

ALDAcon2017
ALDA and Advocacy
John Waldo
October 13,2017

JOHN WALDO:

Thank you all for coming.

So, what are we talking about here today?

I have been working with ALDA and people like Linda Drattell and Tina Childress who have become our advocates and who have made the world basically more accessible to those of us with hearing loss.

Here is the reality of our situation.

Let's start out with a Declaration of Independence and the notion that all men are created equal. We found out that this "generality" had a whole lot of exceptions.

All are created equal except if you are not a man.

Except if you are not a white man.

Except if you are not a property owner

It took a Civil War and several constitutional amendments to get rid of those exceptions but there was more to be done. Finally, we started getting down to the situation of those of us, even those of us who were white and male and property owners, but who were created a little bit differently, namely, those of us with some level of disability.

In 1990, Congress finally got around to dealing with that; they passed the Americans with Disabilities Act (ADA) by an overwhelming bipartisan majority. The notion that overwhelming bipartisan majority is even possible seems to be something from ancient history, but nonetheless, that is what happened.

Essentially, the ADA is our charter of rights as people with disabilities. The provision that I most frequently deal with involves what are called public accommodations, privately-owned businesses that are open to the public. And the law says that no individual shall be discriminated against on the basis of disability, and we shall the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. In other words, we get to enjoy these things just like everybody else.

With respect to people with mobility challenges, who are in wheelchairs, Congress was very specific about exactly how to deal with that. In fact, some of the regulations are so

specific you can actually design a building, just based on what is in the book. With respect to hearing loss that is not so specific.

Here is what it said about us. First of all, it defines something called auxiliary aids and services which are interpreters, or other effective methods of making orally delivered material available to people with “hearing impairment,” (and I realize impairment is kind of a non-politically correct language, but if we are dealing with the law that is the language they chose to use, so I will I call it “hearing impairment.”) Now, to most of us, people like Diana, Tony, and Lorrie are our “interpreters” or CART writers, but in the eyes of the law they are “auxiliary aids and services.”

After defining “auxiliary aids and services,” the ADA then says that it is an illegal act of discrimination for an affected business to fail to take such steps as may be necessary to ensure that no individual with a disability is excluded by the absence of auxiliary aids and services unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the service or would result in an undue burden.

Well, that may establish a reasonably clear objective, but provides no specific guidance about what, exactly, needs to be done in any specific situation. And when the law itself is not crystal clear, then what you have are lawyers and court cases, and judges, and decisions, and administrative agencies that try actually to clear things up, or further muddle, that lack of clarity in the law. And not to be outdone, you also have Congress that may get in there and tinker with things a little bit.

Basically, our rights in any specific situation are no more and no less than what the three branches of government say they are. And, I come here every year to talk to you about what those folks have done for or to us during the past year.

We have these neat laws that some people look at as weapons and some people look at as blessings. I think the best way to look at them is as tools. They are tools, like a wrench or a screwdriver that we can pick up and, under certain circumstances, use to fix a problem. The problem we are always trying to fix is lack of communication.

In order for any tool to address a problem, **someone** has to actually pick up the tool and apply it to the problem. And when it adopted the ADA, Congress essentially assigned that job to us. Congress said that we deaf and hard of hearing people are the ones who know what we need, and who have the incentive to ask for what we need; so here are the tools. If you do not get what you want, you can go to court; but you must be willing to pick up the tools and do it.

Fortunately, ALDA is an organization that is willing to pick up the tools and address the problem. ALDA got involved in this advocacy business back in 2010, when I received a phone call one day in my office in Washington State from a lawyer in California who said, “We want to do a movie captioning case in California, and we know you have got one going in Washington State, so how can we work together?” I said, “I think I can help you. I know a bunch of people in California; and I may be able to help you put together a

case.”

We did just that. I got in touch with Linda Drattell and Rick Rutherford. ALDA as an organization filed a case against the Cinemark movie-theater chain; we settled very successfully. Shortly after that, we also had a nice resolution with the AMC theater chain without filing suit, and we also got a favorable decision in a Washington State case. In each of those cases, the theaters were told to provide caption-viewing devices in every one of their theaters.

The Department of Justice, which can pass regulations to implement the ADA, took notice of a lot of what we were doing. Back in 2010, DOJ had proposed regulations that would require movie theaters to offer captioned viewing equipment in 50% of their auditoriums. We screamed bloody murder and said why 50%? Why not every auditorium? ALDA was getting captioning in every auditorium in court and through settlements, so why should DOJ settle for half of that?

