

# AT Banter Podcast Episode 264 - Lainey Feingold

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## SUMMARY KEYWORDS

people, lawsuits, accessibility, lawyer, companies, lainey, blind, sued, case, law, negotiation, called, website, disability, accessible, overlays, disability rights, talk, money, hear

## SPEAKERS

Rob Mineault, Steve Barclay, Lainey Feingold, Ryan Fleury

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**R** Rob Mineault 00:34  
Hey, and welcome to a another episode of AT Banter

**S** Steve Barclay 00:40  
Banter, banter,

**R** Ryan Fleury 00:41  
Banter, banter.

**R** Rob Mineault 00:44  
Hey, this is of course, the podcast where we talk with advocates and members of the disability community to educate and inspire better conversation about disability. My name is Rob Mineault, and joining me today ... Mr. Steve Barclay.

**S** Steve Barclay 01:01  
It's true I am joining you today.

**R** Ryan Fleury 01:03  
Oh, I see what you did there

**R** Rob Mineault 01:06

R Rob Mineault 01:00  
Who me? What did I do?

R Ryan Fleury 01:09  
You went to Steve first. How dare you?

R Rob Mineault 01:12  
Well, let's change it up.

R Ryan Fleury 01:17  
I see what you did there.

R Rob Mineault 01:19  
All right, well and also joining me last but not least, Ryan Fleury

R Ryan Fleury 01:26  
hello

R Rob Mineault 01:27  
I didn't realize it was so sensitive when we change things up. Oh boy. Oh boy. How's everybody holding up? The old gas shortage and we're good to hear I hear we have a new term in our lives ... atmospheric river. I hear we've got another one heading towards us.

S Steve Barclay 01:53  
Yeah

R Ryan Fleury 01:54  
I think to Thursday and Saturday I think

S Steve Barclay 01:56  
Oh, what what are they rated on a scale of one to five?

R Ryan Fleury 01:58  
I don't know, did they officially gave us a scale?

R Rob Mineault 02:05  
Yep. Yeah.

R Ryan Fleury 02:06  
Did they?

S Steve Barclay 02:07  
It's not coming into effect until January though apparently.

R Rob Mineault 02:09  
Oh, really? Oh, by then. It's gonna be something else. It'll be the snow grenade.

S Steve Barclay 02:15  
That's right. Yes. It'll be a snow blanket.

R Rob Mineault 02:19  
Yeah. Oh, snow blanket. That's another good one. Yeah, although it's not threatening enough. It has to be grim right?

S Steve Barclay 02:24  
You're right.

R Rob Mineault 02:24  
We need to be click baity. So it needs to be you know, snowpocalypse.

S Steve Barclay 02:29  
A wighted snow blanket. Nature's trying to give you a cuddle until you're dead.

**R** Rob Mineault 02:42  
I like it. Hey, before we go down too many rabbit holes. Hey, Ryan.

**R** Ryan Fleury 02:47  
Yes, Rob.

**R** Rob Mineault 02:48  
Oh, hey, what are we doing today?

**R** Ryan Fleury 02:50  
Today we are speaking with disability activist lawyer and author Lainey Feingold

**R** Rob Mineault 02:56  
I am excited about this. It's about time we talked to somebody that knew what they're talking about when it comes to the law.

**S** Steve Barclay 03:07  
Where's she from? She's from the states?

**R** Ryan Fleury 03:09  
Yeah.

**S** Steve Barclay 03:09  
Okay. So we're talking US law here.

**R** Ryan Fleury 03:11  
Yeah.

**R** Rob Mineault 03:13  
But she does do ... I took a look at her blog earlier. And you know she talked about different international law and stuff as well. So she's she's pretty well versed in terms of, of the different countries laws, so I it's

gonna be a really great conversation. I'm looking forward to it. Hey, Ryan,

**R** Ryan Fleury 03:31  
Rob.

**R** Rob Mineault 03:32  
I heard another one of these horrible rumors about us.

**R** Ryan Fleury 03:35  
Another one.

**R** Rob Mineault 03:37  
Yeah, but now that people can call us and leave us messages

**R** Ryan Fleury 03:43  
They can, if they want to get in touch with us leave a comment or have a suggestion or show topic they want to leave us they can call 1844996428 to leave us your name and your message. And if you give us your permission, we may play it on an episode. Hang on, Ryan what's that number again? That number again is 1-844-996-4282

**S** Steve Barclay 04:08  
Alrighty, I've got it written down now. I can I can work on acronyms.

**R** Ryan Fleury 04:13  
I tried to it's the only thing the only thing I could .. what was it I could come up with? I think it's just IATB. Trust me I tried cowbell. I tried C Bell, I couldn't get banter. I tried. I tried. But it was like I think it was IATB

**R** Rob Mineault 04:35  
Hmm Interesting. Yeah. IATB, that sounds too close to I hate AT Banter.

**R** Ryan Fleury 04:46  
Well, mind you know this may be this may be for a limited time only we shall see.



Caricature. I don't know what you look like. So I don't know how close it is. But it looks good.

**S** Steve Barclay 05:43  
I look just like that. I'll start video, You'll see.

**L** Lainey Feingold 05:48  
I want something like that. Bad or a little cartoon icon or something? Yeah.

**S** Steve Barclay 05:54  
Yeah. But that was done by a caricature artist at a dealer meeting that I went to one time. They just had the guy sitting there you could walk up and he do your do your thing. I thought that was a pretty good one.

**R** Ryan Fleury 06:06  
Very cool. And also joining us Lainey is Rob Mineault.

**R** Rob Mineault 06:11  
Hello, sorry, I don't have a caricature at all. Just use your imagination.

**R** Ryan Fleury 06:16  
Think of a grumpy old man.

**R** Rob Mineault 06:18  
Nice. Who you calling grumpy?

**L** Lainey Feingold 06:23  
Hi, Rob. Nice to meet you. I'm sure you're not grumpy. I am old. I'm sure. It turns out in accessibility, apparently I'm older than everybody except Larry Goldberg is one year older than me. So I'm just owning the old thing.

