilities see that there is some pride and ownership in putting the disability status first. Blind voters, for example. The main takeaway is it's that person with a disability or the disabled person's choice.

And we really just seek to honor whatever preference people have. There's no rule other than to respect what people want to be referred to as. Also, this is not legal advice, so please don't take it as such. This is meant to be an informative overview in general. As always, check in with your lawyer who can apply the law to your specific facts.

LAINY

FEINGOLD:

OK. Thank you, Tim. So why are we here? Why are we kicking off an accessibility inclusive design, inclusion conference with a law question? Why is the law part of digital accessibility? And the answer is really quite simple. Accessibility is a civil right of disabled people. Accessibility is a human right.

Depending on where you're listening from, some countries talk about human rights. In the United States, we tend more to talk about civil rights. For the purpose here, one and in the same. And I have a slide here of a march that was part of the run-up to the Americans with Disabilities Act, which is going to celebrate its 30th anniversary in July.

A lot of disabled people with a big banner across-- taking up the street. "Injustice anywhere is a threat to justice everywhere--" a Martin Luther King quote. So sometimes I think, well, what's Tweetable off a presentation? Or what is the one takeaway?

Or apparently, we only retain 20% of what we give over in these kinds of things. So if you only remember one thing, accessibility is a civil right. And that's why we are lawyers working in this space. Why do we say accessibility is a civil right? For three reasons. Because accessibility is about participation.

Whatever your role-- and I know this audience is comprised of people in very many roles working to make the digital world inclusive for people with disabilities. Whatever your role, you are involved with making sure that disabled people can participate, that they get the information they need, and that we have security and privacy.

And I have this illustrated with a big close-up of the coronavirus under a microscope, which is amazing under a microscope. It looks like gummy worms and little yellow-- it really looks like candy, which is sad, given what it is. This period where all of our lives have gone digital-- work, employment applications, education, social connection-- it's all digital.

And health information-- without accessible health information, people with disabilities are risking their health and safety. Security and privacy. When disabled people don't have independent access, when they don't have independent access to information, there is a security and privacy risk, because help is needed.

And now that we're all in our own homes separated, sometimes that help that used to be there is not available. So if you're with an organization that cares about security and privacy, you have to care about accessibility, because the lack of access breaks security and privacy.

And as Tim often says, accessibility is a civil right, because everything now is digital. Digital is integral to every single aspect of our lives. So that is why this is kicking off with a legal update talking about the civil rights of people with disabilities. They're more than just values.

Civil rights are baked into the laws not just in the United States, but all over the world. And we have a picture here of an unbaked apple pie. Because those apples are representing the laws. And we're going to now talk about what those laws are.

And later, we're going to talk about how to bake those apples into a pie with strategy. So I'm

going to give it over to Tim to talk about how those big visions of civil rights, and participation, and inclusion translate into actual laws. So, Tim, take it away.

TIM ELDER:

Thanks, Lainey. These are civil rights. They are human rights. And they are baked into laws. Whatever your role, whatever your institution, you are probably covered by some law that impacts digital accessibility. Let's go over just a few of the main ones, just to set a base understanding of what the legal requirements are and where you can find more information.

Obviously, the most well-known law is the Americans with Disabilities Act. This covers employers. That includes an obligation to provide reasonable accommodations, but it also includes an obligation to make sure your policies and your methods of administration don't inadvertently screen out employees with disabilities.

That is becoming an increasing issue as IT policies are implemented. And we are working in a virtual digital environment. So how the IT is handled can absolutely impact employees with disabilities. And the EEOC's regulations that implement the employment provisions specifically mention accessible electronic information technology as a form of reasonable accommodation. And certainly, it could be in the policy realm, too.

Second, if you work within a state or local government, your programs and activities, including all of your technology programs and activities, must be accessible. There is longstanding precedent and reference to accessible technology in the Department of Justice's ADA regulations. Many states have citations to digital accessibility standards. This is a common area where state and local governments are covered. And their digital accessibility obligations are contained.

