Transcript for an Accessibility.com event entitled "5 Accessibility Myths Debunked" featuring Susan Mazrui and S. Tomiyo Stoner

Susan Mazrui is the Director, Global Public Policy, AT&T Services, Inc. and S. Tomiyo Stoner is the Founder of Undaunted Law Firm, P.C.

The video length is 21 minutes and 54 seconds. Contextural subheadings are included throughout the following transcript with timestamps marking minutes and seconds.

Introductions

(Timestamp 00:05 - 01:17)

Speaking: Susan Mazrui

Hi. My name is Susan Mazrui and I work at AT&T in Global Public Policy. Today we're joined by S. Tomiyo Stoner, who is a disability rights attorney who works in Texas and California. She is the founder of Undaunted Law, and she's worked a number of years in the area of disability rights. She has recovered over $20 million for her

We are certainly glad to have her So, Tomi, welcome.

Speaking: Tomiyo Stoner

Thank you for that kind introduction. I'm really glad to be joined by you with all your extensive experience in the field and your incredible work for disability over the years. So I want to get started. Today's presentation is about the myths surrounding disability rights and disability rights litigation. For that reason, I'm going to go ahead and open up, if I can, some of the slides discussing the myths. Here I am in front of the screen and we're just going to go through five common myths.

Accessibility Myth #1 Debunked - Drive-By Lawsuits

(Timestamp 01:18 - 02:43)

Speaking: Tomiyo Stoner

The first one is the myth of drive-by lawsuits, and I'm going to go ahead and move myself around a little on the screen as a little audio description. But drive-by filed lawsuits are absolutely not the typical Americans with Disabilities Act (ADA) lawsuit situation. You hear about these people that go out and sue thousands of companies with just no real merit to their case.

But actually that's extremely uncommon, less common than being hit by lightning. In 2020, there were 3500 of these suits filed. But when you put that in perspective of the 133 million websites in the US, it's a very small percentage. The average settlement value in these cases is only $26,000. So when you're preparing a compliance strategy, I don't recommend that you think about these drive-by lawsuits as a threat.

The real issue is genuine consumers who are looking to access services for their from their government and they're not interested in suing for the sake of suing. So I kind of call this one the JFK conspiracy of

myths because there are some maybe factual data you could use, but it's just not well supported by the evidence that's out there.

Accessibility Myth #1 Debunked continued
(Timestamp 02:43 - 03:30)

Speaking: Susan Mazrui

That is a concern that I've certainly heard a lot about, that you can just be any company and you could face litigation for no good reason because people are out there just wanting to sue. But I find it interesting that attorneys like you, and attorneys like Lainey Finegold, you actually end up speaking to folks who really want to make a difference, which is not the typical business model per se.

Why is it, do you think that attorneys who work in this field are often the folks that go out and provide guidance or caution for folks who might be concerned about the ADA and their risk with it?

(Timestamp 03:31 – 04:03)

Speaking: Tomiyo Stoner

Well, sadly, it's because it's one of the fields where the cases are so numerous that we often have to turn away good clients. You know, we don't love to do litigation. We prefer to find better solutions, in part because if we wanted to, we could fill our dockets every day with people who aren't complying.

And it's just sort of a shame that so many years after the passage of the ADA, it's still continually disregarded.

(Timestamp 04:04 - 04:26)

Speaking: Susan Mazrui

There are opportunities for change that don't require litigation then. And I guess the folks that are here today listening to this are folks who are interested in doing the right thing and maybe a little confused about what they're required to do. Sometimes public entities think that they are not required or they're part of the government.

They can't be sued. They can't be approached. They're not going to be covered. What are some of the myths around that?

Accessibility Myth #2 Debunked - Public Entities Are Immune From Suit
(Timestamp 04:36 – 05:57)

Speaking: Tomiyo Stoner

So that brings me to myth number two, which is that public entities are immune from suit. And I would consider this sort of as a memory aid to be like your Lucky Mavericks T-shirt or your lucky Golden State T-shirt. You think that it's going to make your team win, but it really doesn't do much for you. In that sense, you know, there are protections that public entities have. Certainly different states have different protections. Government Torts Claims acts are very common, both Texas and California, where I practice have them. So do a large number of other states where I'm also associated in. So they do provide some

protection. And yes, sometimes you will get lucky and have someone fail to make an administrative requirement if that in fact, applies in your state.

