



# 2018 AccessU Digital Accessibility Legal Update

#AccessU2018

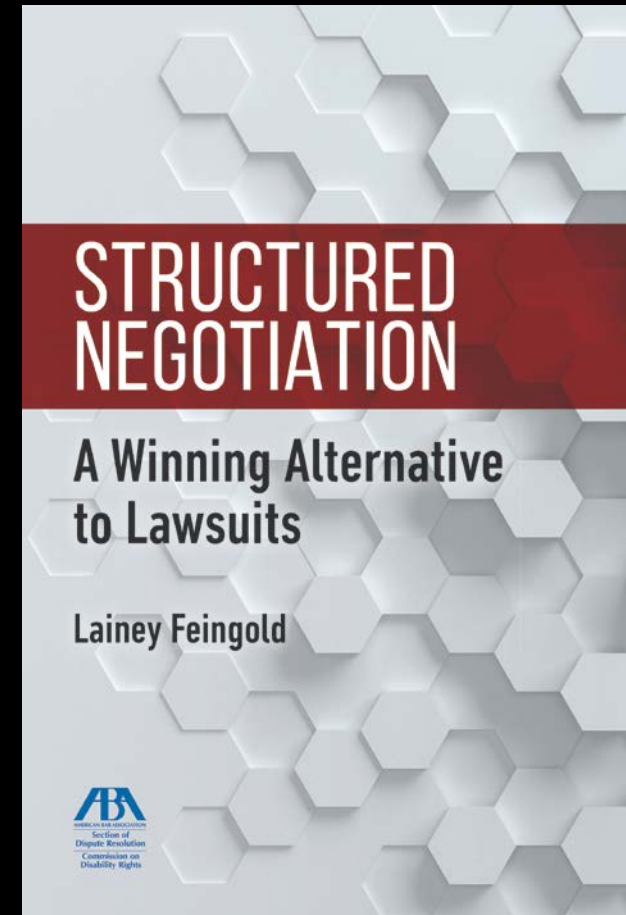
Lainey Feingold



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# Your speaker....

- Disability Rights Lawyer since 1992
- Digital Technology
- Speaker / Trainer
- Author



# Remembering Our Place



- Alabama-Coushatta
- Anadarko
- Apache
- Cheyenne
- Chickasaw

(not so) Fine Print

LFLegal.com Legal Updates  
are **Not** Legal Advice



# Goals of This Session

- Make sense of the **legal landscape**
- Help **shift** from fear to motivation
- You have a role: how can the law **help**?
- Make sense of what happens **tomorrow**





# FIRST PRINCIPLE



# Accessibility is about . . .



photo: Carl Martin,  
[morethanwe.com](http://morethanwe.com)



photo: Shutterstock

# People with Legal Rights



# People (users!)

- Students
- Shoppers
- Patients
- Customers
- Tax payers
- Investors
- Employees and applicants
- Sports fans
- Citizens / Voters
- Diners
- Home owners

# Accessibility is....



A civil (human)  
right of  
disabled people



# Why?

# With Accessibility. . . .

- Participation
- Inclusion
- Equality



# No accessibility?

- Left out
- **Ex**clusion
- Discrimination



# A Choice...





# Judges Agree....

Today, internet technology enables individuals to participate actively in their community and engage in commerce from the comfort and convenience of their home. It would be a **cruel irony ...**

to adopt the interpretation of the ADA espoused by **Blick**, which would render the legislation intended to **emancipate the disabled from the bonds of isolation and segregation** obsolete when its objective is increasingly within reach. – J. Weinstein, federal judge



# A11y is Right to **information**

- Education
- Transit
- Voting
- Services
- Finance

- Healthcare
- Retail
- Employment
- Community
- Sports

# Accessibility is also.....

- Confidentiality
- Security
- Privacy



# Why be afraid of that?

# Legal Equation for Access

**Foundation (Laws and Regulations)**

**+**

**Advocates (Who)**

**+**

**Strategies (How)**

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**Greater Accessibility**

# Foundation (it's strong!)





# US Laws and Policies

- ADA
  - Public Sector
  - Private Sector
  - Employment
- Federally funded (504)
- CVAA
- Federal employment (501 and 503)
- Federal Procurement (508)
- Airline disability law
- Section 1557 (#HealthIT)

AD Web  
Requirements?



ADA Web Regs are Inactive  
The ADA Isn't!