**S** Steve Barclay 06:40  
Excellent. You're You're the elder statesman of accessibility.

L

Lainey Feingold 06:44

I'm an elder, that's for sure.

R

Rob Mineault 06:47

Okay, well, why don't we start out by giving us a little bit of a background about you, and just how you you became involved in being a disability rights advocate and lawyer and how your sort of introduction into that space.

L

Lainey Feingold 07:04

My name is Lainey Feingold. And I am a Disability Rights lawyer. I practice out of my home office where I have worked for 25 years. And that's in Berkeley, California. And I basically fell into disability rights. I like especially when I talk to younger people, I like to start by saying that I was fired from a job that I thought I was going to be in for a lifetime. And that was in 1992. And I was like, Oh, now what? I had been a lawyer for 10 years at the time. And there was an opening at a Disability Rights nonprofit in Berkeley. It's called Disability Rights Education and Defense Fund, Dread F. It's still a strong nonprofit here in the States. And they had a four month opening. So I was like, okay, shockingly to myself. Now. I didn't know anything about disability rights, even though Berkeley California is considered one of the birthplaces, if not the birthplace, of Disability Rights in the United States. And I went there. And one of the first things I worked on, was one of the first things I worked on was a case about bus drivers not announcing stops. This was in 92. And the Americans with Disabilities Act was passed in 1990. So there was a lot of promise and potential about what a civil rights law could do for disability rights. And I got to know a guy named Harry chord Delos. Have any of you ever heard of him?

S

Steve Barclay 08:49

I have not.

L

Lainey Feingold 08:51

He was a character. And he's blind. And we used to ride around the streets of San Francisco on the buses to see if the drivers were announcing stops. This was before they had the automated stop announcements. And Harry said something to me. He was really the first blind person I ever knew. And he said to me, something that I often think, and I often quote, which was "Lainey -- Stop thinking that blind people are sighted people with paper bags over their heads." It's not that and that was, you know, that was my first introduction to one person experience with blindness. And then, probably a year after I went to Dread F - it was supposed to be a four month stint, but the person who was on leave actually did not come back. So I ended up staying there for four years. And during that time, several blind people came and said, there's no ATMs, automated teller machines that we can use. Do you think The Americans with Disabilities Act can help with that? I was working with some other lawyers. And we thought we had a good lawsuit. I had worked in traditional civil rights cases, I had represented labor unions. And so filing a lawsuit was what you did when something was wrong. But here, we said, you know, there aren't any ATMs that work for blind people at that time, anywhere in the world, there were none. And the Americans with Disabilities Act was a new law. Or like, what if we got a bad judge who didn't think blind people should be able to independently

use ATMs or be too dangerous, whatever. So we decided to write to three banks, Bank of America, Wells Fargo, Citibank, the biggest banks in the US at the time. And we said, you know, we have a problem here, but instead of suing you, do you want to sit down and negotiate? And they did. And that was a kind of long way, I guess, of telling you how I started in this space, being a collaborative lawyer, working with the blind community and big companies in collaboration instead of lawsuits?

S

Steve Barclay 11:07

Well, I have a question. Because I mean, typically, our view, you know, from a Canadian perspective, looking at the US legal system is our impression at least is that you guys get paid with a successful lawsuit. So how do you get paid when you go to a bank and you say, hey, you know, I want to, I want to sit down and come up with a solution?

L

Lainey Feingold 11:30

That is an excellent question. And you know, when I speak to American lawyers, they're very skeptical, like, "how can you get paid" and "I can't collaborate, because we'd never get paid." Because you're right. In the United States. In civil rights cases, we have what's called fee shifting, usually in lawsuits, everybody has to pay their own lawyer. But in civil rights cases, both about race, gender disability, the US Congress recognize that people with discrimination claims can't afford to have a lawyer. And so if you win a discrimination case, the fee responsibility shifts. So instead of having to pay your own lawyer, company, or government or whoever you sued in, one has to pay your lawyer. But in my experience over the last 25, now years, practicing Collaborative Law, which we call structured negotiation - that's the title of my book - everything can be talked about. So when we sit down with a new company, we talk about ground rules. And in my book, I have a sample Ground Rules document. And we say, you know, we want to negotiate, but we can't, we can't put our clients at risk. They can't give anything up because they negotiated instead of suing, although they can give up the stress and anxiety of being a lawsuit. So in the Ground Rules document, we usually have a section that says that will receive our attorneys fees, as if, at the end of the day, you know, if we work out in agreement to fix whatever problem we're trying to fix, that attorneys fees for us will be part of it. The Americans with Disabilities Act doesn't have a requirement that the disabled person can receive money for the civil rights violations. But a lot of states do have laws that recognize that money is a way to compensate for civil rights violations. So at the end of the day, we're going to be negotiating also about money for our clients, as well as attorneys fees for ourselves. And you know, what it works and the skeptical lawyers who are like, well, what if this happens, and I don't think, you know, lawyers are the masters and mistresses of 'what if'. But that's been my business model, you know, until a couple of years ago, and I started doing some work for nonprofit. That's the only way I got paid for last 25 years. So that's my experience. It works.

S

Steve Barclay 14:08

I'm wondering if you had cases where you've gone and you've youth approached with this collaborative idea, and then companies have just brushed you off, and and you've had to sue them.