The ADA also applies to private businesses or public accommodations. Again, references in the DOJ, regulations to accessible electronic information technology, and a lot of litigation and case law applying this in the context of digital accessibility on websites. This also applies to transportation providers. The Department of Transportation has regulations that implement the portions of the ADA that apply to providers of transportation.

The ADA also has an interference provision. So if you are a technology provider and you're not necessarily covered by any of these other provisions, you may be liable and have some ADA obligations if your business process is interfering with these other covered entities' obligation to provide accessible technology.

So take a close look at the interference prong as well. Because it is increasingly becoming a way to ensure ADA digital accessibility coverage, as the line really blurs from technology platform to the brick-and-mortar traditional covered businesses and employers.

There are other federal bodies of law that you should be aware of and look into. Section 508 applies to any electronic information technology that is being used, procured, or maintained, developed by the federal government executive agencies.

Section 504 of the Rehabilitation Act applies to any recipients of federal financial assistance. So if you're a government contractor or your customers are government contractors, Section 503 sets forth some requirements for federal contractors with respect to employees with disabilities.

The Help America Vote Act is a federal standard and law that applies to voting machines. It's worth mentioning here. Because it's a good model for where we think digital accessibility is going in the future. This was a law passed in 2000 after the election problems. It required initially that each kiosk have an independently and privately accessible voting machine. And then after another date, it required the polling places to have universally accessible kiosks as opposed to a quota for anything that was purchased with federal dollars.

So the key takeaways are privacy and independence. That's where we're seeing digital accessibility going. And not the quota model, but the universal accessibility model, all the technology implemented that's new. That needs to be 100% independently accessible.

A couple other things to note. There are no regs yet in the federal side that expressly make WCAG the legal standard for digital accessibility for websites. The DOJ has not passed a regulation. But that's not really needed, because the regulations already are implicitly requiring access to digital technology. So nobody should be waiting around for those regulations, given the trends. There are references to other accessibility standards in other bodies of federal law, but folks shouldn't be waiting around. Lainey?

LAINY

FEINGOLD:

Yeah, a couple years ago when we were doing legal updates at various conferences, we had to spend a lot of time on, well, there are no regs. And what does that mean? And should we wait for regs? But the courts have pretty much recognized that we don't need regs to have ADA as something that covers websites, and mobile apps, and other technology.

Because WCAG's standard is how you make sure people aren't discriminated against. The

WCAG standard is how you make sure that technology information is effectively communicated, which is a key ADA part. So you can bring your mantra back to the organization you work for. The regulations are dead, but the ADA is alive and well. And hopefully, there's nobody out there listening who still has to contend internally with organizations saying, well, there are no regs. We don't know what to do.

So in terms of legal foundation and what those apples unbaked in the pie are, there's a lot of other things, just really 10,000 foot overview. We have the Communication Video Accessibility Act. We have the Air Carriers Accessibility Act. We have the Affordable Care Act Section 1557, which prevents discrimination in health care.

Internationally, we have the Convention on the Rights of People with Disabilities. There is international laws and regulations in the EU and the UK, in different countries. And so if you have an organization that does business not just in the United States, it's really important to remember-- even though there's a lot of litigation in the US more than other places-- we have the foundational laws that are very strong throughout the world.

So that's sort of the high-level federal and international. But honestly, where I think the law is going and probably the most important thing to focus on is the laws other than the ones we've talked about. Because the federal courts have-- and I want to predict will probably continue in some ways-- to disappoint, given the appointment of judges in the current administration.

So I'm going to give it back to Tim to talk about some of the more unique and probably what we're going to see more in the future. Tim?

TIM ELDER:

Sure. Thank you, Lainey. So I agree that judges matter. But I also will point out that the Americans with Disabilities Act is a bipartisan statute. And plenty of conservative judges have given very favorable interpretations to these laws. And that's true for both the federal laws and the state laws. So whatever we might think about the trend for judges in the United States, this legal requirement is still going to be there. And this bipartisan statute is still going to be vigorously enforced.