Web Regs are Dead  
ADA is Alive + Well



# Judges agree....

“DOJ’s rulemaking  
process has **no impact**  
on the fitness of this  
case for adjudication”  
**Judge in 1-800-Flowers**



# Judges agree....

“The court **will not delay** in adjudicating [plaintiff’s] claim on the off-chance the DOJ promptly issues regulations it has contemplated issuing for seven years but has yet to make significant progress on.”



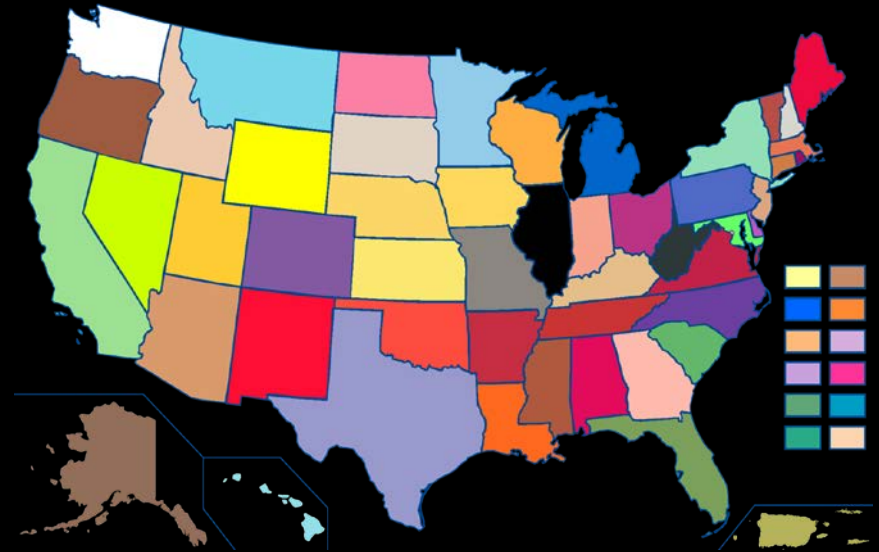


Web Regs are Dead  
ADA is Alive + Well



# U.S. State Laws

- State funded IT
- State procured IT
- State anti-discrimination laws
- Local



# Foundation Beyond the US

- **You** are part of a **global** movement
- UNCRPD
- W3C WAI site [w3.org/WAI/Policy/](https://w3.org/WAI/Policy/)
- LFLegal website – search “Japan”

