

Legal Update—What the Courts and Agencies Have Done
For (or to) Us in 2014

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JOHN WALDO: I have spent the last few years of my life working on movie captioning. And it seems as though it's finally come to a really, really good conclusion.

But before we get to that, let me just back it up and say we call this legal updating. For those of you who haven't heard me speak before, the question comes up "Why do I care?"

The Americans with Disabilities Act (ADA) goes into great detail about how to accommodate people with mobility impairments. The slope of ramps, the height of restrooms, vendors, and things like that. What does it do for people with hearing loss?

What it says is you have to provide effective communication. It says, "Make it work." You figure out how. ADA is written in broad terms. It talks about effective communication, undue burden and fundamental alteration. It tries to define everything in terms of adjectives. Nobody can really pin down what exactly it is that you're supposed to do.

When people can't read exactly what you're supposed to do, what you end up doing is go to court. Or you ask the agency in charge of the law to interpret it for you and address that specific situation.

Our rights essentially are defined by what the courts tell us and what the agencies tell us. That's why we do a legal update. This is what the courts or agencies have done for us, or to us in the past year.

This year has been really good. There's been such an enormous amount of action in just this past week alone, I'm basically going to wing it and tell you what's going on. I will do my best to leave plenty of time afterwards for questions.

The idea of captioned movies is something that has been on people's minds from the get go. When the ADA was passed it was very much on the mind of the theater owners. As the ADA was working its way through committee and towards being presented on the floor and passed, the representatives from the theater owners crawled up to Capitol Hill and the first thing they wanted

was just to be exempt.

Congress said, "No, that's not going to fly." What they added is a statement of the legislative history, which is the report that the various committees send out telling congress what it is that they think they're going to do. What it said in the legislative history is that this law does not require movie theaters to show open-captioned movies.

Opened-captions are basically like subtitles where the captions are visible to everyone in the theater. That bit of legislative history came out of the blue. There was no explanation for what it was supposed to establish.

The legislation had a great deal of trouble trying to regulate that wording or stating that effective communication must be provided. So this is something that has been fought about a whole lot in the court.

The theaters accepted that position that said open-captioned movies don't need to be shown. One can understand this from their point of view. It basically meant the theaters didn't have to do anything. In 1990 when the ADA was passed, the only way you could show a captioned movie was to get a separate print of that movie with laser printed subtitles and put it on a camera instead of the normal print. Then run it.

Open-captioned movies and non-captioned movies were separate things. The films themselves were big, heavy, cumbersome things to move around. Nobody wanted to show the open-captioned movies every showing. Nor did they want to have two different prints of each movie.

For a number of years, people at cinemas were able to get ahold of a few captioned movies and send them to movie theaters. That's when we had "deaf night at the movies." Deaf people could go to the theater and see the open-captioned movie that then would be three or four months after the movie was released. Better than nothing, but not very good.

After digital sound became state of the art in every single movie theater, it then became possible to separate the caption stream from the print of the film. The captions could be done separately and shown separately from some or all of the shows.

That's when we started to get a little bit better access through rear-window captioning. In rear-window captioning, on the back wall of the theater shows the captioning in mirror image, and the LED reader board picks up this reflection and reads the captions in mirror image. The AMC theater chain started using a fair number of those but they would equip maybe one out of every ten of their auditoriums with its rear-window equipment.

Regal Cinemas also did some captioning. They did open-captions by taking the caption stream and using it in the second theater projector. Every theater back then had two projectors. They would superimpose the captions on the film for one showing and turn it off to another.

The theaters are convinced to their last dying breath that hearing audiences find open-caption movies distracting, Regal gave us a few shows every now and then. These were special "set aside" showings for people who were hard of hearing. We also did not necessarily get the best show times.

A number of lawsuits filed because the theater was so resistant. The law suits tended to go badly because the courts put a lot more emphasis on that legislative history, that open-captioning is not required, than they put on the text itself, that said effective communications is required.

In the state of Arizona we got probably the worst decision we could have received. The Arizona courts said, "Well, the ADA requires places to make their services accessible, but it does not require them to have any kind of specific inventory." There's a statement in the commentary on the ADA that says bookstores do not have to stock Braille books. No explanation as to why that's there either, but that's what it says.