And that's particularly true in state courts and where state laws are becoming more important in some ways than the federal minimum standard. Most businesses don't want to adopt a patchwork of requirements where they're meeting one standard in California and a different standard in Texas. We really do have an international marketplace these days, given the shift to online activity and the distribution of software.

So you should be aware that there are states like California where the legal requirement for websites is very strong. Courts have very consistently applied these statutes to ensure that websites and other technology must be accessible. We've had a couple cases-- The California Supreme Court in the *Square* case has made that very clear. We've got other decisions like the *Thurston* case applying to websites. So this is something you should be very aware of.

In addition, there are other state law contexts that are being applied in somewhat creative ways, so fraud and consumer protection, unfair competition, negligence, tort liability. These are traditional state causes of action and statutory obligations that really deal with products, and the fairness, and false advertising, these sort of things that is increasingly going to lump in digital accessibility concerns. So be aware of that and play to the highest standard, not so much to the federal minimum.

LAINY

FEINGOLD:

Yeah, thank you. So that is our high-level overview of the laws, which are still the apples in the unbaked pie that are on this slide. So how do we get from the laws which-- I agree with Tim that the ADA is strong. It was a bipartisan effort. It's not going anywhere, regardless of who the judges are.

So I'm glad you corrected me on that. Thank you. But we still have to get the unbaked apples into the yummy looking apple pie with ice cream that's also on the screen. So how do we implement? And again, just high-level. There's basically four ways that these laws get implemented.

And the first and most important I want to remember is that every single day, disabled people are putting these laws in their pockets. When they call your organization and they say, I can't do this, I'm blocked when I try to do this, I can't independently access that, those are implementation of civil rights laws, even though people aren't framing it in a legal issue.

So if you could train your customer service people, anyone who answers the phone, anyone who deals with the public to think of the people and not just the law, that is really the first implementation way. We have structured negotiations, which is a collaborative process that's been used for 25 years to deal with web accessibility, mobile app, other technology.

Government agencies have played an important role in the past. Not too much recently, but there are still activities by the Department of Justice, Department of Education, Health and Human Services, Federal Aviation. So federal agencies enforce. But the main way that is

taking up a lot of the legal space right now are the lawsuits.

So we want to talk about what's happening in the lawsuit space. And we want to talk about it in terms of the people. Mostly, lawsuits are often referred to by the company being sued. But we want to really leave you with the message that accessibility is a civil right, so we're going to talk about the people. Not by name, but by category.

Because even if we're not touching on whoever your organization is serving, you can think about how your organization is serving people and how those people are impacted if you don't design and develop your information technology to be inclusive. So the first group of people that we want to talk about are the people who eat this yummy looking pizza or people who eat, which is everybody. Tim?

TIM ELDER:

Yes, Lainey. Blind people want their share of the pie and equal access to it as well. Hence, this nice image of the gooey pizza. A lot of attention was paid this past year to the *Domino's Pizza* case. In that case, a blind individual who wanted to order pizza through the Domino's website and mobile app was unable to do so and brought a lawsuit.

Domino's argued that it was unfair for them to be brought into court under these conditions, because there were no regulations requiring them to meet any particular standards such as WCAG. And so they had a telephone line posted online. And there were other ways of doing things.

The trial court bought that argument and dismissed the lawsuit. The blind pizza eater appealed to the federal appellate court intermediate to the US Supreme Court. That Ninth Circuit Appeals Court reversed the trial court and said, no, the ADA absolutely can cover technology and websites. This case should move forward.

The court also commented a little bit on the telephone access and said that simply alleging that there is a telephone number or the presence of a telephone number alone doesn't enable the defendant to get the lawsuit dismissed. There must be discovery about the effectiveness of that telephone access.