# Without Advocates and Strategies....



# Strategies for Enforcement

# US Legal Strategies

- Lawsuits
- Federal Agency Complaints
- Structured Negotiation



# Strategy #1

## Lawsuits Enforce Civil Rights



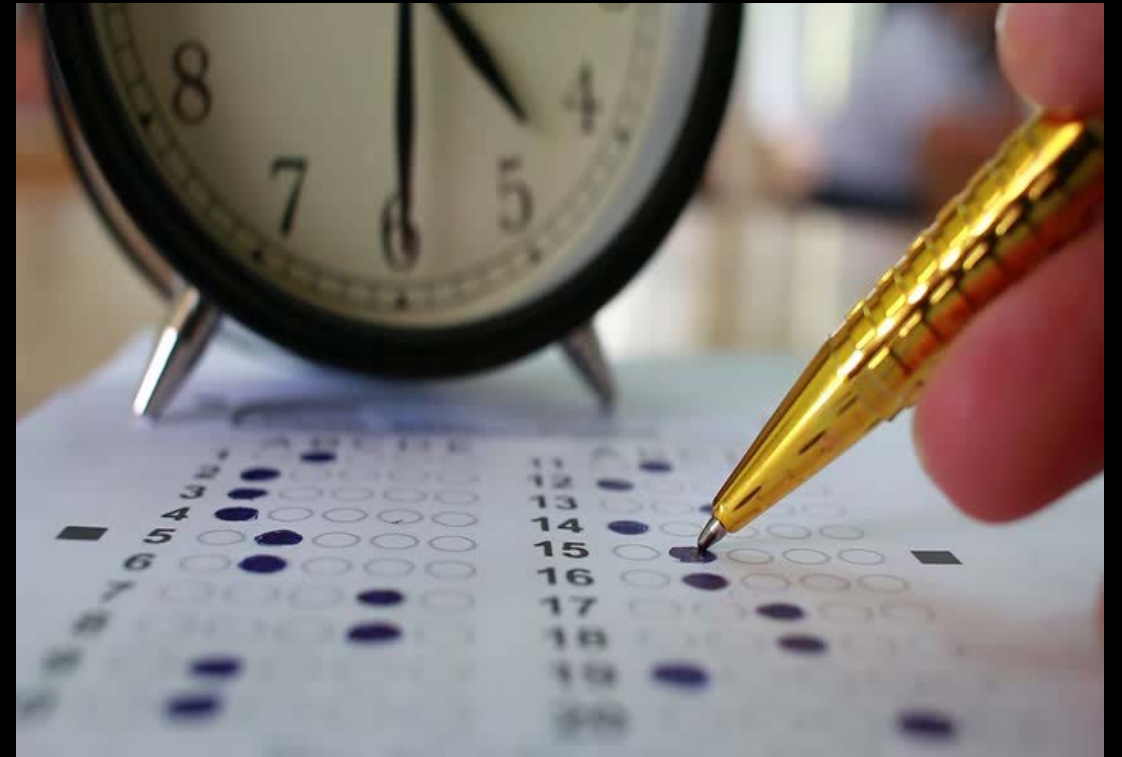


# Lawsuits - Foundational



# Lawsuits: (some) Recent Developments

- BarBri settles
- Orgs can sue (LACC)
- Employment websites
- Medicare website (4-25-18)



# Numbers (Federal Web Lawsuits)

- 2015 ... 57
- 2016 ... 262
- 2017 ... 814
- 2018 Jan - Feb ... 349
- Want more?  
[adatitleiii.com/](http://adatitleiii.com/)



# Court Orders - Recent

- Winn-Dixie (appealed)
- Hobby-Lobby
- Blick Art Materials
- Blue Apron
- 1-800 - Flowers
- Dominos (appealed)
- Pizza Hut



# And more







# Unusual Twists

- Whistleblower case (TFA)
- Web developer sued in Wet Willies

“Web Site Designed and Hosted by Sabre Technologies”





# Big Picture #1.....

The Court today joins the growing number of courts to hold that **commercial websites qualify as "public accommodations"** within the meaning of the ADA, such that the ADA's protections extend to blind persons who claim discriminatory access to such websites.

**DEL-ORDEN v. BONOBO, INC. (12/17)**

# Big Picture #2

- **Some Courts:** Need connection (nexus) to physical place
- **Other Courts:** No you don't
- Psst... websites are **global!**



# Judges agree

“A rigid adherence to a physical nexus requirement leaves potholes of discrimination in what would otherwise be a smooth road to integration.”



# Big Picture #3

- Don't be **distracted** by court losses
- Legal road leads to access (**11/13**)



# Spend Money on Access – Not on Lawyers





# Digital Access > Websites



[lflegal.com/2018/01/kiosks18/](https://lflegal.com/2018/01/kiosks18/)