Thus, a judge in Arizona said, "I think a captioned movie is like a braille book. And if a theater chooses not to show captioned movies, it can do so." So knowing that, you don't have to do anything. The court also said, "You know, the ADA really is about wheelchairs. And we think as long as you're not just stopping deaf people at the door and telling them go away, you're in compliance with the ADA."

When you try cases in court, you want to win. If you don't win, you want the decision to be so God awful, that you have a chance of it being thrown out on appeal. That's what we got in Harkin's case, which was about the ADA. We thought we had a good chance of appeal. While Harkin's was working its way through the appeals court and while we felt really good about it, we had no way to be sure we would win.

At the same time we put together a non-profit group in Washington. They wanted to do the captioning cases, too. We filed a separate lawsuit in Washington. The ADA has one really cool feature that a lot of people don't know about. That feature is a statement that says that this law does not take precedence over state or local laws that are more protective of people with disabilities.

We thought we might as well try it in Washington. We filed a case under our Washington state disability law, which in some ways is a lot better than the ADA. Those cases moved along in parallel lines and we got really good decisions at almost exactly the same time. I think they were three days apart in May of 2010. And they both said exactly the same thing.

They said that while the law may not require theaters to show open-captioned movies, visible to everybody, arguably distracting to the hearing audience, there's nothing that suggests that theaters may not be required to show closed-captioned movies.

Closed-captioned movies work a little bit differently. The captions are prepared by the studios and distributed free of charge. What theaters need to do is make it possible for people to actually view the captions. Closed-captioning is a system in which the theaters provide individual viewing devices so those of us who want to read the captions can do it without really disturbing the bliss of people who don't want to see captions.

That's what both the 9th Circuit in Harkin's case and the court in Washington said. No, you don't have to show open-captioned movies but you do need to show closed-captioned movies unless you can demonstrate that you can't afford to do it.

At the same time all of this was going on legally, there was a huge change happening in the industry itself. Film was ceasing to exist. Film is going the way of records or photographs.

There are now movies distributed that are not available on film except in archives in Beverly Hills. Movies are being distributed digitally in the form of computer hardware packages, where you plug this thing into your digital projector and let it rip.

This has actually made captioning enormously easier and less expensive for the theaters. Because once you get the caption screen as part of your data package, all you got to do is push a button and it will work either to superimpose open-captions on the screen or to drive closed-caption projectors.

As theaters are converging to digital, more and more are beginning to add captioning capability. The flip side of this is that during the time that this conversion was promised, but not actually implemented, people stopped making the kind of equipment that would work to show captions with film.

However, theaters now all have to convert over to digital projection or die. There are possibly 40,000 auditoriums in the country. At last count something over 38,000 of them had converted to digital. Theaters have a much easier and less expensive time providing captions. The equipment is more readily available and should continue to be so.

Nirvana it looks like. 2010 we got these two great decisions. Wham, we're on our way. Then suddenly the Department of Justice jumps in and proposes a rule that says we think the theaters should be required to equip half of their auditoriums with the capacity to show closed-captioned movies.

Well, the federal government moves very slowly. It was understandable that maybe they thought a 50% requirement was a big deal because before the Harkin's case and before our Washington case, movie theaters were settling cases, agreeing to equipment in 10% of the theaters, or 20% of the theaters. So 50% looked like a real step up.

On the other hand, this was a step backwards from the cases that could require all of the movie theaters to show captioning. We said 50% won't suffice. The theaters have to do everything they can afford to do. The Department of Justice took things under advisement. They pondered and they pondered and they pondered.

Meanwhile Regal, Cinemark, AMC, the big guys are all basically thinking, "We lost the case in Washington. We're faced with the prospect of being sued in a whole lot of other jurisdictions and losing and wasting a whole lot of money. So maybe we'll just do it." They caved in. They decided to equip all of their theaters everywhere to show captioning in one form or another. We thought that was great.

After four years of deliberation, the Department of Justice finally issued a rule in August of this year, 2014. And it was not a setback, but a terrific rule.

The DOJ said they'd seen these private lawsuits go forward. They'd seen the Harkin's case move forward; they'd seen the Washington case move forward. There were two other very important things that they mentioned. One was the case when ALDA as the plaintiff, sued Cinemark in California and ALDA also put the bite on AMC. We didn't sue them, but we pressured them until they agreed they would caption all of their screens throughout California.