It took a few years of more proposals and more modifications, but DOJ ultimately agreed with us, and finally issued new proposed regulations that said they would require 100% of movie theatres to offer equipment that allows caption viewing. Those proposed regulations were finalized at the very end of 2016. (It was one of the last actions that the Department of Justice took under the old administration.)

These regulations were extremely industry-friendly in a couple of ways. First of all, they put off the implementation date until June 2nd, 2018; that is the magic date. If, as of June 2nd, 2018, your local movie theatre does not offer captioned viewing equipment, you have my card, you have my e-mail; let me know. They have no excuses after that point.

That sequence of events shows that advocacy really can work. You can go from a small case, to a bigger case, to eventually – you hope - national requirements. And when DOJ did issue national requirements, it said it wanted to do everywhere that we gained through litigation in Arizona, in California, and in Washington. They also mentioned ALDA. So ALDA did this for all of us and the Department of Justice knows about and acknowledges that. That is why it is cool to do this implementation stuff.

One question that as has always been unresolved has to do with Websites. In 1990, when the ADA was adopted, the Internet was really just a speck on the horizon. The Internet is not mentioned anywhere in the ADA so the question is whether or not websites are covered by the ADA.

Let's go back to that business about what the ADA basically commands:

No individuals shall be discriminated against on the basis of disability in the full and equal enjoyment **of** goods services... or accommodations of any place of public accommodation.

As it turns out the most important word in this statement is the shortest one, “**of**.” We’re entitled to enjoy the goods and services **of** any place of public accommodation. And that is really important, because it did not say **in** any place of public accommodation or **at** any place. It said “**of**,” so whether or not “the place of public accommodation” is offering the services on-site or off-site, it still has to be made accessible through things like auxiliary aids and services.

But what about websites – are they “places of public accommodation” and covered by the ADA? This has actually been a bigger deal for the blind community than for us because websites are oftentimes our savior where we can get information in visual form that otherwise we would not be able to get orally. For the blind, of course, it makes matters worse because if the website is not accessible to them they are left in “the dark.” There is software available to websites so that blind individuals can access them on their computers. I do not pretend to understand how it works but I do understand that it can either be done or not done, and it is something that the operator of the website must do.

Deaf and hard of hearing people can still get a reasonably good amount of information from a website although a lot of the videos are not captioned, so that is where it comes in for us; but this explains why the blind folks are leading the charge on this website accessibility problem.

The Department of Justice has been thinking about clarifying how the ADA applies to websites. It said that it needed information and asked a whole bunch of questions – 123 as I recall. But then it kept pushing back the date when a clarifying regulation would actually be issued.

Meanwhile there have been several successful cases about website accessibility: one was brought against the Winn-Dixie grocery store chain in Florida that did not have an accessible website. Winn-Dixie is appealing the judge’s ruling against them, so ALDA will be joining a number of other organizations in a “Friend of the Court” brief which basically says that the lower court decision was absolutely right and should be upheld, and that Winn-Dixie stores are plainly places of public accommodation.

Also, another good decision has come recently from the eastern district of New York state involving the Dick Blick art supply store. As far as I know that is not on appeal but, it will be one of the cases we all cite a lot.

There is another case in California involving Domino's Pizza. A blind individual sued Domino's Pizza. He essentially said that their website is not accessible to him and he cannot read the online Domino’s menu so could not order online. Therefore, he was not getting full and equal enjoyment of the services of Domino's Pizza stores which are plainly places of accommodation. He wanted them to fix the website.

The defense attorney, on the other side of that one is rather well known in the disability law business as an obstructionist; this gentleman threw up what I call “zombie”

arguments – no matter how often they are shot down, they keep showing up again. And once in a great while, a “zombie” argument wins. The judge in this California case essentially said that because the Department of Justice was actually thinking about applying regulations to private business websites, the plaintiffs should go knock on the door of the Department of Justice and see what they say. He decided to dismiss the case until and unless DOJ does issue a regulation. To make matters worse, however, this judge said that asking Domino's Pizza to make its website accessible without specific regulations means Domino's would not know exactly what to do, and that uncertainty would violate Domino's constitutional right to due process if they had to do something before there was a specific regulation.

The Domino Pizza case is extraordinarily troublesome because essentially, in any situation where the Department of Justice has not actually issued regulations, we could not use the courts as a tool to obtain our rights like we did years ago with the movies, and to address novel situations that had not come up yet. Instead of trying to fix the situation ourselves, all we could do is try to call a “repairman” – in this case, the DOJ, who may or may not be interested in coming out and dealing with your particular problem.