# Strategy #2

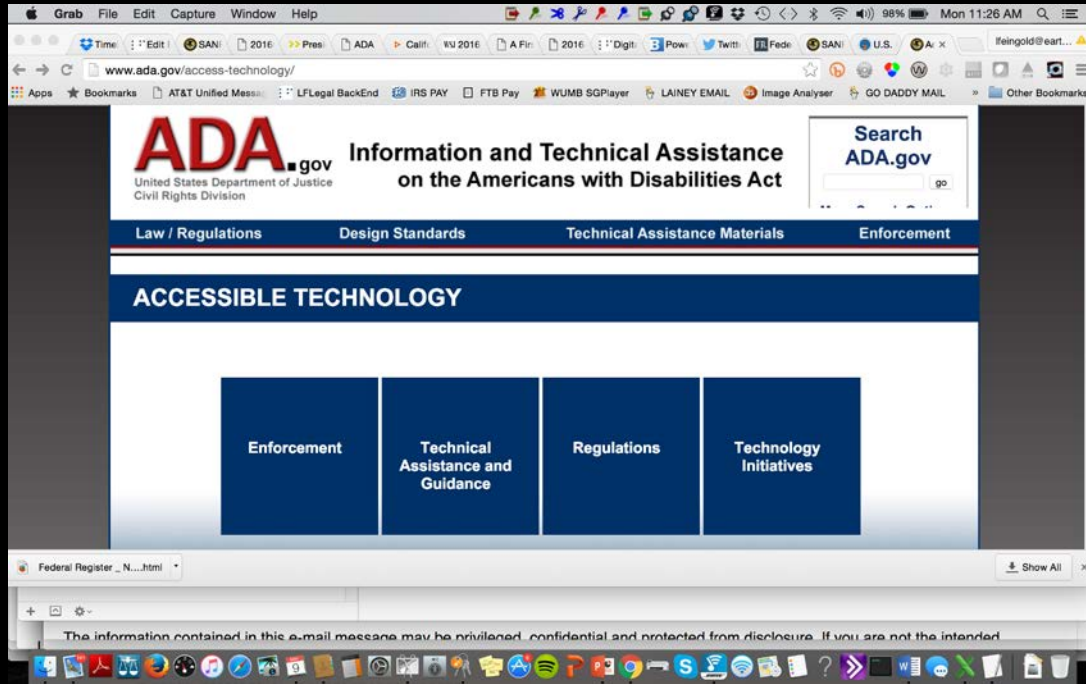




# Gov't Agency Activity

- DOJ
- State Atty Generals
- DOE
- FCC
- DOT

# DOJ



2004-2017



2018

- DOT Settlements  
with Airlines re Web  
And Kiosk



# Dept. of Education

- Web Access
- K-12, Higher Ed
- State /Local Departments of Education
- New rules



# Strategy #3

# Structured Negotiation: Foundational

Bank of America



Walmart



Anthem<sup>®</sup>

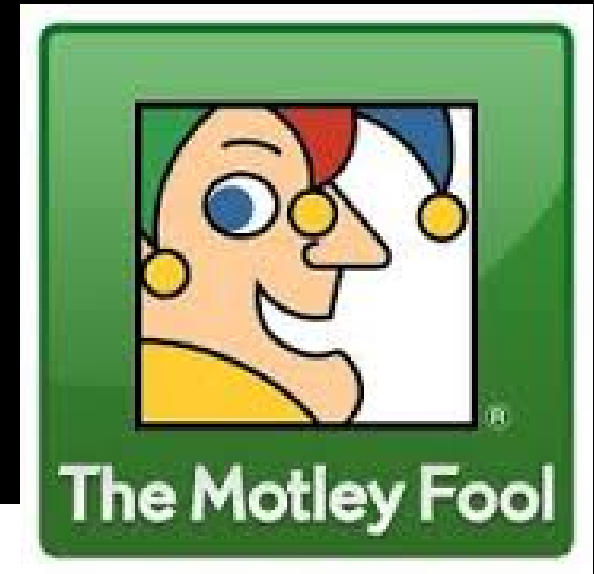


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# More Structured Negotiation Win-Wins /