The Department of Justice said they didn't think access to movies should depend on whether you live in one of the jurisdictions where these lawsuits have been brought. So essentially what they did is say they were going to take the result of those lawsuits and make that a nationwide ruling. The DOJ said they are going to require every theater that has converted to digital

projection, which is almost all of them now, to be able to display the captions, every movie, every showing.

We did the happy dance on that because they said basically that everybody gets the Washington ruling or the ALDA California settlements. I looked at that and I thought, "This is great." There was a two-month commenting period. Very, very short which suggests basically the DOJ was tired of listening to commentary. They were not going to change much of anything.

I'm thinking, "Wouldn't it be great if all the advocacy organizations could agree on the comments that they want to file with DOJ?" So, I started asking people at Hearing Loss Association of America, National Association of the Deaf, AG Bell and so forth, are we all on the same page? I found they were all pretty busy thinking about other things. The best way to see if we were going to be on the same page was to give them a page.

I drafted some comments about what we basically need: "This is what we've already been getting and we don't want to step backwards."

Because of digitalized movies, prices have come down so far that really anybody, even a tiny little theater can afford to install the equipment to show the captions. Then everybody from these advocacy organizations started responding and it looked like we were on the same page. Then we took one more ambitious step. I thought, "Wouldn't it be cool to see if there are parts of this where we could make an agreement actually with the theater owners?" The advocacy organizations agreed. "Give it a try." I sent an e-mail to John Fithian, who is the executive director at the National Association of Theater Owners. I said, "John, why don't we sit down and have a meeting and see if there are things we can work out."

"Great idea," he said. One of the reasons we all agreed to extending the comment period for another two months, it now closes on December 1st, is to sit down and have a meeting. There were two meetings now in Washington, D.C. I was able to listen in on them, but didn't go. Cheryl Heppner was there. The last meeting was this last Tuesday.

Here's what came out. Basically we agree on a lot of things. The National Association of Theater Owners sent out a proposed joint communiqué that the advocacy organizations would agree to and basically if we all agree to it, the Department of Justice is going to publish it. And here's the amazing thing it said.

When the Department of Justice proposed 50% captioning of theaters, the theaters said that's too much. It ought to be 20%. Now the Department of Justice is proposing that all the screens be captioned. What are the theater owners going to say about that? Well, what they are now prepared to say is

that they agree, and accept the proposal that closed-captioning be provided for all movies at all digital theaters. I thought that was pretty amazing.

Basically I was just tickled pink that we were able to get NAD, AG Bell, Hearing Loss Association of America, in the same room cooperating! This is what Jerry Buckley of NTID was talking about this morning how our voice can be so much louder if we all work together. I've been doing a happy dance about that.

I think that the movie captioning issue is pretty much over. Now there are a couple of issues that are hanging out there that we want to work on. One is that the Department of Justice is proposing to say, "This rule applies only to places of business whose business is showing movies." That means really theater complexes. It does not apply to places like museums that happen to show film clips.

Looks like an escape hatch for these places like museums but really, it's not. It's the other way around. The rules that apply to museums and so forth are much more rigorous. The interpretation about theaters don't need to show open-captioned movies, does not apply to museums. Museums can be asked to provide things that the theaters are not required to provide. We would like DOJ to clarify that point in this proposed rule so we don't start running into the arguments, "I'm not a theater, I don't have to do this." They would lose; however, we would rather have them spend the money actually providing accommodations, instead of filing lawsuits.

Theater owners really want to change what the Department of Justice had proposed requiring that theaters to provide a very large number of viewing devices. The theater owners said that was way more than anybody is going to need. We said we feel your pain in a lot of ways because we don't hear very many reports. I have heard none from Washington State that people have too few devices available. There always seem to be enough devices.

We said, "Start off with a relatively small number so long as you monitor it and increase the number if the demand is there." The theater owners originally wanted a safe harbor option where they buy this many devices and are in compliance and never have to do anything else." We said "No, the notion of never having to do anything else is not acceptable." As the population ages, and hopefully as people become more aware that this accommodation is available, we're going to see a larger number of these units demanded.