I want to be as nonpolitical as possible, but we know that whenever a new administration takes over there are going to be new priorities. Since the Department of Justice is essentially the repair man that the judge in California told us to call, what is the repairman going to say? Well, the new repairmen in the DOJ essentially said “not interested.” As I mentioned, regulations of the Internet that were proposed back in about 2012, 2013 kept getting pushed back. Well, in June this year, the Department of Justice created a new category of regulations. Before that, there were active regulations or pending regulations and every six months the DOJ would tell us what the status was of any proposal. This year, though, DOJ introduced a new category called “inactive,” basically another word for “the circular file,” and every proposed regulation that was in the pipeline anywhere having to do with disability suddenly was placed into that inactive file.

If you follow the logic of Domino's Pizza decision, we would not be able to do anything for several years (which would mean I would have to basically try to take golf lessons and get better at it, or learn to play the guitar, or speak Spanish, or something like that.) The Domino's Pizza case is also going up on appeal. It is wrong, wrong, wrong! Every court that has looked at the issue has looked at it differently, including other judges of the exact same court which is the central district of Los Angeles. ALDA is also joining in a “Friend of the Court” brief on that case, which will be a huge one, and we are fairly confident it will turn out the right way. So that is what the Administration is doing.

And what is happening with the legislature or Congress? You may have read something or seen something on Facebook about the ADA Improvement and Education Act. It was originally introduced into the House of Representatives by Ted Poe who is, through the miracle of gerrymandering, my representative despite the fact that I live in the most liberal neighborhood of Houston. That bill is aimed at what you might call the

“ADA trolls,” people who may or may not have actually experienced discrimination, but who file a lawsuit, then demand a settlement without actually ensuring that the supposed obstacle to access is actually fixed.

This trolling problem is especially bad with respect to mobility issues simply because the regulations involving wheelchairs are extraordinarily specific, and even minor variances are technical violations of the law. There were stories of lawsuits being filed because the sign telling you that it was a handicapped parking place was not exactly the right height, or maybe it did not show the exactly correct amount of the fine for parking illegally. Then after filing the lawsuit the lawyer would call the defendant and say instead of worrying about fixing this, why not just pay me or my client a certain amount of money and we will go away. Those are the trolls. The ones who really do not care about whether something gets fixed. They care about finding a quick complaint and extracting a quick buck out of it and then they go away.

Nobody gets hurt worse by these trolls than those of us who are actually trying to advance accessibility, so some of us have been trying to figure out how to correct that bill.

In my view, it is kind of a baby in the bathwater thing. Legitimate news outlets like Anderson Cooper run the stories about the ADA trolls and how bad it is. People with disabilities come back and talk about all the good stuff that gets done through the ADA. But we talk past each other – they talk about bathwater and we talk about the baby. Everybody acknowledges both are there. How do we meet in the middle? What would be a better way of dealing with the bathwater, better than this ADA notification bill?

Let me explain; what this bill requires, basically, is that before people can file an ADA lawsuit, they would have to give notice to the business in order to give that business an opportunity to fix it. I cannot remember if it is 90 or 120 days, but it can get extended beyond that. And only then, if they do not fix it, can a lawsuit be filed. That may have a certain amount of merit when talking about something like a light switch that is too high to reach. What the business side keeps talking about is how there are so many times where if people just tell us what is wrong we can fix it in 15 minutes. That is great; how we got from 15 minutes to 120 days is a little troublesome, but it is not the worst thing in the world. The worst thing is what it does for us who have communications issues. How many times can we anticipate 90 days in advance that we may be needing to communicate with someone? You cannot get it all that fast.

The fundamental problem is that this bill would remove any incentive businesses might have to self-police and correct any access problems in advance. They would simply wait to get sued.

As currently written, the bill would not apply to us. It is limited to lawsuits based on a construction defect, but the absence of auxiliary aids and services is not a construction defect. So, our ox is not being gored, but we are still joining with people whose rights would be affected to oppose this bill.

I wish we could come up with a better solution to the troll lawsuits than we have been able to do. That bill, the notification bill, has passed the House of Representatives, it is in the Senate, where we think we have a much better chance of beating it or modifying it.

AUDIENCE MEMBER:

Is there any attempt to amend the bill to make it more palatable to both sides? For instance, some kind of mandatory mediation, or something like that?