L

Lainey Feingold 14:19

You know, there's only been one case where that happened. And that was a case against an airline, because airlines are not covered by the Americans with Disabilities Act. They have their own law, and it's a

weak law. You may have read that has huge problems in the US. Probably Canada to it. Yeah, airlines and, you know, wrecking wheelchairs and a woman died recently because her wheelchair was wrecked and they gave her an inferior one. Well, at the time, we sued the airline at the time we tried to negotiate with the airline. It was about Website Accessibility as well as Kiosk Accessibility at the, you know, check in airport check ins. And, you know, they got this young lawyer who's like some big firm is like, he wrote a letter, "we will never engage in structured negotiation", that was just very haughty. And so we had to sue in that case, at the time, the US government was working on regulations that would require websites to be accessible, that would require kiosks and airports to be accessible. So eventually, we lost that case. And interestingly, before we lost the case, they hired another lawyer. And as soon as we found the last lawsuit, that lawyer said, you know, we should sit down and try to negotiate this. So we actually had some very good conversations after the lawsuit was filed with this airline. But unfortunately, another group of blind people had sued a different airline about the same thing. And when they lost their case, the airline we were talking to was like, "well, we can't negotiate with you, we're gonna win in court, because this other case, there's precedent there". Yeah, so that's what happened there. But by and large, you know, I think the success of Structured Negotiation, I tell a lot of stories in the book. It's really, because we're bringing real people in front of the companies, people who are their customers, or their clients, or the general public. And in my experience, when you put these real issues and say, "Okay, here's a bank customer who can't get \$20 of their own money out of a machine, because you haven't designed with accessibility", or "here's a blind pharmacy customer who can't read the label on their prescription has to put a rubber band around one prescription and two rubber bands around another". You approach people without aggression, and without screaming and yelling at them, which is basically what a lawsuit is. In my experience, people have been willing to sit down in and solve problems.

R

Rob Mineault 17:26

Interesting. Yeah. And that makes a lot of sense. Even just from a psychology point of view, you know, people are going to respond better when they don't feel like they're, they're being screamed at. And not only that, I think that, you know, if you can talk to companies and corporations in their own language and present sort of a business case, almost for accessibility. I think that that they do sort of pay attention to that.

L

Lainey Feingold 17:56

You know, my dad is a financial planner, I'm very lucky that even though I am an elder, I still have my dad who's 88. And he's didn't want to my biggest supporters my whole life, and in this career, and he's always like, basically, you're a consultant to these companies. I'm like, well, they're not really consultant because I'm not. But that's basically what you're doing. He's always saying and in some ways, that's true. Because one of the best things about Structure Negotiation when it when it works at its finest now, all the cases that I've worked on the settlements and the press releases are on my website, and people can look at them. And I'm not saying they're all it's all been a lovey dovey experience, but the best ones are ones where the company's real, or the government whatever can really get to know the blind people involved. And when you're in a lawsuit, there are certain roles and the roles are very rigid. You're a plaintiff, you're a plaintiff, defendant, defendant -- everybody has to hire an outside expert. In this process. Blind people can be experts, in their own case with their own experience. And that has been some of the most powerful successes I think of this process are when everybody's sitting around a table, and the experience of blind people are like 'aha' moments for the companies making the decisions, which is why when I talk to companies outside of structured negotiation process. First thing I say is, you know, you gotta sit down with

people with disabilities. And if you don't have on your staff, which you should, you got to have a relationship with a nonprofit. And you got to hire some blind people or people with other disabilities because that is I think the ticket to the kind of inclusive society we're all looking for here.

R

Ryan Fleury 20:05

So, I'm very ignorant when it comes to the ADEA. Does it cover web accessibility? And if so, is that the law guidelines, whatever you want to call it, that is held up to these companies such as CVS, Target, Domino's, and whatever to say you're in violation of this. So that's, that's me that's talking about this. Like, who determines what's accessible and what's not?

L

Lainey Feingold 20:31

Um, that's a really good question. One of the issues that has been the subject of some of the lawsuits is, well, we don't have any regulation that specifically says, if you have a website, it has to be designed and developed to the WCAG standards. But since 1990, we have a law that says, you can't discriminate against disabled people, you can't have a program or a service that's not available to disabled people if you're a public company, like the ones you've mentioned. And that part of not discriminating is effectively communicating. The only way to effectively communicate what's on a website is to make the website accessible. In the Domino's Pizza case, you mentioned one of the arguments was Domino's was saying, well, people can call on the phone and find out what kind of pizza we have and what our hours are. And so that's our way of effectively communicating. The ADA gives them the right to make that argument. But so far, it's never been accepted by a court. Now unstructured negotiation -like the stories in my book show - the way it starts, I mentioned yelling and screaming. I often say like a lawsuit is a punch in the punch in the face. We tried to start with an invitation to negotiate. So when we write a letter, we there's sort of two key components here. One is we do write what the law is. And it's not just the ADA, we have laws, like I mentioned before, many states, like California, New York have the strongest state laws on discrimination, which is why you'll see a lot of lawsuits in California in New York. But in our process, we sort of put the law at the end. And we start by saying instruction negotiation, we don't have to fight about the law. But we want you to know that we think the law supports our position, you know, something like that. And I, you know, I've got I've gotten more confident in the process, obviously, this all I've done for 25 years. So and I'm sort of known in connection with this process now. And I've written a book, and I just put up the second edition last month. So I can be very kind of straightforward and say, you know, we don't think we should get bogged down in the law. So here's a little bit of why we think your conduct is illegal violation. And if you need more, let us know. And you know what no one ever asked for more. No one ever wants more, a lot more case citations or more. And then when we get back a letter, another aspect of the process is the mental state that you have to have to be successful collaborating. And that mental state gets called into play very early, because when you get the letter back, typically they've hired a lawyer, and they go blah, blah, blah, about the legal reasons, they don't have to do it. You know, and, you know, I do structured negotiation training for people, not just for lawyers, and advocates. But these are kind of skills you can use whenever you're trying to advance a cause or whatever. And I always say, the quote from a woman in the US, and the quote is, "I've stood on a mountain of noes for a single Yes". And that's kind of what it is you kind of plow through all the 'no's' in the letter you get back. And typically, after all that legal stuff that they throw at you, they'll say, "but we're willing to sit down and talk" or "we're willing to sit down and hear what you have to say" or "we're willing to see". The law doesn't require it, but we're willing to see if we can improve the customer experience -- the business case, like you guys just mentioned. So yeah, so the law and without the law, some of the skills obstruction negotiation, I think, can and are effective in terms of if you're having a meeting with someone that you're trying to get something from the person don't start by yelling at them. You know, I mean basic things like that. But without the law, this process would not have

been the success that it has been, obviously, you know, you guys are in Canada, I want to make sure I tell you one thing that I have in the book -- let me just read you one sentence, it says "advocacy north of the border gave us an early lesson in the importance of paying attention to activists working on issues underlying our negotiation." And then there's a couple paragraphs about how the very first talking ATM came out of Canada, right. In a case filed by a couple of last names, start with the Canadian Human Rights Commission, you probably know this. Yeah. And, you know, when that happened, that was a big boon to our negotiation. Like, we were making steady progress, but here, you know, Canada got the first at Royal Bank of Canada. And we did all this research, and we discovered that TBAS, who built them. So it was really an international effort to get our first negotiation to the finish line.