So we really need to be able to boost the number if the demand is there. Now, looking a little farther into the future, I actually think this issue is going to disappear because these units are capable of showing captions in any

number of languages. Sooner or later, the studios are going to start distributing the movie with foreign language captions, as well, particularly Spanish language captions. I guarantee if you do that in markets like Los Angeles or Houston, where I live, which has a huge Hispanic population, the theaters are going to have hundreds of those devices. That's how they're going to make the money. Not necessarily from us, but from other people who will want to use them.

AUDIENCE MEMBER: How about drive-in movie theaters?

JOHN WALDO: Right now there is no technology that would enable them to show captions in a way that would make sense other than open-captioning. Because of the geographic size of drive-in theaters, it would make it difficult to do it. There seems to be nobody who is interested in creating the technology to do this. So DOJ are proposing that drive-in theaters are out of the picture. Maybe some of those bright kids from NTID could figure out a way to do this. The DOJ said that if a new technology is developed, they will revisit the drive-in theater issue.

Similarly with the theaters that did not convert to digital, DOJ said, "what should we do about that?" Again, because of the way that the government works, DOJ was working with a set of facts that were two or three years old when they talked about the number of theaters out there that had not converted to digital and will still show film. They keep saying these theaters will still continue to exist. Actually, it doesn't look like they will continue to exist. If they do, they will be museums. They will only show old movies, old films and a lot of those aren't captioned anyway.

Our thought is just ignore those. Wait a couple of years and see what happens because at this point we really don't know whether film theaters are going to survive, or if they do, in what form?

AUDIENCE MEMBER: The French film festivals and old heritage theaters like to play old movies where I don't think they have digital caption machines. Are they exempt?

JOHN WALDO: Those are the ones I was talking about, the analog theaters. I know there are those special situations. I think the advocacy organizations pretty much agrees with me. Before we spend a lot of time and energy figuring out what to do with those theaters, let's find out what happens to them. I think film festivals are doing new things. Yeah, there's no reason they shouldn't be using the captions. They should be.

More good news came from the district court in Maryland this year. You know for quite a number of years there's been an emphasis particularly on

the part of the National Association of the Deaf about getting captioning visible on score boards at athletic stadiums.

In a way it seemed like it's a little bit of a non-issue. Arguably, you go to a game to see the game, not necessarily hear what the public addresser says. At least that was the argument that the athletic teams and departments started making. But the answer was, "No, you don't go to the game basically for the game. You can stay home and watch it on TV. It's drier and cheaper. You go to the game because you want to be part of the experience and know what is going on. The athletic people got this. Somehow they got sidetracked into this notion of hand held captioning devices or an app that will let you read the captions on the phone.

People tried that in good faith and realized that it just didn't work very well. It's very cumbersome to have to hold this thing through the whole game. It may be raining outside. You've got to take it with you everywhere, which people think is an advantage, but it can also be a huge disadvantage. So the argument is that they really ought to do the captioning on the scoreboard.

We finally had a case specifically this year in the federal court in Maryland that addressed that very issue. The University of Maryland said we've got the app, people can download it and read the captions on their phone. The plaintiffs there said, "No. They don't work for us for a number of reasons."

First of all, they cut in and out, particularly anything that's transmitted over the Internet. If you are in a stadium with 80,000 people all of whom are trying to take and send pictures, your reception is terrible.

Number two: they can be very hard to read in a bright sun.

Number three: "We're deaf. We use our hands to communicate. If we are holding a captioning device or a cell phone, we can't talk to each other about the game."

The court agreed. Basically it said, "Your obligation is to provide effective communication and these people have explained to you why handheld devices are not effective communication." That was on what was called a "motion to dismiss," which means the University of Maryland was trying to get a case dropped immediately before it ever went to trial. The motion to dismiss was denied. Theoretically it could go to trial. In reality what I'm sure is going to happen is the University of Maryland will try to settle it and just start doing captions on the scoreboard.

Before that case came out, we had pretty good luck particularly in the Northwest with getting the teams up there to voluntarily do scoreboard

captioning.

The University of Oregon was telling us how great these handheld devices work. Those folks there went through the same thing the folks in Maryland did. They started doing captions on the scoreboard for football and basketball games and made it possible at other events if people requested it in advance. It's not clear how you make that request; we're working through the details. We're getting there.