JOHN WALDO:

Not at the federal level. There have been several modifications at the state level, most notably in California, but it does not seem to make any difference. There does not seem to be any good way to discourage the trolls. We are talking a lot about that. Whether we want to try to come up with a good compromise that might work, or whether we want to stand firm on the sort of “hell no, we won't do anything” stance, depends on what kind of practice you have. We do not want to throw the mobility people under the bus, but at the same time, we do not want something that is going to make matters much worse for all of us.

(Editor's note –The “hell no” approach appears to have paid off. In March of 2018, 44 Senators, all Democrats, had signed a letter opposing the ADA bill, which means it could not survive a filibuster, and therefore likely will not come to the Senate floor.)

There was another bill that would deeply impact our ability to file lawsuits involving communications problems because it would give people the opportunity to get in there, and not only dismiss the lawsuit early, but also potentially make ALDA responsible for the attorneys' fees of the other side. That would be a very bad thing, because most of our organizations do not have a lot of money.

That bill is one that was designed to prevent frivolous lawsuits over people expressing their opinions. Well, the king of frivolous lawsuits over people expressing opinions happens to sit in the White House.

LAUGHTER

Again, I am trying to not be political. I am just telling you the facts and that the people who were sponsoring that bill decided we are not even going to risk pushing it, so that is not going to be reintroduced into this congress and we do not need to worry about that.

Now, back to the courts where a lot of the action on disability rights takes place. I have told you about the website decisions and the mixed results. Now I want to tell you about an absolutely wonderful case, which came down about ten days ago out of Pennsylvania. It was a case in which a deaf/blind individual wanted to see a movie at a Cinemark theater and said, "I would like you, Cinemark, to provide me with a tactile interpreter who would let me enjoy the movie by both telling me what is happening on the screen, and telling me what is being communicated through the dialogue." This

would have cost maybe \$500. Cinemark, bless their pointy little heads said “no, no, we do not have to do that.”

Cinemark got another ADA defense attorney, who is another master of zombie arguments, who walked into the court and said, "You know, the ADA basically just says, all we have to do is open the doors, and let them in, and they can enjoy it as best they can, and if they can't, oh we are sorry. Those are the breaks."

This guy is the same guy I had on the other side of our Washington movie captions lawsuit where we got exactly the same argument. That argument comes up every place. The defense said, yes, you may have to do captioning or something like that, but interpreters, that is somebody's idea of what the movie says, not necessarily what the movie is saying, and that interpretation would change the content of the movie; so, we do not have to do that. Once again, the lower court bought this argument.

That went up on appeal and the appellate court, after deliberating for a frighteningly long eleven months, came down and said “nonsense, Cinemark.” It is reasonable for you to do it. It is not going cost you too much money; it is not an undue burden, so you have to do it. And that is an absolutely wonderful case, which I intend to cite every chance I get. And chances are that it probably will come up.

Another area we are working on is athletic facilities

We have been partnering for a couple of years with the National Association of the Deaf, which I love to do when our objectives actually do agree with theirs. That is not always the case but when it is, let's work together.

We have been trying to increase access at athletic facilities. As people said long ago it was “take me out to the ball game, take me out to the crowd.” The games are all available on television where it is warmer, it is drier, and the beer is a lot cheaper, but you do not go to the game to see what is on the field. You go to be part of the experience, and to be part of the experience you need to know what the experience is. So you want to be able to know what is happening with the public-address announcements, the organized cheers, the on-field halftime stuff and all that.

Generally, the courts have been quite consistent in saying to the teams and stadiums, that people who cannot hear ought to be able to know what is being said. The problem there is not that we are not getting the content, but rather the way we are getting it. A number of teams have said (particularly in California) that there is an app for everything. There has to be an app for that. We will just provide the captioning information on an app and you can go into the stadium and hold your phone up like this (indicating) and you can read what is going on with the captions.

We said that this plan probably sounds good to somebody who does it for only a few minutes, but we want one hand for a beer and one hand for our popcorn. And we do not want to sit there and hold this captioning device. And, by the way, if we are holding

a phone we want to be able to use it to take selfies, or take pictures of what is happening on the field. We want full and equal enjoyment just like everybody else gets. What we want you to do, is to display that oral information on a scoreboard -- someplace where everybody can see it. We have had kind of mixed results with that.

About two years ago, we sent we sent a letter to the Chicago Cubs and they came back and said that the team plays in a historic landmark field and they cannot disrupt the pristine, ancient beauty of Wrigley Field by putting up a scoreboard that displays the captions.