S

Steve Barclay 26:10

Nice. That's nice to hear that we have the Canadian connection there. Thanks, thanks to the Stark family for bringing that to the Human Rights Commission. So people often say that, you know, in Canada, we don't have a Canadians with Disabilities Act, or we haven't until just recently we do now. But there's not, there's no teeth to it, it's got no real enforcement mechanisms. But the people often say that our human rights legislation can be more powerful than the ADA. And I'm just wondering if you have any sense of that, if you've ever had a chance to compare our different systems work.



26:58

No, I haven't done that. But, you know, I, I often couple times a year I do the Digital Accessibility Legal update. For it, I'm actually doing one in December. Play Media has a free webinar series, and I'm going to do the update. And it's mostly US. But I do try to get at least a little bit of a sense of what's happening around the world. And I also do work with a nonprofit here called Disability:in, which is actually global and include, it's like a business to business, disability, inclusion, nonprofit, there are Canadian companies in it. And I often speak to those partners about these issues. And for that, I rely on my friend, David Lepowsky, who has filled me in on the strength. Even though you're waiting for the national law to get some teeth and the regulations and it seems like it's going to be a long process, you do have the basic non discrimination provisions of the Human Rights Code. And I have a little national global file, but I didn't really prepare it for this chat. I don't have it at my fingertips. But I do think that the process of collaboration is a good way to test the strength of some of these laws, even the CRPD, you know, the Convention on the Rights of People with Disabilities, because it's there. And then a lot of these laws aren't really being used to the full extent they can be used. And we don't want to be fighting out the meaning of any particular clause if we can help it because we don't want to lose, you know, but to have that kind of law as a foundation to get in the door to get to the right people to get the legal department to pay attention. I think there's potential there.

R

Rob Mineault 28:54

So that's a that's a perfect segueway into something else that I wanted to talk about, actually, because I was reading over one of your legal updates on your on your website, and the one that stood out to me - because it's it's kind of a favorite topic that we like to talk about around here - is the Accessible Overlay edition of your legal update. And I just wanted to sort of talk a little bit about about accessible overlays, and sort of what that space looks like these days. Because it is I know, it's something that's it's fairly new. And there's there's been quite a bit of controversy around them. So I just kind of wanted to get your take and, and to get to talk a little bit about that. That legal update because there's some there's some kind of

alarming things that you talk about in there, including over in France, where there's an overlay company that's actually went ahead and sued a disability advocate for speaking out against their their overlay. So yeah, what's sort of the temperature of overlays over here?

L Lainey Feingold 30:03

Well, I like your word alarming, because it is alarming to me. And, you know, I'm an optimist. I actually write about optimism in the book. And, you know, I recently said to someone, just to say, just to get off topic for a second. Have you ever had Josh Miele, on your show? Do you know Josh?

S Steve Barclay 30:27

I've known Josh for years and years since way back when he was at Berkeley systems. Uh huh.

L Lainey Feingold 30:33

Well, I hope you all know that he got a MacArthur Genius Award this year.

S Steve Barclay 30:38

No, I didn't know that.

L Lainey Feingold 30:40

Yes. Which, in case anyone's listening doesn't know. That is an award that comes with a \$500,000 Prize, and is really in the US here. Like a top recognition, like you are at the top of your field. And Josh has blind and he's an inventor. And so there's Josh getting the MacArthur, then there's a project called Astro Access. Have you been following that? Where the idea is, how can disabled people influence a space program, and they chose 12 Ambassadors, 12 disabled people to go on a zero gravity flight that happened last month. And I've been saying to people, I want to talk about Josh, I want to talk about Siena. I don't talk about overlays, or like it to me, it's one package overlays, and drive by lawsuits by unethical lawyers in the US, it's on the package. I don't think one would exist without the other. And in addition to this, Josh getting the MacArthur, that's fantastic. It's really good. It's an astroaccess.org. And it was 12 people with a variety of disabilities. And, you know, the idea is, if you open space, who knows what's gonna happen, so having disabled people, and having their creativity and work around ability, I'm not doing it justice. But and then there was also recently Yahoo put out a fantasy football, blind fantasy football league, they did like a five minute video, they brought together all these blind guys who can have a fantasy football league using Yahoo Sports, and like, that's inclusion, that's accessibility. And then on the other hand, we have these overlays companies that they have so much money, that's a part that is hard to be optimistic about for me because they have so much money, and the money is going into marketing. And I know because I personally talk companies out of using them, that many people using them are kind of unsuspecting consumers. And people want a fast solution. And you know, people always say to me, do they work? And I said, you know, if they worked, Microsoft would be selling them - because Microsoft is committed to accessibility. They're a global leader. They're a leader in AI, if there was a one line of code AI solution, I would be happy to use it. I would be advocating for it. Microsoft would be selling it or giving it away for

free. Yep. So I it just, and you know, they gave a lot of money away to disabled people and nonprofits and it's really a mess. I'm alarmed by it. I mean, one thing we're really trying to put out that article that I wrote, my website is [lflegal.com](http://lflegal.com). And there's a high level Legal Update tab, you can read that article. And Karl Groves has done an amazing job with the overlay factsheet - [www.overlayfactsheet.com](http://www.overlayfactsheet.com). And he's gathered all the articles everybody's written, including the media reports. So yeah, I think it's a real problem. I'm proud to say that in our last two settlement agreements, we have put in a clause that the companies won't use the overlays. And that's not because we're worried that our negotiating partners will use them.

R

Rob Mineault 34:41

Yeah. That's just not a solution.