The cool thing is we went down there after the first year that they did the scoreboard captioning for the football games and started debriefing basically the athletic department and vice versa. One of the people who had been on our advocacy group was a student at UO who said "I've been going to the football games with my dad since I was a little girl. But I enjoy them so much more now that I know what everybody else knows. What the lyrics of the songs are, what the public address announcements say". We thought that was gratifying.

Then the Athletic Director said, "My hearing is normal. But it's so noisy in there, that I find myself looking at the captions too." There are situations where nobody can hear. Captioning is not just for those few people who have a certain degree of hearing loss. It enhances everybody's experience.

We like doing it in the athletic venues because so many people see it and they start getting comfortable with what accommodations for the deaf and hard of hearing looks like. We start getting people thinking about this, that it can be done, that it doesn't cost all that much money, that it doesn't hurt them and in fact it helps everybody.

We continue to sort of push on that area. Last count, 10 of the 12 members of the Pacific 12 Athletic Conference are now doing scoreboard captioning. I'm trying to remember who the two outliers are but we'll start working on them.

AUDIENCE MEMBER: I was going to say it's awesome for all of us who don't remember the alma mater song.

JOHN WALDO: It's still maybe not one step forward and two steps back but five steps forward and one step back. The folks in Oregon have been talking to the folks at the Civic Center there. They've talked to two managers of the facility and beating them over the head with the same information they have solved the problem and are going to provide captioning, and here's how they are going to do it: handhelds. We have to go back and tell them why handhelds don't work and don't provide effective communication. Et cetera, et cetera, et cetera.

As everybody keeps saying, you get discouraged and you have to keep going and try again. That's looking good on the athletic captioning.

There were some mentions earlier today about college students and the difficulty they have had. There have been a couple of cases that seemed bad that turned out pretty well.

One involved a medical student at Creighton University, who was told that he would be given preferential seating preference and notes would be provided, but no CART would be provided for his first year of medical school. He lived in Seattle then and called me and asked, "What about this?"

I said "I really don't think it's going to work. When you're learning something new, you need to learn the vocabulary and you're not going to learn the vocabulary unless you have it spelled out for you." But the University was being nasty and said they might revoke his acceptance. He gave it a try. He hired his own CART reporter for the first couple of years. Later, he was told he could not use an interpreter for the clinical interviews with a patient.

Why? Because according to Creighton, so many clues about a person's symptoms and difficulties come from looking at them. You have to be able to look at the people while you're talking to them in order to make a diagnosis. I'm thinking, "Come on guys. Who do you think does a better job of picking up non-sound clues by what people are doing with their body language?" The hard of hearing people. Our whole life is about picking up on these extraneous clues.

Thus that case went to trial, went up on appeal and went back to trial. It all ended fairly happily. Creighton was ordered to provide CART for the medical student for the rest of his education, assuming he goes back. It allowed him to use interpreters in clinical trials. He was not able to get reimbursement for the money he had already put out. You can't get damages in an ADA case. That's a problem.

There was a case earlier this year in the state of Washington where I think a naturopathic college accepted a student who was deaf. Corresponding back and forth, the guy quit his job and moved his family and was good to go. Yet, the college came to the conclusion that it couldn't be made to work, so his acceptance was withdrawn. That suit was filed and very quickly and the court came down on a decision that slammed the school. "Admit him, do it this year, do it right now, and start providing all the accommodations."

So more good news.

AUDIENCE MEMBER: Was that a private school?

JOHN WALDO: Yes, it was a private school. I don't recall whether they received enough federal funds to make them subject to 504 of the Rehabilitation Act or whether it was a Title III ADA Case. However it works, they all basically get you to the same place. The guy is in school doing fine. Great, great results. Again, National Association of the Deaf people doing terrific work there.

A little rain did fall: the case of GLAD vs. CNN. The Greater Los Angeles Agency on Deafness (GLAD) filed suit against CNN, and said, "We think you need to caption all of your online videos, even those that were not on television before." The FCC does not require captioning of internet videos that have not previously appeared on television.