*charles* SCHWAB



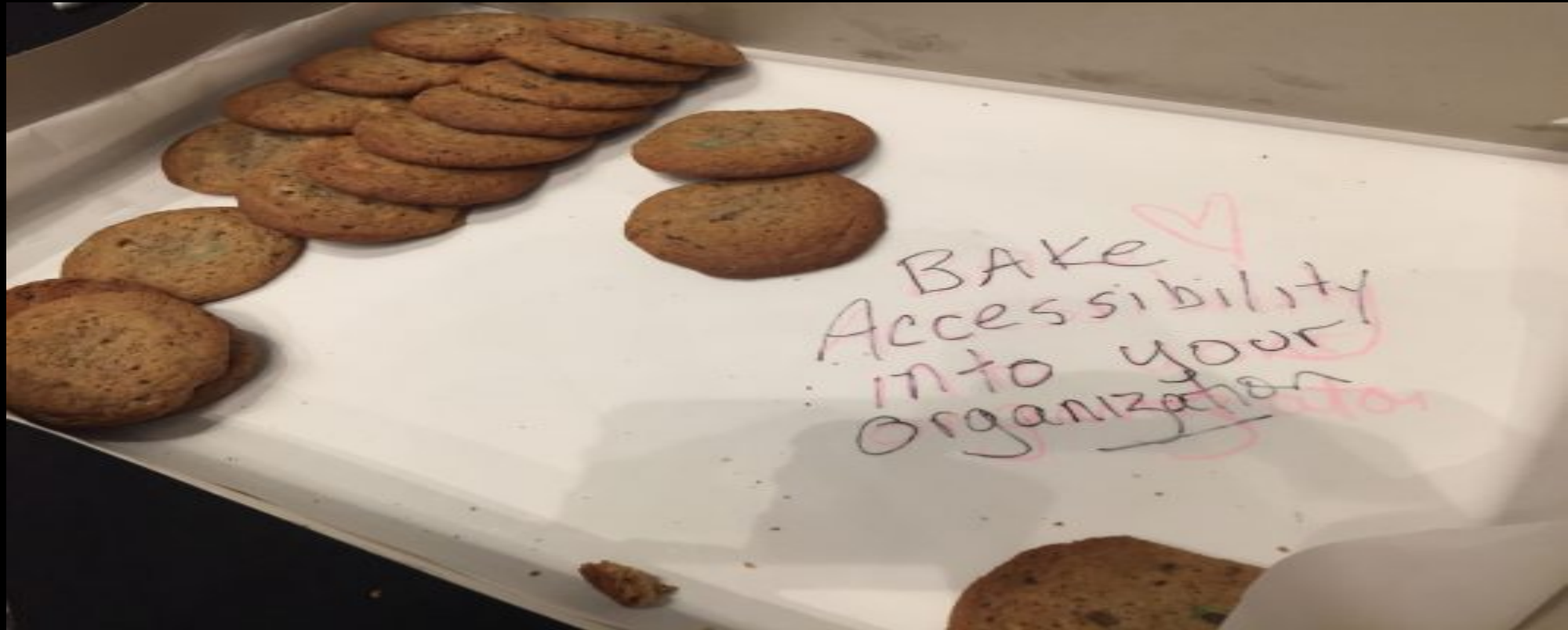


**Laws (foundation)  
+Advocates  
+ Strategies  
Results**

# Threat to ALL Legal Strategies: HR 620



# Good Strategies Bake in Access



# Best Practices....

- Web and Mobile ++
- WCAG 2.0 AA
- Web Accessibility Coordinator- **where?**
- Independent consultant – **who?**
- Accessibility Policy

# Best Practices.... Training

- Who
- What
- By Whom
- Check it out....



Photo: Shutterstock



# Best Practices.... Homepage AIP

LFLegal.com  
[search [Hitachi](#)]  
Contact  
Information  
Commitment



Photo: Whirlwind Int'l

# Best Practices.... More

- Add to performance evaluations
- Use a testing tool (CMS Settlement)
- Usability Testing
- Vendor Contracts (**specificity**)!

[lflegal.com/2018/04/vendor-contracts/](https://lflegal.com/2018/04/vendor-contracts/)

# Best Practices...Higher Ed

1. Go to....3PlayMedia.com

2. Search....Paul Grossman

3. Select....The Legal Year in Review;  
Accessibility Trends in Higher Ed

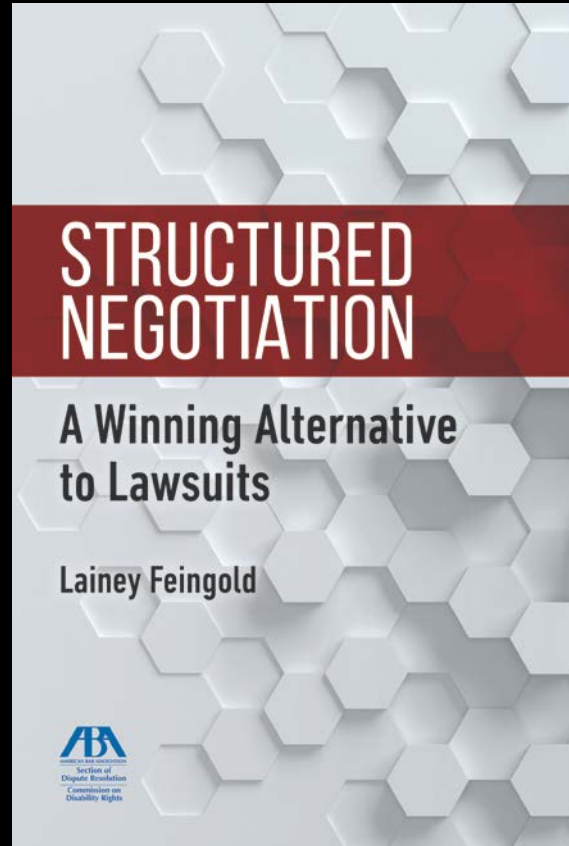


# Best Practices....Culture!




[lflegal.com/2018/05/accessibility-culture/](http://lflegal.com/2018/05/accessibility-culture/)

# LFLegal.com/book



- Stories!
- Strategies!
- A11y!

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