L

Lainey Feingold 34:44

Yeah, and it's and part of it, you know, we have this problem in the US with unethical lawyers who have found a way to, you know, file lawsuits based on a scan of a website. If I got a call from I don't, I don't defend companies who have been sued in those lawsuits just because I can't do everything. And there's sort of ethical conflicts. And even if I, even if I'm sympathetic to the companies, because they get these lawsuits, even if they have a good program, they can get a lawsuit. And many of the companies get more than one lawsuit. And I got a call from a company, a nice company. And he's like, I really care about web accessibility. I've done all this stuff, I still got a lawsuit, what can I do? And he said that the lawyer who sued him filed I think, 26 cases for the same person in a week and a half. A couple years ago, I wrote a piece illustrated by an image of red flags. And there's a whole bunch of red flags to look at. Because I believe in lawsuits. And I have to personally be very careful that people don't hold me up and say, "Oh, maybe if I owe them think you need a lawsuit, because she has structured negotiation". It's not that I'm all for ethical lawsuits, and they help structure negotiation, because companies see that plaintiffs win lawsuits, so why would they want to fight? Why wouldn't they want to negotiate? But these lawyers who think, you know, that they can take -- I can't file 26 lawsuits in 10 years. I'm not joking. I mean, you guys all know what it takes to really get this right. It's a lot of detail. And I do a talk about the accessibility cookie, meaning, just like there's a lot of ingredients that have to come together in a cookie, there's a lot of roles that have to come together for a real accessibility program. It's not just coding, you know.

R

Ryan Fleury 36:47

So Lainey, I don't know if you can answer this question or not. Are there lawsuits against lawyers and law firms with websites or services that aren't accessible? Because we don't hear about those we hear about the CVS, we hear about the Domino's we hear about the retail mom pop stores. But are there law firms being sued?

L

Lainey Feingold 37:11

Well, you know, there's about 3000 lawsuits a year. I think last year, there were over 3000. So we're only hearing about top tier kind of clients, and many of these unethical lawyers target the pockets, because they're hoping that the company will just throw 5/10/15/25, whatever, you throw some money at it and have it go away. I do you know, my family, my aforementioned father. They have an insurance agency,

financial planning agencies, small thing in Massachusetts, where I'm from. And my brother in law, who works with my father called me this year, and said, we got a letter thing our website was inaccessible. And apparently they send it to every single insurance agent in Worcester.

R

Ryan Fleury 38:14

Yeah. And we do know, there are people that are filing suits all the time, and people looking for companies to sue.

L

Lainey Feingold 38:21

But I would bet that they're not suing law firms for one reason, I'm sure their own loss. I mean, some of these lawyers don't even have lost love, sorry, don't even have webs insurance sites, because they don't want the company to come back and say, Well, look, your website doesn't do this. Right. So it wouldn't surprise me if law firms have not been targeted, then again, it wouldn't surprise me if they have I'm just not.

R

Rob Mineault 38:49

Yeah, for sure. You know, and I know that, you know, certainly, you know, the shotgun method to litigation is not effective, and not really good for anybody. But in terms of the accessibility overlays, and, you know, specifically, some of these lawsuits, it seems to me, are, are important. So say the, the Eyebobs lawsuit, for example. And, you know, and that that sued being successful, is, is that sort of an important milestone, because if companies can can look at access to be in particular, and say, Oh, obviously, having Accessibee isn't going to protect us from a lawsuit that sort of undercuts that marketing effort, that access to be so good at, and that's kind of the beginning of the end for them. Is that how you sort of see it?

L

Lainey Feingold 39:46

Well, there were over 200 lawsuits last year against companies using an overlay. So we've known for a long time that using an overlay doesn't protect you from being sued. sued. What's good about this Eyebobs case? And for people in your audio listeners who don't know, that was a case where Eyebobs used an overlay and they got the lawsuit. What made that case special was that the company hired - No, not the company, the plaintiff - hired Karl Groves, who's an ethical consultant and an expert in overlays to really analyze what exactly why the website was still inaccessible, even though it had the overlay. So, yeah, I think that's an important case, because it got more publicity. And I'm not here to say none of the cases are good. I mean, it took me a long time to be able to speak publicly about what's wrong with the lawsuits, because, you know, in some way, they brought attention to the issue. And I always say, like, I don't believe fear is a good motivator. But some people who get one of these lawsuits or get a demand letter, they do hire a good consultant, and they do make the website more accessible. So that part is good. It's a very nuanced conversation, I've kind of come down that on balance. Because 3000 lawsuit is ginning up an industry like Accessibee to give people a comfort level that they won't get sued. Even though it's not true. I've sort of come down feeling like, we have to be able to find the words to say why accessibility isn't just about lawsuits, and checking the boxes, because any of us who've been in it a long time know that that you know, people get a lawsuit. they'll settle it, they'll throw \$10,000 at it, they won't have an accessible site. And they won't think well of disabled people. You know, unstructured negotiation. Language is a really

important skill. And the book I talk about why we don't use the word plaintiff for the blind person who's bringing the claim, we say claimant. One reason is because when I looked at the root of the word plaintiff, it means wretched complainer.

S

Steve Barclay 42:29

I had no idea. I'm going to use that.

L

Lainey Feingold 42:32

I had no, I had no idea either. As we built start, you know, structured negotiation was not born out of whole cloth - or whatever that expression is - it developed with the lawyers who used it with the blind community with the organization's you know, we work very closely with American Council of Blind State affiliates. And I knew we didn't want to call people plaintiffs, because that's in the United States. People who are plaintiffs are looked at as wretched complainers, and this whole development since 2017, of all these lawsuits has really fed into that and the judges, the arbitrators, they just think, oh, no, here's another blind person trying to get money out of a company. On balance, I think that hurts us in the long run. So yeah, I think yeah, you asked a good question back to the Eyebobs, that case matters. And it's great. People have written about it, I think it's gotten a little mainstream press. Yeah. And it contributes to getting the word out. But what we know to be so true, you know, 600, people assign the overlay statement. And there's been national news stories about problems with Accessibee, and a lot of blind people have spoken out very forcefully, not just that it doesn't work as promised, but it actually causes harms. Yeah. It creates barriers. We all know that it's very hard to break through the noise when you're up against a venture funded, gigantic, you know, marketing machine.