We thought about that but we also started thinking about whether we really wanted to suggest that anything anybody says about Wrigley field might be wrong before a judge in Chicago who might be a Cubs fan. Well, probably not a good idea. That is probably not where we want to make that stand so we kind of let that go. The Cubs got so good that people started paying a lot of attention to the game itself, rather than the captions or lack thereof. So that one is on the back burner.

AUDIENCE MEMBER;

I was at a Chicago White Sox game last year, and it was captioned fully. All of the public-address accommodations were there on a screen or on the board; so, on the other side of town, we are doing it right.

JOHN WALDO:

Yes, there are accommodations.

Actually, there are eight to ten stadiums that do it right. We have no problem in Houston; we had no problem in Seattle. We asked them in Seattle and they tried the app business, so we explained about the peanuts and cracker jacks and we told them considering what you guys charge for peanuts and cracker jacks it would not take very many people being able to buy more concessions to pay for the cost of putting it on the scoreboard.

A lot of places have been really agreeable. At the behest of Linda Drattell and a couple of other people, we sent out a letter to the Golden State Warriors basketball team which, again, is one of those where you just want to watch the game because they always win. They got back to us and said that they did not think they could actually provide scoreboard captioning at Oracle Arena where they presently play because it is managed by somebody else. They said that they could not do anything in Oakland but they would be moving into a wonderful new facility in the Mission Bay area of San Francisco and, once they get there, they will provide scoreboard captioning.

So, we said, okay, thank you very much; we look forward to scoreboard captioning in the new arena. We knew that Oracle could darn well have done it. BUT we also knew the management company's attorney. He is "zombie guy No. 1," and he could certainly tie this up in court for two years. By that time, it will be gone and the whole thing will be moot.

Right now, we have a letter out to the San Francisco Giants. We have not heard back from them yet, but they are also doing the app business.

I went there in August and saw a game against the Cleveland Indians, may that name rest in peace, and the Giants actually won that game. I did the rigmarole of logging on to the MLB.com website and telling them what park I was in and that I needed captioning. Meanwhile my beer is getting warm and my hot dog is getting cold, and by the time I actually was able to punch that up, I got the message, so sorry, captioning not available today. Well, thank you very much.

We told the Giants that while it might be very quiet in AT&T Park in San Francisco, the Giants' glory days will return, and there will be lots of cheering again sometime and people want to have their hands free to do that.

(Editor's note – the Giants bought a separate caption-display board during the off-season).

The idea is that we say it would be nice if we could get some court to actually tell the stadium people that not only do you have to do captioning but you have to do it on a scoreboard. Arizona just agreed to do it. Seattle agreed when we asked, but we have not gotten that court case yet. We are trying to find some team who wants to be really obnoxious and say, "No, hell no. Take it with the hand-held stuff or forget it." We do not have that yet but we are working on it.

Another cool thing that is going on right now is live theater.

Live theater in a lot of ways is like movies, in that we need to be able to see the captions, to read the dialogue at the same time it is happening on stage, and particularly with musicals, to hear the song lyrics because, you know, if you have a hearing impairment, that background noise, the orchestration, even though it is wonderful, and pleasant and lovely -- it interferes with our ability to pick out the lyrics. We need to be able to read the lyrics as the music is unfolding.

There are a number of theaters that have been offering what you might call open captioning LED reader boards put up on the edge or sometimes in the front of a stage. The management blocks out seats, gives us seats where the LED reader board and the stage is visible in the same line of sight. The captions are all prepared in advance, and an operator or caption person is usually there operating the captions in sync with the pace of that night's performance.

This is where it becomes much more complicated than movies, from the point of view of the people trying to provide the captions, because movies always go the same pace and so it is all just a computerized synchronization. Not so with live theater. The pace may be a little faster one night or slower depending on whether people have had Valium or coffee beforehand.

[LAUGHTER]

During a musical people will applaud sometimes for varying lengths of time. You need to find some way of syncing the captions along with the pace of that night's performance. Live operators are one solution but live operators can get expensive, and especially it can get expensive if you find yourself in a situation where the Broadway stagehands contracts kick in. Those are very, very pricey contracts. And very, very, very good jobs to have, if you happen to be a Broadway stagehand union member.

So, the problem with theater live captioning is twofold. First of all, the captions are prepared in advance but because you have to block out the right seats for them, it is extremely difficult to do that without knowing very far in advance which performance is going to be captioned, and to find a situation where there are enough seats in that line of sight corridor available to offer them for people to see the captions. That from their point of view is a problem. From our point of view, the problem is the LED reader board captioning works great-- absolutely fabulous-- for a very few people. If you happen to be the lucky person who is sitting right there where you have got that beautiful, perfect line of sight, it is fabulous. I experienced that "nirvana" one time when line of sight was absolutely perfect, but for most people it is not so perfect. So, between the problem that only a few people can enjoy it and that it is such a hassle you get very sporadic open captioned performances.