GLAD was trying to break new ground out there and push things a little bit farther. CNN struck back in a nasty way. Instead of simply saying "No, the law does not require this," they invoked what is called the "anti-SLAPP statute." That stands for Strategic Lawsuits Against Public Participation. A number of states have these anti-SLAPP laws. They were designed to thwart the tactic that a number of business -- mostly property developers -- employed in the 1980s and 1990s. When environmental groups came in to protest a project, they would say you're libeling them, pay us the money. They didn't expect to win in a million years. They knew doggone well that the First Amendment right to petition the government and all this kind of thing absolutely protected this kind of speech.

But the developers felt like if you make them spend money and take time to get these cases dismissed, basically we will scare off other people from doing these kinds of protests. This is what the anti-SLAPP statutes intended to prevent. Good purpose, good idea. But the anti-SLAPP statute can be overused. What was intended as a law to prevent bullying became used as a tool for bullying.

They could say the people who sued us originally, put up the money right now. Show that you have a reasonable likelihood of winning this lawsuit. By the way, if you don't, not only does the lawsuit get dismissed, but you have to pay our attorney's fees.

Now they hired big, expensive law firms. CNN is part of the Time Warner Empire. Last year they made about \$47 billion with a "B." GLAD a small, private organization that has its own budget of less than a million dollars. So you can see what's going to happen. If CNN can require GLAD to pay their fees, GLAD is going to go bankrupt.

Now faced with that, GLAD has to put up immediately. This is difficult because in

the 9th circuit, which is normally very friendly, the courts have held that the ADA does not apply to the Internet. They got shot down trying to bring it under one case, one of the California statutes.

There's another California statute that the 9th circuit federal court said, "We don't know yet whether that statute may apply to the Internet or not. So what we're going to do is ask the California Supreme Court to decide that question." That's called certifying the question to the state highest court. California Supreme Court said yes, "We'll do it. They set a briefing schedule. Everybody was ready to go to the California Supreme Court and argue about why as a policy matter the Internet ought to be covered under this state law. Then two weeks ago out of the blue, we got the notice that the case had been settled and dropped.

CNN agreed they would not seek attorneys' fees if GLAD simply dismissed the appeal. Everybody goes home. I think CNN did it for two reasons. First of all, there was some concern on their part that they might get a ruling which they think would be bad for them. Not that it necessarily would be. But they think it would be. They didn't want an adverse ruling.

I think the bigger problem was that CNN realized is if they put a small nonprofit company out of business, they would look like really bad folks. They didn't want to look like really bad folks even though they had been that way all along.

That case goes away. It still causes us a little bit of heartburn because when CNN originally raised the anti-SLAPP suit or anti-SLAPP motion, the trial courts said "No, we don't think it applies. Because basically it applies if your First Amendment rights are threatened. We don't see the literal transcription of communication threatens your First Amendment rights. We don't think the law applies.

CNN applied that immediately to the 9th Circuit Court of Appeals. The Court came down and said, "No, we think anything that affects the mode of communication does involve First Amendment rights to the extent that it implicates this anti-SLAPP law."

So that creates a little bit of heartburn for us is because what it means now is basically if you were trying to sue a news organization, be very, very careful. They will be able to use the anti-SLAPP statute against you.

If it's not a news organization, you're probably on reasonably solid grounds but I wouldn't worry about getting attorneys' fees assessed against you. The problem that it does create is a very practical problem, though. The anti-SLAPP statutes say if the trial court denies the motion, then the other party can appeal it. Basically if you file a lawsuit asking for captioning, it's quite possible that the anti-SLAPP statute gets invoked, denied, appealed and basically you've wasted

two or three years before you can get any place. That's kind of a problem if you have an attorney who works on a contingency fee basis who probably doesn't want to sit around for two or three years waiting to get into court.

I just learned today that there appear to be some action in the 9th Circuit Court of Appeals about the Air Carrier Access Act. That is what applies to airlines and airports. The question has always been is whether you are entitled to file a lawsuit under the Air Carrier Access Act to try to make the airlines do something, or whether you just have to complain to the Department of Transportation and see if they'll do something.

The so-called ability to file a private right of action is great because it gives you the opportunity to set the agenda and not worry about where it sits on the pile of somebody in Washington, D.C. There seems to be an unsettled question in the 9th circuit about whether the ACAA does give you a private right of action. We'll look at that and there may be some friendly court briefing to be done there. That's something to keep an eye on, but we don't know where that is right now.