R

Rob Mineault 44:12

Yeah, well, I think that that even extending beyond that, the even the more harm that they do is that they also tend to, to almost demonize the idea of, of, of accessibility in their marketing, because their whole marketing is like, "hey, look, you know, you don't want to get sued by these by you know, by these people that are that just want to come in and sue you over accessibility issues. So sign up for our subscription based service and we can protect you against them" like, that's the whole marketing push. And not only that, it they they also make the idea of accessibility, which is already a fuzzy concept to a lot of people. They make it even fuzzier by spreading sort of disinformation about what it actually means to make your website or your product accessible, so they're doing a lot of harm to the whole movement. And that's really the problem with it, it's not even so much that their product doesn't work because, like, honestly, the market is full of products that that don't work, you know, late night, late night infomercials, like, you know, none of that stuff necessarily works as advertised. That's just that's part of marketing. It's, it's really more the damage that they're actually doing. They're pushing back against the whole accessibility movement.

L

Lainey Feingold 45:35

I completely agree with you. And they also I like how you said demonizing accessibility, some people use the word weaponizing. Accessibility or disability, because you're taking people out of it entirely. It's like, Oh, my God, here's this problem you have. And with no effort, that's the thing that just kills me there. Add the Accessibee add, like with no effort?

R

Ryan Fleury 46:07

What kills me as a blind user is there no one at Accessible including their own staff? That have actually been added table with them with their plugin on a website trying to use a screen reader that get now gets disabled because Accessible has taken over? Like, do they not see it doesn't work? Like what's the issue? Why is there such a roadblock?

L

Lainey Feingold 46:36

That is a million dollar question, Ryan. I mean, I think they're just in it. I don't know they're in it to make their they have a business and they try to make money. I think there might be people. I mean, they do have a blind guy forgot. His name's very active. And like I said, they have paid

S

Steve Barclay 46:56

We were just talking about it before the show. The the blind guy they've got has been on our show.

R

Rob Mineault 47:02

Michael Hingson, yeah.

L

Lainey Feingold 47:04

Oh, yeah. I don't know. I don't know him.

R

Rob Mineault 47:09

you know, it's, it's funny. And that's why I really love your approach to because in a sense of involving the community, because I feel like any company out there, like when you actually bring in the community, you know, you're basically saying to them, it's it's not, it's not so adversarial, because you're saying, Look, this is a customer, this is somebody who wants to use your service, but can't like, and I think that that resonates with with companies, much better than litigation.

L

Lainey Feingold 47:42

Yes, I agree with you think thank you for saying that. And I mean, some of the core, but there's a chapter towards the end of the book that I was kind of afraid in the first edition to put it in the front. Because I was afraid that if I talk too much about trust and kindness and empathy, like it's the book, not just for lawyers, but you know, did want lawyers to read it. So it's still in the back of the book. But honestly, when I do the trainings, I really do that first. Because even in the biggest companies, a human being is going to read the letter. And that human being is going to have feelings. And another thing about accessibility is one advantage we all have. Accessibility is part of so many values companies already have, you know, like

trust, or privacy. If there's no accessibility, security and privacy are broken. When a Customer Service says, oh, can someone help you with that? They may as well say, well, someone breached the security we've set up so you can't do it independently. All these things can be talked about in the conversation without attacking without, but not in a lawsuit. Because a lot I mean, eventually lawsuits will get to the negotiating table. But even then, there's a lot of bad blood between one last thing on that overlays we haven't talked about is the way in which many of the companies demonize us. And by us, I mean, advocates like us. And they say, Well, you shouldn't listen to them, because they've just made money off of this for many years doing it the old fashioned way. Yeah, this is the modern way. And so don't try all these people, including myself. I mean, one guy put on LinkedIn, like, "you made money off this for 25 years and you're afraid to step into the modern era of AI solutions". Like whatever. I don't engage with people like that. I mean, you know, they say these to companies who don't know us into government agencies and nonprofits. It's not just companies, nonprofits, it's Mom and Pop restaurants. Yes, we have. What was the word use alarming? Horrifying, all those?

R

Rob Mineault 50:14

Well, before we let you go, I want to talk about one other thing that's a little bit more positive. I noticed that you did you did a talk that was specifically aimed at developers. And I thought that that was that was really, that was really on point because I've always said that really, this idea of accessibility is going to be at its most successful when it's baked in at the beginning, in any sort of process. And those I feel like, those are the people that we need to actually focus on, because we can scream all we want at the companies and the corporations. But really, at the end of the day, they're just, they're not actually doing the work. They're not building the foundations of whatever their services or website or whatever. They're, they're contracting that out to developers. And so I feel like up and coming, the next generation of web coders and UI developers, if they understand accessibility, and they understand how important it is, then they're the ones that are going to be like in charge of building a platform for a corporation. And if they understand that, then they're just going to bake that in at the beginning.

L

Lainey Feingold 51:40

Yes, um, a couple things that brings to mind first of all, you're familiar with this project called Teach Access?

S

Steve Barclay 51:48

No, I don't know it's a new one on me.

L

Lainey Feingold 51:51

Yeah, it's [teachaccess.org](http://teachaccess.org). And I really recommend it. It's, it's a nonprofit, it started kind of as a volunteer effort of accessibility, people in companies thinking, we don't have the talent we need. People are coming out of computer science programs and boot camps and colleges, without knowing accessibility. And they do a lot of great work. They they are in the colleges, they give grants to professors, just to address that thing you're talking about. Another very good thing they have on their website is they have a section with job descriptions for accessibility. And they have the job description, they have questions for interviews, to help companies hire people with the skills that we're talking about. So that's one thing. And another thing is, yeah, I like doing the talks for developers, designers, you know, shift left as far as possible. And even

the legal updates are not designed for lawyers. They're designed for me to say, accessibility is a civil right. And whatever your ingredient in the cookie, you know, whatever your role, whether your procurement or design development, if you do your work with accessibility in mind, you're enforcing the civil rights of disabled people. And I haven't seen that for a long time. But because I'm active on Twitter, I can see still today when I say that, some people don't know it. And I think people want to know that the work they're doing has potentially a bigger impact. I also like to talk about the global community. You know, you're not just a coder, sitting in front of your computer for x hours a day, you're part of a global community, which is why I always, you know, push the little white hashtag on Twitter. You know, I think that social media stuff matters. And the more people we can plug into that community, the stronger we all are, together.