But the reality is that public entities, especially local governments, are particularly contemplated by the ADA. And there's a dramatic amount of case law in point that says absolutely Title II of the ADA is, you know, putting obligations on public entities and that immunities have been waived. So any kind of immunity from suit that you think you have, it's really time to think twice about that.

And it's most likely much more a myth than it is a reality.

Accessibility Myth #2 Debunked continued
(Timestamp: 05:58 - 06:03

Speaking: Susan Mazrui

So if you're not familiar with the requirements under the ADA, that's not a good defense.

Speaking: Tomiyo Stoner

Absolutely not. You know, the ADA has been the law for more than 30 years. Especially public entities are... Any business really is taxed with with knowing that information.

Accessibility Myth #3 Debunked - Contractor Quick Fixes
(Timestamp: 06:18 - 06:55)

Speaking: Susan Mazrui

What are some other myths that you've found?

Speaking: Tomiyo Stoner

So number three, this one is the take a diet pill and lose 30 pounds in 30 days. myth. The contractor quick fix. So contractors, a lot of them out there will say things like "cure ADA violations with one line of code". And if it sounds too good to be true it's because it is. If you think that one line of code fixes your website.

Just think again, please.

(Timestamp: 06:56 – 07:46)

Speaking: Susan Mazrui

Yeah. It is not a simple process for a website. There's so much code involved in it. When you think about it, it's a little bit ridiculous to think that someone could come in and wave a magic wand and make things OK. At AT&T we say it's better to bake it in, to bake in accessibility, bake in the code, than try to bolt on a fix.

It's also much less costly if you take the approach that as you're building it, you're looking at the guidance to provide accessible websites, following WCAG guidance. And you can talk a little bit more about some of the things maybe that you've heard companies have done when they don't know what to do, but they still want to make sure that the choices they're making are are the right ones for the right reasons.

(Timestamp: 07:47 – 09:10)

Speaking: Tomiyo Stoner

Yeah, absolutely. You mentioned the WCAG standards. I think in any relationship with any contractor, make sure you're aware of the standards so that when they talk to you about things like whether it's perceivable, whether it's operable, understandable, robust... Make sure you know what those terms mean so that you can see through it. if they're just blowing smoke. And like you alluded to, it's absolutely correct that if you bake this in early in your development, not only will you save money in the long run, but if it comes to the point of a lawsuit, it may be too late for you to make those fixes depending on how complex your product is or your website is.

So definitely think about that early. Get specific with the contractors. As a public entity, use the bidding process to really, really find out who you're working with and make sure they have a good record and make sure that they're providing you guarantees that if you get sued, you can recuperate what you've paid them and maybe even more.

So that's a that's a great way to think about this. Think about contractors with a grain of salt just like you would a product on online or on TV. I mean, it doesn't mean that it's going to be bad. It just means that you have to take those reviews into account and you have to think really seriously about what you're purchasing.

Accessibility Myth #3 Debunked Contractor Fix Example
(Timestamp 09:11 - 09:19)

Speaking: Susan Mazrui

And sometimes people will say, we do all our testing through automation. What's your experience with that?

Speaking: Tomiyo Stoner

Automation can be an important part of testing, but it is never, ever a substitute for what actual consumers experience. The reality is that when it comes to an ADA lawsuit, the judge isn't going to ask, "What did you do to try to comply with the ADA?" The judge is going to ask, "Is the person able to access the site?"

And if they're not, that is... it's not a defense that you did some automated testing, and the automated testing said it was fine. If the person can prove that they can't use it. That's all you need to win.

(Timestamp: 09:56 - 10:17)

Speaking: Susan Mazrui

I think I have a good example of that. Several years ago, I worked with a team and they're working on a site and they were trying to do everything the right way, but they didn't have any manual testing. They didn't have actual user testing. They went through the automated process. They got a great score, but they had a button that was labeled "Orange Button".

So it passed the automation because it did have what was needed to be described, but the description was not particularly useful because they didn't know that the orange button was the enter or next button. And so I think that you're right, having users engaged to make sure that people with actual disabilities know the site is working for them.