We started thinking that there must be another way; maybe like the type that is done in the movie theatres. There has to be some way the captions, once prepared in advance, can be reused for essentially every performance and can be seen essentially on some kind of personal viewing device, where you can place it right in the line of sight that you enjoy to the stage.

We had decided that the best way to deal with this, was to start out by talking to the Broadway theater owners. I had thought Broadway theater was just kind of an amorphous mass of theaters, but I find out it is a very precisely and tightly-defined universe. There are 41 theaters, 40 of which are right in the Times Square area, and one of which is in Lincoln Center in New York City. Basically, 31 of the 41 theaters are owned by the same three companies. And there is a lot of information available on how much money they make, and what they can and cannot do. So, we thought, it would be cool to start talking to the Broadway theaters and suggest to them that there must be a better way of doing captioning.

We want them to find a way where captioning can be done for every performance and can be offered for every seat. Find a way that if a deaf or hard of hearing patron comes to New York City and goes to that Times Square ticket booth and scores a ticket for something they want to see (even though they are doing it on half an hour's notice), they can be sure that the play is going to be accessible.

We had drafted a letter which ALDA agreed to sign on as part of this project in which Tina, my partner in crime, was involved as well as a couple of people in New York. We

were going to tell the Broadway theaters "There has got to be a better way." We would like to sit down and talk to you (the theaters) and work out how, maybe, we can do this.

Then a miracle happened.

We were ready to send that letter out on, like, the 10th of November. About the fifth of November when the people we were dealing with in New York got an e-mail from the Schubert theater group. They are the biggest owner of Broadway theaters and they said, "We think it would be worth trying to find a way to do captioning for every performance, and from every seat, with a device that will enable every individual to see the stage and the captions." And we thought, God, this is amazing. We think it is a good idea to take "yes" for an answer, even if we have not actually asked the question yet.

[LAUGHTER]

And it turned out there was not a security leak; it was just an idea whose time has, obviously, come. And it became obvious to people on both sides of the equation, both us as the users and them as the providers, that we had to find a different and better way of doing it. The Schubert people said we want to put together an advisory group. They talked to a number of New York people who were going to be on it, and we said well, wait a minute, you know, 70 % of the people that go to Broadway theaters are from out of town, so you might want to include some out of town people. And they said, "Oh, sure, like, who?" And we said: "Like us."

Tina and I are part of the advisory group and we are talking to the Schubert Theater people because they are the big guys and the opinion leaders in New York who are able to bring all of the other members of the Broadway league into the group.

We expect almost any time now, a public announcement of some sort of that says that by sometime next year, every one of the 41 Broadway theaters, will be able to offer captioning for every performance from every seat, for every play.

So, we are really encouraged by that!

[CHEERS AND APPLAUSE]

That is the good news.

Here is the bad news: guess how they are going to do it -- an app.

AUDIENCE MEMBER;

Oh, no!

JOHN WALDO;

It is an app you can actually download right now called GALAPRO. I have it on my phone; Tina has it on her phone.

The Schubert, at their expense, flew us back to New York City last year, on Easter Sunday, to test this new app. We saw *Chicago*. They said, "You can use your own phone, but do not worry about that, because we have got phones that we are 100% sure will connect so just use ours." We had our phones in our pocket we went over to the booth; the guy who was trying to help us could not make either of his two phones connect but he could make ours connect.

So, Tina and I were sitting there watching *Chicago*, watching her phone and she had a selfie stick so that she did not have to hold it in her hand, she could hold it down here (indicating), and we could both see it. Everything was going fine until the middle of the first act when an alarm on the phone went off. Tina had forgotten that she had set it. The lights went off, the bells went off. You have no idea how conspicuous that makes you in a darkened theater, so Tina shoved her phone under the seat and basically tried to stomp it to death.

[LAUGHTER]

We pulled out my phone, and connected with it, and it worked pretty well. GALAPRO is not without problems. The syncing is done basically according to light cues. There are a lot of light cues; whenever something changes, the lighting changes a little bit. The people that are running the light board get these cues as to when to change the lights. GALAPRO taps into those cues, and uses that as the key to advance the dialogue.