R

Rob Mineault 54:09

See, oh, that's a you don't that's a perfect soundbite to end on.

S

Steve Barclay 54:14

Don't say another word. That's perfect. Thank you so much. You've given us a much better picture of how things are working down there. Because you know, mostly mostly, all we get are the headlines right? And, and, and the screaming.

L

Lainey Feingold 54:35

When I do those updates, like, right, I put on LinkedIn. If you've never seen one of my updates, I promise you, you'll get more than just numbers and legal jargon, because you know, it's not just overlain companies, honestly, a lot of the reputable consultants, everybody's talking about the number of lawsuits and using lawsuits as the motivator to get the work done. And no, it has its place. But we just have to be careful because I think it's kind of a danger. It's, like I said, I want to talk about Josh and Siena. So it's a, it's a great time for accessibility. So the like a good time I feel like a tie in is really, accessibility is having a moment. And, you know, Google does their ad focusing on their captions and Microsoft, does their national TV ad focus on their accessible gaming console and all the jobs and that's all good. And maybe this overlay and drive by lawyer thing is just kind of a price that we've reached the national stage.

R

Rob Mineault 55:44

Yeah, I would agree, I think that, you know, I don't think we've ever is ever been as much of a conversation as it is now. Like, I think that inclusion and the idea of accessibility is certainly more of a more of a hot topic these days. And I think that that's, that's what's important.

R

Ryan Fleury 56:02

Well, it is like it was it earlier this year, the Academy Awards for the first time ever had a wheelchair ramp. Inclusion is front and center and people are starting to take notice representation in media is starting to happen.



**R****Rob Mineault 56:19**

Yeah. And that that along with the fact that the technology is just getting better and better. I think that yeah, I think you're absolutely right. I mean, we you can paint a sort of a dour picture on it if you if you look for the negative. But is there certainly a lot of positives in what's happening right now? For sure.

**L****Lainey Feingold 56:40**

Well, on that positive note, I really thank you guys have fun conversation. And thanks for inviting me and let me know when it's up. And I'll share it out on my channels, as they say.

**R****Rob Mineault 56:54**

100%. And for sure. And just before we let you go to I want you to give make sure that you have another chance to give a plug. Where can people find you? If if there's if they're interested in learning more about you and your legal updates.

**L****Lainey Feingold 57:07**

Yeah, thank you. So I have a website. It is lflegal.com. And I have a book that's called structured negotiation, a winning alternative to lawsuits. It's available in print and accessible digital format. Here's another Canadian angle that the woman who made it possible for me to self publish the second edition to be honest with you is named Laura Brady, who's a Canadian accessible book expert. And if you're interested in accessible books, she's your woman. I don't even know how she did it. And it just really looks good. And we made sure it's available on Amazon and other online booksellers. It's in Bookshare for people with print disabilities. So that's that's me. I'm on Twitter at LFlegal. And I'll just end with one little story but the aforementioned Josh Miele, when I was going to when I got my website in 2008, I was going to be LaineyFeingold.com and Josh said, no one will know how to spell Laney no one will know how to spell Feingold in your email address will not fit in one line of Braille on your business card.

**R****Ryan Fleury 58:39**

I heard that earlier today. And I snickered. It was pretty funny.

**L****Lainey Feingold 58:42**

I know I get it all the time. But to start out by saying you got to listen to disabled people. Work wherever you are. And now I kind of have this brand LFlegal, which is where you can find me on Twitter too.

**S****Steve Barclay 58:55**

Lainey, if you if you happen to run into Josh, please tell him I said hello. I used to I used to deal with him back when I was with a company called Aroga Technologies. He'll probably remember Aroga. But yeah, great, great guy. Glad to hear he's having the success that he is.

L Lainey Feingold 59:13

I know it's really was very, it's, it's great. It's really the MacArthur thing is very exciting for all of us. I think we all just felt like ah, yeah. All right. Thank you again, Ryan. Thanks for being persistent and getting me on.

R Ryan Fleury 59:28

Thanks for accommodating us. It's been a real pleasure.

R Rob Mineault 59:30

Yeah. Good to talk to you. Okay, bye. Thanks, Lainey. Yeah, man. I think we got like about five show ideas.

R Ryan Fleury 59:39

Yeah, don't get edit it down.

R Rob Mineault 59:42

Yeah, that's excellent. Oh, that was so interesting. I love it. I we could talk for another two hours.

R Ryan Fleury 59:48

Oh, easy. We didn't even talk global stuff like the European laws

R Rob Mineault 59:52

I know all that stuff. Well, unlikely, like I mentioned to you like you read the legal update on on Iflegal.com. Yeah, in France, there's a there's an overlay company that's like suing all the advocates that are speaking out against the company. So I was like, Man, I hope that that doesn't have any legs over here because man, I don't have any money if Accessibee decides to sue us.

R Ryan Fleury 1:00:17

Well, it's interesting.. Lainey made a comment about how much money Accessbee has, and why guess their investors have thrown at disability organizations. That just kind of floored me for a minute like, wait, what? They threw money at the disability groups, and we have the other half of disability groups complaining and advocating against Accessibee and it's like, Oh, my God, like, I didn't even thought of that.

R Rob Mineault 1:00:42

ROB MINEAULT 1:00:12

Yeah, man, yeah, there was so much more that I feel like I have, I had notes, I got like three points that I want to talk about out of like 10. So we'll have to have Lainey back on. But it's so interesting. Still, it frustrates me when we talk about the the Accessible Canada Act and enforcement. Because I really feel like that's where that's one of the most most important things. Like, you just you have to have teeth behind some of this stuff, or else you don't have a place to start. I love the idea of structured negotiation. But I feel like you got to have like a foundation there. You got to have some sort of leverage to get them to the table to have the conversation. And without any sort of enforcement, I just don't know how you do that. Unless, you know, you're lucky enough to be interacting with a company that actually is interested in doing the right thing.