There may be some techniques they use on a daily basis because they're used to doing it, because that's how they accommodate their disability that you as a person... So if you don't have that particular disability, you wouldn't necessarily know. So I think that that's very helpful.

(Timestamp: 11:01 - 11:24)

Speaking: Tomiyo Stoner

Yeah, that's the old picture goes here that I see all over the Internet, even big companies. And that brings me to another point, too, about whether you're a developing a team through contractors or your internal team. You hire people with disabilities. They're the ones who are most likely to have the ties to the community. They're the ones that will have better knowledge.

I mean, obviously you can't represent every disability on every team. But if you're trying to comply with the ADA and you're not getting input from people with disabilities, that's where you're going to go wrong even if you're trying. It's just too hard.

Speaking: Susan Mazrui

If you don't have someone on your team or you can't hire someone right away, what can you do to make sure that you're getting that manual testing? Who do you go to?

Accessibility Myth #3 Debunked continued
(Timestamp: 11:53 - 12:16)

Speaking: Tomiyo Stoner

There are a number of organizations that provide at the end, we'll put a link to DisabilityIN. DisabilityIN has a list of those organizations. I'm sure Accessibility.com has a number of resources. But you know, most importantly, going to organizations that are for and by the community that you are seeking to reach, that's the most important strategy.

And I would also say that when you are evaluating compliance, don't expect that they're going to do it for free. Many people are willing to, but for a lot of the people that do this, this is their profession and they are going to be looking for payment and that's pretty standard and typical. So don't feel... don't feel any type of way, if that's the case.

Speaking: Susan Mazrui

I think even folks who are willing because they have some spare time or they want to help, they're often not willing to do it these days because without payment, because it decreases the likelihood of people who are in the profession. And so often around disability issues. If you have a speaker, for example, we'll talk about disability rights or inclusion or other things.

Generally payment is expected. So don't be surprised. It's not that they're a bad person. It's just a job, like anything else. So what are other myths that you notice?

Accessibility Myth #4 Debunked - You've Already Complied
(Timestamp: 13:20 - 14:43)

Speaking: Tomiyo Stoner

Number four, this is the myth that you've already complied. The myth is that compliance is something you finish. That's kind of like Rip Van Winkle. That you put your website out and you think it's great and then time goes by and then it is out of date, especially with the state of the internet. Things change very fast. Screen reader technology continues to come up with new updates.

They're just a variety of different technology changes that occur over time. Even with apps especially, we see that those apps update and you may or may not realize that the updates they've made have now made them inaccessible. Sadly, it does happen, though. Sometimes it happens the other way and an update increases accessibility, but unfortunately you cannot count on that being the case. And so definitely compliance is an ongoing process. Make sure testing is a part of it. And then this goes back to one of the points we've addressed before.

If you are getting feedback from the community, deal with it in a respectful manner. Capture it, utilize it. And I honestly think this is kind of I almost don't even feel like I should give this advice because the reality is that if you're taking suggestions and you're acting on them and you're trying and you're integrating early before suit is filed, many of these matters can resolved before they even make it to my desk.

Accessibility Myth #4 Debunked continued
(Timestamp 14:44 - 15:21)

Speaking: Tomiyo Stoner

Most of the people that come to me have tried verbal complaints, often have tried a written or email complaint, often have tried to use an automated system that allegedly captures complaints. So work with your counsel on creating a confidential space where these complaints can be documented and acted upon. I really promise that there are ways... there are many types of privileges in place that give companies the ability to, companies or government entities, the ability to work on improvement without exposing themselves to additional liability.

So I would I would recommend you speak with your attorney on how to craft an ongoing compliance program that's going to take advantage of the the privileges that exist.

(Timestamp: 15:33 - 15:55)

Speaking: Susan Mazrui

I think one of the mistakes that some companies will do is they will assume that they haven't gotten a complaint so everything is fine. And unfortunately, a lot of times people don't know how to complain or they don't know how to effect a change. And they may go in the community and bad mouth your website. And you may have done everything right.

But another section of the website was changed and it broke the accessibility because it was an ongoing quality assurance. So I think having an easy way for customers to give you feedback, but then not rely on that as your sole way of knowing you're doing OK is also important. You know, it's really easy to say "everything's fine. I haven't heard anything." But it is not really an effective way to make sure that what you're doing is OK all the time.