There is a fair amount of correspondence between the lighting cues and the dialogue changes, but it is far from perfect. So sometimes the dialogue is way ahead, sometimes it is way behind; we had some connectivity problems. It is a work in progress, but it was not all that bad. We understand now, that GALAPRO has done a refinement of their cuing mechanism. Now, it is using a combination of lighting cues and voice recognition, which they believe will work very well to sync the pace of the display with the pace of the actual production. We are hopeful that will work.

(Editor's note – at a subsequent test run in November, the new and improved GALAPRO worked very well indeed.)

Then, though, there remains the problem of having to hold the damn thing for the whole show. And this is one of those things that we cannot get people who are not users to understand. They appreciate, as do we, the technical brilliance of this GALAPRO app, but they do not appreciate the hassle of having to hold it. So we are telling them to make sure we get the app right. Work on the app first, but then we have got to work on the business of some sort mechanism that does not require us to hold it.

I was at a conference in Austin and I talked to the guy from the Schubert, and was explaining this to him and he said, "Oh, I think I have got just the solution, John. What we are going to do is we are going to put a transparent envelope on the back of each

seat in front of you, and you can stick your phone in there so you do not have to hold it.” I said, yeah, but we are going to have to look down and up, down and up (what I call the bobble head problem). And at that point he basically said, “Well, life isn’t perfect.”

And I admit it is not. I admit it is not and we do the best we can, but I think they can do something better than that. I am asking them to think of something like a scabbard maybe or a holster, where you can stick your selfie stick in that and, basically, position the phone or whatever you are using. Some theaters are using a pad in a position that is between our eyes and the stage, so that we do not have to hold it. If we can get that then we will get something pretty cool done.

AUDIENCE MEMBER;

In New York, I know they have captioning for the opera and in New Mexico, the opera has captioning on the back of the seats.

JOHN WALDO;

Absolutely. Bobble head, though, is a problem. Let’s face it. I like opera, too, but there is not a lot going on in terms of libretto or in terms of what is on stage so you can glance up and glance down and not much has changed either in terms of what they are saying or what they are doing. But try that with *Hamilton*. Try that with *Hamlet*. It is just lickety-split.

One of the problems that we deal with, even when we are dealing with people who have our best interests at heart and are trying as hard as possible, is that they do not really test these things under game conditions. They test them for a little bit and see that it will work. And in a lot of ways it will work but they do not use it under the actual circumstances.

Right now, we have a lawsuit going on in St. Louis, Missouri, again, involving Dr. Childress, where a theater there basically just told her “go away” when she wrote them an email asking for captions.

I, then, wrote them a letter saying that she needs captions. And the ADA said you have got to do it and they ignored it, so we filed a lawsuit. We are still going back and forth on that. They want to offer seat-based captioning; that is closed captioning where they give you a pad which you have to hold. We say no.

They also say they are going to do it for one, and only one, performance of each play. And again, we say **NO**. We actually say, “pshaw” and “hell no, we are not going to do that.” If you take away the complication of needing to block out certain seats (and I get that it restricts the number of performances that you can provide captions for), it is just a matter of money.

And they have said “Oh, money's not a problem; we have got a lot of money.” And what we are saying is, “then you have got a lot of problems because there is no reason not to do it.” We are in the process of filing a motion for summary judgment on that.

That story is to be continued.

(Editor's note – the decision was handed down in April of 2018, and we won on all issues).

But basically, we are making some real progress with live theater on the technical stuff; the problem now is the practical stuff, and that is what we have to keep working on.

There is no substitute for individual advocacy. If you write a letter to the business involved, do not tell them that you even know a lawyer, and see what you can do. If you want me to look at it to make sure you do not misstate in the letter that is fine. If the business comes back, and says they cannot do it or they do not have to do it, I may start getting progressively more involved. Through persuasion and education, 90 plus percent of our stuff gets done at that level. If that does not work, the next step is to ask for a formal negotiation; only if that does not work do we file a lawsuit. By all means start with the request and ask nicely. And say “thank you,” that is the most important thing.

I can see that it is 3:00 and we only have 15 minutes more, and you probably prefer to ask questions, than to hear me rattle on about this.

AUDIENCE MEMBER;

I see you have listed funeral homes under other causes (referring to slide), but before there is a funeral, often people live in an assisted living complex or skilled nursing memory care -- am I correct that the ADA applies to those three types of residences?

JOHN WALDO;

Yes and No. Funeral homes for the most part do not provide any accommodation and they are specifically listed as a place of accommodation that has to do so.

I say “for the most part” because if you have a clergy person conducting the service, it may not be quite as clear-cut because the ADA does not apply to religious facilities.