And I think a lot of us are very skeptical about how telephone access can preserve the privacy and independence and really give equal access to the services in the technology website or mobile app consistent with legal obligations. So the case was sent back down to the trial court for a trial on these issues. Oh, I'm sorry.

Domino's did seek review in the US Supreme Court. The Supreme Court denied that petition, which means that this Ninth Circuit Appeals Court decision applying the ADA to websites-- that is a law of the land and at least in the Ninth Circuit, the West Coast region of the United States.

No other federal circuit court decisions really contradict this decision. So most other federal courts will likely find this Ninth Circuit decision persuasive. And it will essentially become the trend throughout the federal appellate courts moving forward.

So be aware that this is a strong precedent applying ADA to websites and mobile apps, even without any kind of regulations and really puts a death nail in any kind of an argument that the lack of regulations should excuse digital, independent, and private access into digital technology.

**LAINY
FEINGOLD:**

On my website, LFLegal.com, if you search Domino's, I've written two pieces about it. One-- just the basics and, two, a response to some of the commenters. So if you're interested in diving more into that yummy pizza, you could go there. OK, so besides eaters, we next want to talk about shoppers.

Again, we're talking about civil rights of people who buy things. In other words, all of us. This is a picture of a self-check at Walmart. And there's a lawsuit about this. Because two blind people couldn't use this, because it wasn't independently usable. It wasn't accessible and instead they needed to ask for help. Again, breaking the security.

And when they asked for help, instead of getting help, they got someone who stole their money. So this case is moving forward. The judges have already said it can go forward. There was an effort to get it thrown out of court and that failed. So this is something we're watching closely. It has bigger meaning in my mind than just maybe it was a rogue employee or whatever.

Because accessibility is more than just websites and mobile apps where the law has put its most focus. I mean, you heard what Tim said. Only in the law would you be talking about, could a telephone substitute for an accessible website? So the cases are catching up. And there are more and more cases on kiosks on self-check.

I have a link on my website that's here. It's a bit.ly link-- B-I-T dot L-Y/kiosks18. And I started it in 2018. And I keep there all the legal activity around kiosks-- health care kiosk, government kiosk, restaurant kiosk, the Walmart self-check kiosk. So it's really important whatever your

organization is doing around accessibility. Make sure it's not just about websites. Make sure it's not just about mobile apps. It has to be about kiosks, email, et cetera.

Another thing that's happening in shopping, which I almost forgot, is that we are waiting to hear about the *Winn-Dixie* case. And you can go back in the legal update and read more about the *Winn-Dixie*. But it was a trial where a judge in Florida said that the Winn-Dixie website had to be accessible, including third-party content, including vendor parts of the website.

It was appealed. And it's been on appeal for three years. So I'm going to give a shout-out to Christina Loni who mentioned it in a webinar yesterday. And I had forgotten about it. So shoppers-- next, my favorite case-- campers. Tim?

TIM ELDER:

Yes, blind people camp. And they want to have equal access to make their online reservations. This case, just for full disclosure, is one of my cases here at TRE Legal Practice. And it is novel in some respects. In this particular case, the California Department of Parks put out a bid to procure an online reservation website.

A technology website developer bid on the contract and was awarded it. There were very explicit requirements in the contract to provide an accessible website, including references to WCAG and particular technical standards. The website went live and it was grossly inaccessible, not even close in terms of complying with the technical standards.

In this case, we are actually pursuing it on a government fraud theory, arguing that the contract which, by the way, was \$66 million to build and maintain this online reservation website, which is why we have this graphic of burning money. But \$66 million-- the accessibility wasn't put into it upon launch. Blind campers were excluded. Some investigation was done through public records. And the contract and the bidding was disclosed that this was a very explicit requirement of the contract.

So the case was initially filed. The defendant moved to dismiss the case. And the trial court denied that, and let the case move forward, and gave us a very helpful ruling and in couple of respects. So it allowed the fraud claim to move forward. And the penalty for that can be pretty substantial, right?