So some version of reassessment, some process to make sure that there's testing that's not going to impact other sections of the site, even if they have nothing to do with accessibility or nothing to do with what's seen on the computer screen for folks. Those changes can actually break the accessibility. So keep checking out, be diligent about your site just like you would for for other things.

You don't want to get a notification that there is a... the site is not working for any reason, even for accessibility, even if it's not as obvious to someone who's looking at the site. So, there are processes. So Tomi, what other myths have you noticed?

Accessibility Myth #5 Debunked - Compliance is a Ceiling
(Timestamp: 17:16 - 17:37)

Speaking: Tomiyo Stoner

The fifth myth might be the most dangerous, which is that compliance is a ceiling. Compliance is the floor, the bare minimum. And many times organizations fail to see the forest through the trees. They check the boxes. They believe they comply with the ADA. But they don't ask themselves the overall question of "Are we providing equal service to people with disabilities?"

"Are we really making things easy to use?" "Are we giving a customer experience that's great?" And I think the myth that this ties into is a very common and pervasive myth that many people won't say expressly, but a lot of people believe, which is that deep down inside, they believe that neither they nor anyone that they're close to in their family will ever have a disability.

But that's a myth. One in four Americans has a disability at some point in their life. So the reality is that when we talk about making a great user experience, we're talking about making great user experience for you, for your family. It's not just some abstract group. The reality is that compliance and having an attitude of inclusion is just so crucial for organizations not only to avoid ADA lawsuits, but to build the type of community the ADA was meant to create.

(Timestamp: 18:37 - 19:05)

Speaking: Susan Mazrui

So really having an experience that is equal, whether you have a disability or not. I know one of the mistakes that people I've run into have made is that they believe that even if the website's not accessible, if you could call and get the same information, it's OK. And the problem with that is, one, it's not the same experience looking at it and reading it, especially for a low vision person or with some disabilities.

But the other thing is the offices are very rarely open 24/7 and their websites are available at all times. So if somebody is working a day shift and they can't get away when your hours are open, they

effectively have no access to the information you're trying to provide. And whether you're a company or a government organization, you want to share that information in the best way you can.

So if you make compliance your floor rather than your ceiling, you're probably going to be not only helping your customers today, you're not only avoiding lawsuits, but you're also making the experience the best for everyone. And there's often unintended benefits from accessibility. For example, if you captioned your videos, the websites are more likely to come up to your site.

So there's site optimization based on that piece of it. And you may never be aware of it. But it's more than that. It's making everyone feel welcome, whether they're in a noisy environment or they have a hearing loss or other disability.

Accessibility Myth #5 Debunked continued

(Timestamp: 20:15 - 20:38)

Speaking: Tomiyo Stoner

That's exactly right. And that's... I think if you can always work with that in mind, that's one of the best tools to achieving compliance and staying away from litigation. And the reality is that many times people don't want to sue, but they become frustrated and they don't feel that they're treated with respect. And that's what drives them to an attorney's office in many occasions.

And many disability organizations will have reached out to the company or organizations several times before they decide to take legal action. Because that's not their first choice. They want to help you become a better company for all your customers, including those with disabilities. So it's an important thing to keep in mind.

Accessibility Myths – Key Takeaways of 5 Debunked Myths

(Timestamp: 21:03 - 21:29)

Speaking: Susan Mazrui

Can you run us through the myths really quickly, Tomi?

Speaking: Tomiyo Stoner

Sure. So the key takeaways... Most litigation isn't drive-by, so prepare a compliance solution for the long run. Two, public entities must fully comply. Any other suggestion is myth. Three, beware of overlays and other contractor quick fixes. Four, compliance is one and done. And five, compliance is a floor, not a ceiling.

Closing Remarks

(Timestamp: 21:30 – 21:54)

Speaking: Susan Mazrui

So I know folks have the the bios and contact information, I believe from Accessibility.com. And we thank you all for joining us today. And I hope that this has been valuable information for you.

Speaking: Tomiyo Stoner

Great. And I have one additional resource slide and that should be available on the Accessibility.com website as well.

Speaking: Susan Mazrui

Thanks.

Speaking: Tomiyo Stoner

Thank you.