This subject has become really tricky because residential facilities in and of themselves are not covered by the ADA. They are covered by the Fair Housing Act which is different. The Fair Housing Act says that the landlord must let you install things like loops or amplified telephones or flashing fire alarms at your expense. And when you move out, you have to remove them at your expense. In some of the public areas, however, if you are in an assisted living facility that offers programs and so forth, those **do** have to be made accessible.

This is a tricky but a very important area.

AUDIENCE MEMBER;

Regarding handicapped placards, I see fines for people who park in handicap spots vary from anywhere between \$35 and \$500. I do not understand that. Why isn't it the same in all states?

JOHN WALDO:

It is difficult to understand any legislation because any legislation is arbitrary at a certain point. Why doesn't the ADA cover websites? Well, because it does not. All I can say is that I am sure there were trade-offs involved. When the ADA was being passed, it did not say anything about movie theaters but in the congressional legislative history, both the Senate and the House put a provision in the legislative history that said, "This law does not require theaters to show open captioned movies." That has been a huge problem, because the law certainly does not seem to say that open caption movies are required. Courts have tried, agencies have tried, everybody has tried to reconcile those two provisions. Since we **do** have closed captioning available, that must be what Congress had in mind.

As a matter of fact, the 9th Circuit once said that maybe the Department of Justice thinks that open captioning would be a fundamental alteration. And they have closed captioning there so they do not need to get into open captioning. We have tried again and again and again in every venue, in front of every court that will listen, in front of every agency that will listen, to say there should be at least some open captioned movies required but we have failed utterly, every time, in front of everybody. So, we will enjoy the closed captioning we got. If you can get open captioning from time to time, great. Enjoy it and say thank you.

AUDIENCE MEMBER;

I am deaf. I have no help from any assistive listening device. I travel and stay alone in hotels. When I go to a hotel, I ask for an ADA kit because I need some way of being notified should there be an emergency. I want to write a letter, and I am glad that you mentioned you would look it over, because I went to a hotel in Maryland and I asked for an ADA kit and the clerk said they did not have it. I said it was a law. He said not in the state of Maryland. I know that is BS because the ADA is a federal law. As I always do, I want to write a letter because I think it is very important that people are aware of what the law is and what they are supposed to do to accommodate us. I am not sure what to put in the letter. I know I have to write a letter. More people should ask for what they need for accommodation, not just me. If you go to a hotel you should ask because the reason they do not have a lot of accommodations is because nobody asks. I feel like I am the only one asking.

JOHN WALDO:

That is 100 percent correct. If we do not ask for it, it will not happen.

AUDIENCE MEMBER;

Can you summarize some of the most important things for us to do on a day-to-day basis to help advocate for our rights?

JOHN WALDO:

I have to say

1: Ask for what you need.

2: Patronize places that offer accommodation.

3: Say thank you to the people that offer it. Even if the law requires it, saying thank you is a more powerful prod than just saying told you so.

AUDIENCE MEMBER;

And I would say that when you ask, document it; put it in an e-mail, copy other people. You want to have a documented chain of events and e-mail is a great way to do it. Go to their website, to their "contact us" information, and make sure that you have some kind of proof of chain of events.

JOHN WALDO:

Yeah, it is so much better when it is documented. One last question.

I will be around during the rest of the conference mostly in the bar watching baseball, particularly when the Astros are playing so you can always find me there.

AUDIENCE MEMBER;

I have a couple of questions that relate.

I enjoy live theater and it is difficult for me to understand. The theater people somehow think that hearing devices are going to be the answer, but if you are deaf that is not going to work at all. And the hearing devices that they have do not work with newer technology. Some of these people whom I have talked to are very interested in improving things, if it is not too expensive for the theater. I would like to know where to direct them. They have said if you get information, let me know. I do not know how to direct them to get improved systems.

The second thing would be the quality of some captions that you see can be an issue.

And another thing, for example here in the hotel they ran out of the ADA kits. They say that they are being compliant and, in fact, they are, as long as they do not run out of kits, but if you get here and they have run out, you are out of luck.

JOHN WALDO:

One of the real problems with the ADA is basically you cannot get damages when somebody **does not** do something. All you can do is get a court order telling them to do it right in the first place -- or next time. And if there is no real assurance there is going to be a next time, if you are not going to stay at this hotel again, then you are out of luck. We had the same problem with captioning quality. Because the only thing you can get is potentially, a court to say do it better next time.

I will talk to you afterwards about where to get good sources of information about this.

Thank you all very much for being here. My card and the outline are here so please feel free to take them. Feel free to contact me.