When you defraud the government, you have to disgorge what you've received. And there's some penalty involved in that. So if the penalty is \$66 million, obviously that is going to deter

future fraud in this kind of the context. The case also is alleging interference directly against the website developer, independent of the fraud claim.

So the court released an opinion that says that that is a viable legal theory that will move forward in the case and the interference of the developer in helping the California Department of Parks comply with their legal obligations to have an accessible website. The developer here-- the allegations are sufficient to allege that they have interfered with the ADA rights of blind campers to have a website offered by the state of California.

The case is in litigation now. It's going through discovery. We will see what happens going forward. Lainey has a Bitly link here-- bit.ly/66MilWeb? Is that you have there?

LAINY

Yeah, M-I-L.

FEINGOLD:

TIM ELDER:

M-I-L. Yeah, OK. So that is the case. We'll see what happens.

LAINY

FEINGOLD:

Yeah, talk about takeaways from this presentation, just burning money on a \$66 million website and not making it accessible, even when it's in the contract. It's really one of the most, I think, creative and important cases in this space right now, so I'm following it closely. And I update that link whenever something happens in the case.

OK. So next, we have employees, applicants, and retirees. We could do a whole presentation on this. And I plan to write about it. I haven't yet. In this era of remote work, what could be more important than making sure remote tools, software tools, conferencing tools, telephones are usable by everyone, including people with disabilities?

Already before the pandemic, there were cases brought by employees and applicants about applicant portals, health benefit information, online assessments, employee software, job training, interview software. When you're thinking about hiring people, when you're thinking about employees, you may have an HR department that's familiar with reasonable accommodation.

Digital accessibility must be baked into all these systems, otherwise we are not going to have people with disabilities in our workforce. So there's cases and some settlements on these types of issues. There was a recent case on employee software in the state of Massachusetts against Epic.

The judge said that case could not go forward. It is Massachusetts only. What happens with these lawsuits is the state laws, like Tim said earlier, are important and give a source of rights to people. If a case loses in one state, you don't have to say, oh, we don't have to do that because the case lost.

Because you're an organization, you're operating in every state. So I wouldn't put too much stock in a case that a judge says, oh, this can't go forward. Because I think we're going to see more and more active legal activities, structured negotiation, litigation.

There was an interview software case. The EEOC filed it, the government agency, because a company did not offer a good interview platform for a deaf person who needed captioning during the interview. So we're going to see more and more of these cases as work continues to be online. And I urge you to stay up to date with them and make sure your own processes are accessible. Learners.

TIM ELDER:

Yeah, students with disabilities. And this may be one of our most timely topics as most education, if not all formal education in the United States at the moment, maybe even around the world is going virtual. And the technology is becoming up front in the educational experience. There have been several key cases that have occurred over the last year.

A couple of the big ones-- the National Association of the Deaf sued Harvard and MIT about captioning. Those reached settlements this year. There is a consent decree. That's a good model. So if you're wondering, how can I possibly caption all of my online video content coming from all its various sources?

The consent decree is an interesting approach to how to scale that across a very large institution. So anyone who is dealing with this issue might take a look at the roadmap that was set forth in the Harvard consent decree and the MIT settlement. It gives you some idea of how to do this, and scale it, and put a roadmap in place.

There was also a jury trial this past year against the Los Angeles Community College District. The judge and the jury ruled in favor of the blind plaintiffs. The judge put an injunction in place that requires the community college district to make a lot of sweeping modifications to their technology systems.

The jury found that the college's use of technology and other inaccessible instructional materials had a negative impact and discriminated against the blind. College students-- an

award of \$40,000 was given to one of the students. The case is currently on appeal.

But I suspect that the price tag of this case-- when you add up how they have to scramble to change their technology now, the jury verdict, the attorneys fees that have yet to be awarded, the cost of just making the technology accessible or making sure procurement wasn't in play, and that only accessible technology was being procured, that cost would be far lower than this case. So we'll see what happens on appeal.