R

Ryan Fleury 1:01:40

I think we need to get David Lepofsky or somebody who's on that board on an Accessible Canada Act back on the show, actually give us an update because I don't hear anybody talking about it on Twitter, social media, email, news groups or newsletters.

R

Rob Mineault 1:01:58

Wow. That's, you know, and that's part of the problem with social media, right? It's all the outrage of the week, you know, it just depends on who they're mad at this weekend. They just the Twitter mob and the you know, they just moved from target to target. So, you know, they're not necessarily talking about the stuff that actually matters a lot of times.

R

Ryan Fleury 1:02:16

Well, that's just it, you know, we need to find somebody who can talk about it, you know, if the Accessible Canada is a thing. Where is it at? You know, last we heard that. They still hadn't hired two positions. They were still working out the bylaws or whatever. Maybe in the New Year, we'll try and get someone on.

R

Rob Mineault 1:02:33

Yeah, we should, we should definitely have David back on because he's another guy that's fascinating to talk to. And he has like that inside view. Because I think it is important. You know what, you know, it's, it's, frankly, it's a little embarrassing. When you talk to people like Lainey and to be like, yeah, here in Canada like we didn't we even have an Act until 2019. Like, yeah, we're we're like 40 years behind the ADA.

S

Steve Barclay 1:03:05

However, we do have very toothy human rights legislation. So, you know, like I said earlier, you know, people say that our human rights legislation actually has more teeth to it than the ADA I don't know if that's true or not, you'd have to ask a lawyer I guess.

R

Rob Mineault 1:03:28

THANK YOU FOR JOINING US TODAY. WE'LL BE BACK WITH YOU NEXT WEEK.

That's true. That's true. And that's kind of I imagine that's what's kind of saved our butts. And a lot of ways is that is human rights legislation. So there you go. There you go. There you go. Wow, this show is gone long. We need to need to get out of here guys. All right. Let's go Hey, Ryan.

R Ryan Fleury 1:03:49  
What?

R Rob Mineault 1:03:52  
Where can people find us?

R Ryan Fleury 1:03:54  
They can find us online at [www.atbanter.com](http://www.atbanter.com)

R Rob Mineault 1:03:57  
Hey, they can also drop us an email if they so desire at [cowbell@atbanter.com](mailto:cowbell@atbanter.com), but even better than that, because who the heck wants to just send an email when you can pick up the phone and dial

R Ryan Fleury 1:04:13  
1-844-996-4282 That number again is 1-844-996-4282

S Steve Barclay 1:04:21  
or if it's easier to remember that is Ugh 9964 Bob

R Rob Mineault 1:04:30  
Okay, no, that's great. Okay, Ryan now your job is to write a jingle.

R Ryan Fleury 1:04:39  
976 Bob

S Steve Barclay 1:04:42  
9964 Bub 9864 Bub

R Ryan Fleury 1:04:51  
Great. Oh, now we're getting T shirts are we getting

R Rob Mineault 1:05:00  
Man.

R Ryan Fleury 1:05:01  
Hmm,

R Rob Mineault 1:05:02  
I don't know why we're so desperate to I don't know this could be opening up a can of worms. Are we sure we want like to talk to our audience? Like, do we want them to leave voicemails?

R Ryan Fleury 1:05:10  
They can if they want to.

R Rob Mineault 1:05:11  
i Okay. Listen, I'm just saying like, you're the one that has to answer this thing

R Ryan Fleury 1:05:16  
It goes to voicemail. It sends me an email. I don't have to talk to anybody. We get the emails and we can play them on there.

R Rob Mineault 1:05:22  
No, but that's what I mean. You have to weed through that.

R Ryan Fleury 1:05:24  
Well, yeah.

R Rob Mineault 1:05:26  
Oh, that's okay.

R Ryan Fleury 1:05:27  
It's fine.

R Rob Mineault 1:05:27  
Cool. Okay.

R Ryan Fleury 1:05:30  
I wish I wish people would start to do it. Because just the entertainment value just tell us like, even if they'd only be funny if you listen to other podcasts and people, you know, send in emails and they get read on the air. Play their phone messages. Yeah, some of them are pretty funny.

R Rob Mineault 1:05:44  
Yeah. So listen, this is a great opportunity for the audience, like screw TikTok. Like, this is the way you're gonna get, like, go viral. See, I can just say that because Accessibee can, make whatever claim. There's no recourse and can't sue us. Our conditions in it. You can't sue us. You can't sue us. You wouldn't want to anyways, because we're really nice.

S Steve Barclay 1:06:16  
We're super nice.

R Rob Mineault 1:06:17  
Yeah, we don't mean we have any money anyway.

R Ryan Fleury 1:06:21  
So well, they can also find us on Facebook,

S Steve Barclay 1:06:25  
and Twitter. I heard that but I think we ought to get off there.

R Ryan Fleury 1:06:29  
We're getting off Instagram, Instagram.

**R** Rob Mineault 1:06:32  
No, I thought yeah, that was already a done deal.

**S** Steve Barclay 1:06:34  
Oh, yeah. That's right. We're getting ready Instagram and getting rid of Twitter and keeping the Facebook and Twitter.

**R** Rob Mineault 1:06:38  
Oh, yeah. We're keeping those for now. Till until we enter the metaverse. That's right. You can find us I guess in the metaverse

**S** Steve Barclay 1:06:47  
Hanging out at virtual 711.

**R** Rob Mineault 1:06:49  
That's right

**R** Ryan Fleury 1:06:50  
In front of it drinking Slurpees

**S** Steve Barclay 1:06:53  
We're getting punchy, let's go.

**R** Rob Mineault 1:06:54  
Okay. All right. Well, that is gonna do it for us this week. Thanks, everybody for listening in. Of course, a big thanks to Lainey Feingold for joining us, and we will see everybody next week.