So movie captioning is about done. Handhelds look like they're a thing of the past and we'll get scoreboard captioning at the stadiums. People are doing well in college. The GLAD vs. CNN thing is a pain in the tail, but it's not all that bad. And Air Carrier Access may be back on track.

So what's new? Well, here's what's new. About three weeks ago I got an e-mail from Dana Mulvaney, who most of us know. Dana had a problem at a comedy festival in the Bay Area. She was trying to get captioning on a monitor so she could read the captioning and see the comedian's face at the same time.

She had a great deal of difficulty finding the right person to ask. There's nothing on the website about accommodation for hearing loss. They say if you want ADA seating, call the box office. When you're talking about accommodating us with hearing loss, a sign that says call for information is like saying wheelchair access upstairs.

You quit before you start. Touch this number to talk to somebody about this. You never get a real person. Dana persisted. She finally managed to find a real-life person. But she didn't get really far because they kept saying we'll call you back and it didn't happen for four or five days.

Dana said, "This is a more complicated problem than you think it is. I actually know something about this, and how about I come down and sit and talk to you and we'll work this through." They said, "No. We don't have time. We'll just make it work." They didn't make it work.

The captioner was apparently not able to do comedy very well. There was no

syncing of the video monitor and the captioning. So Dana was sitting there trying to read it off a computer and look at the stage and look at the monitor.

Dana said that the amphitheater is managed by a company called Live Nation. It's huge. It is a multi-billion dollar corporation. My first thought was, "Dana, I don't practice in California anymore. Let me see if I can find anybody there." But the more I thought about it, I thought this could be a cool opportunity to get with Live Nation and see if we can make something happen that would work for a lot of people in a lot of circumstances.

So I talked to an attorney in California and have been tossing it around for a little bit. We decided instead of filing suit and just trying to correct Dana's problem on that particular occasion, to enter into what's called structured negotiations with Live Nation. This means where we say to them, "We could sue you. We think you're in violation of the ADA and State Law. But instead of doing that, why don't we just sit down and try to work things out? Come up with a solution that works for you and works for us. We can do it so much faster, so much less expensively by sitting down and working through it ourselves."

More importantly, something like stretching negotiations gives us an opportunity to address more than just that specific problem that Dana had at that specific instance. We can talk about things like the fact that you need to make accommodation information available on your website. You need to provide an online way for people to ask for the accommodation. You really need to listen to them when you talk about what's effective and what isn't. You really need to be able to adopt best practices for all of your facilities and for all of your events.

Best practices may vary. I mean there are some issues with song lyrics and whether they're protected by copyright. This is an argument that is being played out by other lawyers in other jurisdictions but we'll keep an eye on it.

Live Nation has facilities in New York, Chicago, Philadelphia, Oakland, Boston, D.C., Atlanta, Detroit, Houston, Phoenix and on and on. We think this may be a terrific opportunity. In order to really make it work, we have to expand the playing field beyond just Dana and her problem. What we need is an organization that has people in a lot of these various places that might be affected.

That would give us an opportunity to go to Live Nation and say, "Guys, rather than file a bunch of little lawsuits here there and everywhere, let's get it worked out now and for all." So I'm hoping that ALDA might be that organization that would step up once again just like it did in California with the Cinemark case. We will need to avoid all of the risks that would be associated with filing a lawsuit. None of that anti-SLAPP stuff would apply. Maybe we can get something done. I hope we can.

I'm done. If there are any questions, I would love to hear them. Otherwise, I will just say it was a great year.

AUDIENCE MEMBER: I have a question about captioning on movies or TV shows when a song comes on the captions go off. Why is that?

JOHN WALDO: That's a really good question. Nobody really knows. I believe there is some kind of claim that there is a separate copyright for the lyrics and the TV station didn't license it or something like that. But a couple of very good lawyers, one professor at Colorado named Blake Reid and a guy named John Stanton, who does a lot of work with AG Bell, is thinking about doing articles about this. Stanton tells me there may be a class-action lawsuit filed to attack this business. Everybody believes it's a preposterous argument.

But they may have to go to court. We think that's in the works.

If nothing else, thank you all.

John Waldo is a practicing attorney who focuses on legal issues arising out of hearing loss, work that combines his 30-year plus years of legal experience with his lifelong experience as a person with significant hearing loss.