But the plaintiffs in this case are on track to prevail in a pretty major way. There have been other settlements with a lot of different educational institutions. There are some good models. The *Miami University* case-- we'll post a link to the website at the end in our resources section that gives you a good collection, the most notable settlements from around the United States with both large universities as well as community college districts or campuses.

**LAINY
FEINGOLD:**

OK. Also, for the Harvard and National Association of the Deaf on my website, you can either search for Harvard. Or I have a bit link up here-- NAD and Harvard. And you can see the settlement. And I agree with Tim. It's a really great model.

So I'm going to give Tim and I a time check. We have about 15 minutes left. And we have a lot to cover, so we are going to speed it up a little bit. Again, you can always reach us through our emails or through Twitter for follow-up. OK, so another piece of the education.

The image in the first one was college students. The image here is younger students, because accessibility is important, starting day one. The US Department of Education has been an agency that investigates web accessibility claims.

They changed their process. They decided they weren't going to investigate in the same way. The National Federation of the Blind, the NAACP filed the lawsuit. The process had to be changed. And then as a result of that, there's been a reopening of more than 700 web accessibility cases.

So this is an area where the current Department of Education has been paying attention. We don't know what's going to happen in the current year in the current situation, but that has been happening. So the higher ed has more development in terms of private settlements and private lawsuits. But the K-12 is critically important, too. OK, citizens. Tim?

TIM ELDER:

Yeah, we have seen activity happening in this category. Blind citizens have been suing and have been successful in some cases in dealing with voting issues. For example, in Maryland,

members of the National Federation of the Blind brought suit against the voting administrators. Because the ballot marking tool used in a polling place would flag the vote that was cast as a disabled vote.

So it wasn't private in the way that it needed to be. Because this special ballot was being output. So you could basically tell which ballots were cast by disabled voters using the special marking tool, the accessible ballot marking options versus all of the other ballots.

So that case will continue to move forward for, again, private votes. In addition, there have been some cases, one in particular against a state legislature to ensure captioning for the state's video content of legislative proceedings.

The National Association of the Deaf brought suit against the Florida legislature to ensure that it would caption its legislative material. So again, disabled people want to engage with their governments. And the technology that's necessary to do that must be accessible.

LAINY

FEINGOLD:

OK, movie lovers. We did a lot of work probably 10, 12 years ago in making sure movie theaters were accessible. There was litigation around captioning. There was a lot of [INAUDIBLE] negotiation around audio description. But you know what? I have a big X over the movie theater picture here. Because people can't go to movies anymore.

So there has been, even before the coronavirus, an emphasis on making sure streaming is accessible. And the picture here says Netflix enabling audio description. If you are putting out video, it is crucially important to make sure that deaf people, blind people can access the content of your videos, access the tools needed to get to the videos.

And I like this as a reminder that we can be working on accessibility. And five years later, the environment has shifted. And we still need to be accessible. And the law takes a little while to catch up, but it will catch up. Because again, these are civil rights. So that's another area of paying attention to, regardless of the content of the videos that you're streaming. They have to be accessible.

Investors and savers. Real quick, this is a picture on the left of Bank of America's first brochure for their accessible ATMs. It says, "Did you know that Bank of America's ATMs can talk?" And it's in Braille.

And this was 20 years ago. 20 years ago, last month, was the first web accessibility agreement

in the United States. I have the Bitly for it. It's bit.ly/BofAat20. And I encourage you to take a look at that. It was a result of a structured negotiation. Bank of America has been a champion ever since.

And it's just the reminder that this is not something new. WCAG is now 20, 21 years. I'm forgetting right now. Yet, we're still seeing the financial institutions that have not been leaders like Bank of America getting sued for not being accessible. And a recent one-- there was a \$2 million suit filed against an investment house.

So if you're in an organization that thinks this is new that doesn't yet have the resources, the Accessibility Committee is very generous as you can see from this conference. Reach out. Talk to the people who've been doing this for decades-- actually, decades. And let's make sure financial information, health information, information involving privacy where people need privacy is accessible. Patients.

TIM ELDER:

Yes, blind individuals in North Carolina brought suit against a health care system to ensure that its paper notices were accessible to members of the plan. This highlights that blind patients, and electronic information, and health care needs to be accessible. Or any information, really, in health care needs to be accessible.

But it's also a good reminder that any interaction that's happening in paper needs to have some alternative accessible format options. So if your institution is communicating with people only in paper, you need to be thinking about how you're going to provide accessible alternatives.

That might be accessible email. It might be other access to electronic information. It might be paper Braille. So this is true in health care and other government benefits. But this is really a concept that would be applicable to any institution that is communicating with users or customers through paper channels.

LAINY

And the other image up here is a picture of a prescription bottle with a label that's blank.

FEINGOLD:

Because when a blind person gets a prescription and the label is not in an accessible format like a talking label or Braille label, it's as if the patient is getting a blank label.

We've done a lot of work in structured negotiation. There's been a lot of great progress on this front and having talking labels. And again, like Tim said, all of these are just-- maybe you're not in health care, and you're listening to this. But think of, what else? What other information

you are providing.

How are you providing it? And is it accessible to everyone you're providing it to? Because these are the people using your products and services. And those people include disabled people.

OK. What about the ethics of all this? Well, those of you who know me, know I'm very interested in the ethics of the digital accessibility legal space. Things have changed. There's a lot of lawsuits. There's consultants cropping up who don't necessarily know the best practices.

All we can really say today is beware of red flags and don't throw the baby out with the bathwater. You can search ethics on LFLegal.com. I've written a lot about this. The bathwater thing is really important. You may get a demand letter. You may get a lawsuit. You may not think it's valid. It may be from someone who files 30 lawsuits a week, which is a big red flag.

But don't forget that the underlying issues are about the people using your products and services. And we want to make sure that the laws stay strong, the apples get baked. And we want to be conscious that not all lawsuits are unethical. And not all lawsuits are civil rights lawsuits.

So one of the reasons I like doing this-- and I really liked Tim's case on the California Parks System-- is that litigation really matters. Lawsuits have been really important to baking digital accessibility into the legal system. And so you may get a bad lawsuit that you don't like. You may hear about lawsuits that seem to you, oh, why was that filed? But don't forget that real people are filing real lawsuits and that matters.

Why do I care so much about ethics? Because I don't like the fear that is produced. This Zoom isn't playing this theme from *Jaws* that I like, but don't let fear be the motivator for your accessibility initiative. Understand the civil rights aspects of the law, but don't let it be fear. So that's why I have a big X over the shark.

How can organizations stay ahead of the legal curve? The big picture is that you need to bake accessibility into your organization's culture. And I have a picture of yummy cookies here that were baked for a talk I did in New Zealand. They have a ton of ingredients.

And that is to represent both that there's a lot of roles that make accessibility possible. And all of you listening to this are in different roles, and you all matter. And the other reason for so many ingredients is there's many things that create the culture. So, Tim, why didn't you just

throw out a few? I think we have two minutes to talk about it and then-- yeah.

TIM ELDER:

Sure. Well, one of the most important ingredients in this cookie baking process is making sure you take a look at what you're buying to put into it and checking the label of those ingredients. So procurement and making sure that the stuff you're buying, or licensing, or using as you deliver goods and services with the aid of other technology-- just make sure that you're asking, is this a healthy ingredient? Is this something I want to incorporate into my product or service for my customers or service consumers?

Making sure you've got indemnification. That the company that's selling it is putting their money where their mouth is in terms of a guarantee. There's inclusive design, making sure that people with disabilities are involved in your design process, in your testing process, in your training. That's a very key ingredient, making sure that a real disability perspective is mixed in, right from the beginning and is spread throughout all of the process.

Lainey, you're familiar with others. What others would you add?

LAINIEY

FEINGOLD:

I really like how you baked all those ingredients. A couple of things. On the procurement, I have a link up here-- bit.ly/DIprocure-- capital D, capital I, procure. This is a link to the disability and accessible procurement toolkit. It is a wealth of information that disability and its corporate partners-- I help with it-- have about how you really make sure that you don't end up like the state of California.

A couple other links I have in here on the culture piece. I have to boot my Zoom controls out of the way. Another Bitly link-- [LFLegalState](https://bit.ly/LFLegalState). Transparency is very important. And let the community know what you are doing about accessibility. At this link, I gather accessibility statements from companies all over the United States and the globe.

I know there's still some lawyers-- maybe you're listening-- saying, oh, we don't want to broadcast this, because it might hurt us. No. Transparency-- letting people with disabilities know who to call if they have a problem answering it. And in an appropriate way, incorporating suggestions really matters.

One thing about the ingredients-- the law is a piece of it. Tim and I wouldn't do the work we do. We wouldn't be here if law wasn't a piece. But I like to say the law is a salt, because you cannot have a sweet cookie without salt. However, if you have too much salt, you don't have a good cookie.

And for that, I invite you to take a look at an article I wrote. It's at bit.ly/65PerCent. And it's an article about a question I got asked after a session like this. And someone said, well, if the captioning we use-- it's 65% accurate. Do you think that complies with the law?

And to me, that just shows all that's wrong with a very narrow compliance focus. Do you want to read a book that's only 65% of the words? Do you want to listen to something that's only 65%? No, but when you're only thinking about compliance, sometimes you're asking the wrong questions.

So those are some of the ingredients. And in the one minute we have left, we want to give you a few resources for staying on top of things. Because as you can see, there's a lot of things to stay on top of. So, Tim, you want to just go through some of these?

TIM ELDER:

Sure. So first of all, connecting with people with disabilities and understanding the community and the issues that they care about and things that maybe they don't care so much about that you might think they care about. The consumer organizations have conventions every year.

The National Federation of the Blind, for example, is an organization of blind people for blind people. It has a virtual convention this year in July. You can go to nfb.org to learn more information. Because this convention is virtual, it's actually going to be a great opportunity for folks to participate.

Even if you can't travel and stay in a hotel for a week to attend this really great and dynamic event, you can participate remotely this year, and check in, and see what people with disabilities are actually talking about. There's lots of other resources. Lainey, you have your website here with the collection of educational settlements.

LAINIEY

FEINGOLD:

Yeah, Laura Carlson at University of Minnesota keeps a great list. You can find it. There's a Bitly short link at bit.ly/HigherEdLaw. Want to give a shout-out to the upcoming Knowbility AccessU conference. Again, like Tim said, usually you have to go to Austin. This year it's virtual. It's Knowbility with a K for those of you who don't know Knowbility.

It's a really great conference. The web accessibility initiative has an intro to web accessibility course running on edX right now. That is free. It's open till the end of May-- really a great place to start and refresh wherever you are. Also up here, we have the ADATitleiii.com, which is Seyfarth Shaw's Title III blog, which always has accurate information about web accessibility

cases.

We have Tim's website-- TRELegal.com. We have my website-- LFLegal.com. I have a resource page on there with lots of other information. Accessibility-- Twitter-- #A11y. For the 11 letters between the A and y in Twitter is a great place to get information. And you can always contact us. So on the final page here, we have the dolphin.

Because we don't believe in being sharks, even though sometimes we do have to file lawsuits, as Tim explained. I've been lucky not to, but lawsuits are important. But you still can be a dolphin when you file a lawsuit. LFLegal.com and my Twitter is @LFLegal. And the last word from Tim with his contact.

TIM ELDER:

Yeah. Tim can be reached at TRELegal.com. That's @TRELegal on Twitter. And thank you so much for your interest in this and your commitment to digital accessibility. I know you'll take this and make some wonderful progress in your respective roles and institutions.

LAINY

Yes. Thank you all and enjoy the rest of the conference.

FEINGOLD: