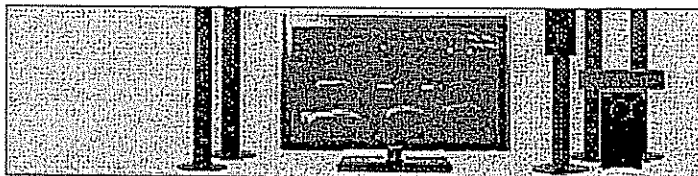


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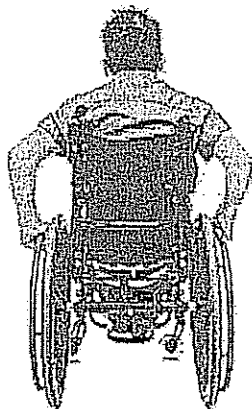
Attorney Tom Frankovich and his disabled clients sue small businesses to make them accessible - and make millions

By [Ron Russell](#)

Published: July 25, 2007

Inside his elegant law office in a restored century-old Victorian at the upper end of Van Ness, with his feet sprawled across an enormous hand-carved desk to reveal the most audacious pair of alligator boots this side of Wyoming, Tom Frankovich projects the swagger of a man at the top of his game.

Gabriela Hasbun



Gabriela Hasbun

The cartoon image that greets visitors to his law office Web site may well be the closest thing to a Frankovich self-portrait. In it, the burly, pony-tailed lawyer with a penchant for cowboy hats and bolo ties leads a throng of the disabled from atop a military tank labeled "Access Blaster." A gun-toting female stands guard as Frankovich commandeers a special phone for the hard-of-hearing.

Perhaps not surprisingly, he professes to practice disabilities law the way his favorite role models, World War II generals Rommel and Patton, executed warfare. "The best defense is a good offense," he declares. "You keep going. You don't stop. The

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Tom Frankovich.

Gabriella Hasbun



Frankovich's law office in a restored Victorian is itself not accessible to the disabled.

Gabriella Hasbun



Frankovich client Patrick Connally is a big fan of the attorney.

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Owner Hussein Kajouee at the Hyde Out, his bar at the foot of Nob Hill.

Gabriella Hasbun



Jose Garcia at his Rancho Grande restaurant in Napa. No one there recalls seeing the Frankovich client who

only thing that works is firepower; the more the better."

That translates to a prickly style that critics say often skirts the bounds of propriety. He routinely raises the ire of the mostly mom-and-pop business owners his clients are fond of suing by sending them so-called "friendly advice" letters. The missives imply that their legal position is hopeless and urge them to pay up without bothering to seek legal advice.

"Much of what he does is designed to intimidate, and it works," says Catherine Corfee, a Sacramento-area attorney who has tangled with Frankovich on several occasions.

His clients, practically all of them in wheelchairs, think he's the greatest thing since sliced bread. But to countless restaurateurs and assorted small-business owners who've been sued by Frankovich under the Americans with Disabilities Act, the landmark 1990 civil rights law, the cowboy-loving Frankovich is the devil in a buckskin coat.

Few people dispute the positive changes brought by the law. It is widely accepted that, in the 15 years since its enactment, the ADA has helped to bring about a sea change not only in providing the disabled access to public accommodations, but also in raising awareness of disability

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But in California, the birthplace of
the disability rights movement,

critics say that a relative handful of professional litigants in
wheelchairs, with help from savvy lawyers like

Frankovich, have turned the ADA on its head. So-called

"frequent filers" have done so, they say, by bringing

lawsuits in "drive-by" fashion, extracting easy settlements from establishments — often small businesses — that fail to post handicapped signs or whose restroom grab bars are a few inches too high.

That's because unlike other civil rights legislation, whose enforcement falls under the auspices of the Department of Justice, Congress left the policing of ADA violations largely to plaintiffs in civil courts. Under the ADA, plaintiffs are entitled only to injunctive relief — that is, that a problem gets remedied — plus attorney's fees. However, in California, which has more ADA lawsuits than any other state, plaintiffs can piggyback claims in state court under the Unruh Civil Rights Act, enacted in 1974 as the nation's first disabilities rights law. It provides damages of at least \$4,000 per violation.

Enter Tom Frankovich.

"It's a cottage industry," says Bakersfield attorney Craig Beardsley, who's gone against Frankovich numerous times, "and no one has mastered it better than Tom Frankovich."

Among lawyers at the ADA plaintiffs' bar, none is more feared than Frankovich.

He and his stable of disabled clients are from a long tradition of California lawyers and litigants known for testing the law's boundaries. Bay Area court regular Diane zum Brunnen famously took on Clint Eastwood and his Carmel Mission Ranch Inn before a jury rejected her ADA claims in 2000. Another frequent filer who was active in the '90s, George Louie of Sacramento, even sued one of his own lawyers for having an inaccessible office restroom.

But defense attorneys and others say few are as adept as Frankovich at working the system.

"There are lawyers out there who will throw up any kind of ADA case against the wall and see what sticks but you won't find him doing that. He comes prepared," says attorney Alan Boon, who has gone against Frankovich several times.

Besides two other attorneys and a support staff of three who work out of the office on Van Ness, the Frankovich team includes consultants who function both as expert witnesses and compliance verifiers. Frankovich's people have even been known to solicit targeted businesses to do the work to bring them into ADA compliance — even as Frankovich was threatening to sue them.

His investigators are routinely dispatched to businesses to observe such things as whether paper dispensers are easily reachable, or whether restroom grab bars are close enough to the toilet bowl. Says

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Boon, "He leaves few stones unturned."

In the 13 years since he abandoned personal injury law to devote himself to people in **wheelchairs**, Frankovich, 61, has been the lawyer of record in more than 1,000 disability cases. Most have been brought on behalf of a core group of about a dozen clients. They include Bay Area disability rights advocate and part-time radio host Patrick Connally, Redding-area herb farmer Marshall Loskot, and — arguably the king of all current ADA litigants — Los Angeles-area paraplegic Jarek Molski.

Molski, 34, a paraplegic who was injured in a motorcycle accident as a teenager, has a law degree, although he has never practiced law. During a cross-examination a few years ago, he admitted he doesn't have a regular job outside of filing lawsuits. In four years, Molski filed more than 500 ADA legal claims, becoming, in Southern California at least, a poster boy for so-called "drive-by" ADA lawsuits. (Frankovich represented Molski in 232 of those cases.) Court records show that he often claims injuries at four or more establishments on the same day.

Typically collecting much more in fees than his clients do in damages, Frankovich unapologetically concedes that the ADA has been very kind to him. His ornate, if disheveled, office is stuffed with original paintings, sculpture, and antiques, including a life-size wooden lion from England that dates from the early 19th century. When he's not in the office, he and his longtime girlfriend split time between a sprawling home in Tiburon, with sweeping views of the North Bay, and a 240-acre ranch in the rolling hills near Red Bluff, Calif., that is home to Frankovich's personal herd of 90 bison.

One rival attorney estimates Frankovich has made \$10 million from Molski's cases alone.

"We're not the Kmart of disabilities law," Frankovich says. "We're Neiman Marcus."

Yet, beneath his steel-blue eyes and disarming smile, which adversaries say masks a relentless take-no-prisoners style, there are clearly signs of worry.

"When people don't like what you do, you don't want to give them an opening, justified or not," he says. "And there are clearly people who don't appreciate what I do."

The ADA was hailed as the Emancipation Proclamation for the disabled when it was signed into law by President George H. W. Bush. The law's aim is as simple as it is noble: to remove barriers that prevent persons with disabilities from full and equal access to public accommodations.

To that end, ADA lawsuits attack a variety of flaws: doors too heavy for people in **wheelchairs** to open, restroom stalls that are too narrow or that lack grab bars, wheelchair ramps that are too steep, parking lots without spaces for the disabled, and counters and pay phones that are too high. "It's hard to imagine what life would be like without ADA," says disability rights advocate Evan LeVang, executive director of Independent Living Services for Northern California, based in Chico.

But critics say there's a factor that abusers of such suits in California have learned to exploit: The ADA and the state's Unruh Act are sometimes at odds, if only slightly, in what they require. That makes it

"virtually impossible for a business, large or small, to say with absolute confidence that they are 100 percent compliant," says San Diego consultant and attorney David Peters, who advises businesses on how to avoid ADA lawsuits. And, he says, it has resulted in a bonanza for "professional filers," who reap big paydays for even trivial violations.

"No one is arguing that ADA isn't a wonderful law, but in this state you've got a small cadre of lawyers and professional plaintiffs who've gamed the system and are wreaking havoc on small businesses," says former state Assemblyman Tim Leslie, a Sacramento-area Republican who retired last year after 20 years in office.

Leslie was the driving force behind an attempt several years ago to reform the Unruh Act by providing a "right of notice" to business owners to fix ADA problems before plaintiffs could collect damages under state law. It ran into a firestorm of opposition from both disabilities rights groups and trial lawyers.

Advocates for the disabled insist that nearly two decades after ADA's enactment, violators no more deserve the right to a "warning ticket" than do violators of other civil rights laws who practice discrimination on the basis of race or ethnicity. While some disability rights leaders privately acknowledge abuses of the law, they are "absolutely paranoid about reform for fear it will turn the clock back on ADA enforcement," Leslie says. Meanwhile, trial lawyers for both plaintiffs and defendants benefit mightily from the status quo.

"The proliferation of these lawsuits really is a situation that's out of control," says Lisbeth West, a Sacramento attorney who filed an amicus brief on behalf of the California Restaurant Association last year in support of sanctions a federal judge imposed on Frankovich.

Even some in the disability community agree.

"I don't have a problem with what [Frankovich] and others like him are doing as I do know how they go about it," says Kim Blackseth of Oakland, who consults with businesses on ADA compliance, and who is a quadriplegic.

Blackseth says hyper-litigants of the sort Frankovich represents have stirred resentment against the disabled, and cites himself as Exhibit A. After showing up to do some consulting for a Central Coast restaurant two years ago, Blackseth was accosted in the parking lot by several men who he says mistook him for one of Frankovich's clients. They tossed his measuring tape and notebook on the ground and warned him to get out of town.

"There's definitely a backlash out there, and it's serious," he says.

But Frankovich isn't buying it.

He sees non-ADA compliers as "scofflaws" who merit no sympathy. "Lawsuits are the only language these people understand," he says. "Unless you pound them into submission, nothing will ever change."

The overwhelming majority of the people Frankovich's clients sue settle out of court for amounts that

typically range from \$20,000 to \$35,000, thus avoiding the expensive risk of defending themselves at trial and being stuck with both theirs and the plaintiff's legal tab under the law.

Cable's Restaurant in suburban Los Angeles is among the rare breed of defendants who refused to settle with Frankovich and his star client, Molski. The company's decision to fight Frankovich and Molski exposed their practice like never before. The fallout from the case continues to haunt Frankovich's legal career.

Molski sued the restaurant in 2003 after he had gone to the eatery with his grandmother and claimed to have found a litany of ADA violations. In preparing for a trial against Molski, Cable's attorney, Craig Beardsley, gained access to hundreds of settlement documents revealing that while Molski has made a small **fortune** from filing ADA claims, Frankovich has become even richer. "In a typical \$20,000 settlement, what we found was that Molski walks away with \$4,000 and Frankovich takes almost all the rest. We're talking millions [of dollars] involving just this one client. You do the math."

Cable's prevailed at trial after Beardsley put forth a novel argument: that Molski had brought so many ADA lawsuits that he should be considered a business, not an individual, and thus is not qualified to collect damages under the state's Unruh Act. (An appeals court reversed the decision, and the outcome remains unresolved.)

But it was in an unusually blunt (and exhaustive) 2005 edict in another case that U.S. District Judge Edward Rafeedie, by declaring Molski a "vexatious litigant," all but put an end to what critics belittled as Molski's "reign of litigation terror" in the sprawling federal judicial district that stretches from Los Angeles to halfway up the Central Coast. Molski was prohibited from filing any more federal lawsuits in the jurisdiction without Rafeedie's approval.

But the judge was arguably even harsher with Frankovich. He accused him of teaming up with Molski and other "serial filers" to file a barrage of "cookie-cutter" lawsuits that were essentially identical "down to the typos." Frankovich had engaged in "a pattern of unethical behavior designed ultimately to extort money from businesses and their insurance companies," the judge said. He decried the lawyer's tactics as "bordering on extortionate shysterism" and prohibited the Frankovich firm from representing clients in the Central District without the judge's permission.

Rafeedie then referred Frankovich to the State Bar of California for possible disciplinary action.

Frankovich appealed the ruling, and a three-judge panel of the Ninth U.S. Circuit Court of Appeals heard oral arguments in April. But Frankovich is nervous. His personal attorney assured him that his appearance before the panel went well, but he isn't sure. "I wasn't comfortable with it; they kept pounding me."

If Rafeedie's condemnation stands, it means Frankovich will likely continue to be barred from involvement in any federal cases in the expansive Central District without the judge's express consent. But he's really worried about something else — that an affirmative appeals court decision could prompt the state bar to impose sanctions, maybe even suspend him.

From a practical standpoint, though, the edict appears to have had little effect — at least thus far. Although he no longer represents Molski (he attributes their split to "philosophical differences" unrelated to Rafeedie's action), Frankovich continues to bring ADA suits on behalf of others in federal jurisdictions elsewhere in California, including the Northern District that includes San Francisco, where Rafeedie's order has no bearing.

And the clients, he insists, continue to pour in.

"People with disabilities tend to be fighters," he says. "They see me attacking the establishment, and if everybody seems to be out after me, then they figure I must be doing something right."

Patrick Connally is one of Frankovich's most outspoken defenders.

As host of a weekly public affairs show for persons with disabilities that airs on KUSF, the University of San Francisco radio station, Connally, 57, who is a paraplegic, occupies a unique position to sound off on ADA matters. "He's someone at the forefront of the disability rights struggle," Connally says of Frankovich. In recent years, lawyers from Frankovich's office have turned up as guests on his program, as has Frankovich himself on at least two occasions.

Connally praises the lawyer as a civil rights crusader and denigrates many in the business community — whom he sees as largely resistant to disability rights issues. A self-described visual artist and self-employed events programmer, he has sat on a KQED advisory board, and back in 1992, was a phone bank coordinator and liaison to the disabled in the Bay Area during Bill Clinton's first campaign for the White House.

But his claim to fame is as the head of Disability Rights Enforcement Education Services, or DREES, a nonprofit entity he founded a dozen years ago, and which he directs from his home in Marin County.

Its detractors see DREES as little more than a Frankovich front group, something Connally vehemently denies. Although its stated mission is to promote disability rights education, the group appears to have little to show for it. He concedes that it's a struggle just to keep its modest Web site up and running.

Yet there is one area in which DREES enjoys an indisputably high profile: as co-plaintiff in practically all of Frankovich's lawsuits.

Although defense attorneys often succeed in getting judges to remove DREES from cases against their clients on grounds that it has no legal standing to sue, they say DREES's initial presence nonetheless serves to add a patina of credibility to Frankovich's legal efforts. "It looks good on a [legal] brief, or at least he must think it does," says an attorney who has represented several clients sued by Frankovich.

Judge Rafeedie, in his excoriation of Frankovich and Molski, offered a similar appraisal of DREES, saying that the group's inclusion in Frankovich lawsuits appeared to be an attempt to provide "an aura of legitimacy" to what he described as "predatory litigation" for the purpose of encouraging settlements.

Craig Beardsley, the Bakersfield lawyer who got access to Frankovich's settlement records, says that in

cases where DREES manages to remain as co-plaintiff, it collects \$1,000 or less from settlements, a figure that Connally doesn't dispute. "DREES doesn't derive much money from Mr. Frankovich," Connally says.

But as a frequent filer of ADA lawsuits, Connally has a relationship with Frankovich that extends beyond DREES. Court records show that since 1998, he has filed at least 70 ADA claims with Frankovich as his attorney, including six since February of this year. He and the lawyer met by chance at a gathering in Marin County in the mid-'90s at a mutually beneficial time. Connally had just started DREES, and Frankovich had just retooled his practice to focus on disabilities law.

Among their first triumphs together were a string of settlements in cases brought against merchants in San Rafael, where Connally lives. That was followed by a litigation victory in neighboring Tiburon, where Frankovich maintains a home. Besides Connally, the effort there involved several other Frankovich clients, including the late Ed Roberts, the disability barrier-breaking former UC Berkeley student considered the father of the independent living movement. After Frankovich and his clients went after more than two dozen of the town's merchants for accessibility shortcomings, the city became involved and ultimately reconfigured Tiburon's main shopping thoroughfare.

Connally is proud of his role as a disabilities advocate, and bristles at the suggestion that he makes a living from it.

"I make a little bit of income, but I don't do it for the money. When I find violations, I send people letters. And if they fix the problems, I don't proceed [with a lawsuit.]"

But those sued by Connally tell a different story.

"The only letter I got was a notice telling me that I was being sued," says Jose Garcia, who owns a converted '50s root beer drive-in in Napa that he turned into a Mexican restaurant called Rancho Grande. After claiming to find several alleged ADA deficiencies in the eatery's restroom nearly a year earlier, Connally filed suit in February. The lawsuit was preceded by a letter from Frankovich demanding \$41,000 to settle.

"I don't have that kind of money," says Garcia, a Colombian immigrant and part-time minister who says he struggled to put two daughters through the University of Southern California "only with the help of a lot of financial aid."

His lawyer and Frankovich are negotiating.

As for Connally, "If he's even been here, we wouldn't know. He never came to us saying there was a problem. We've never laid eyes on the man."

From his perch at the Hyde Out, a neighborhood bar at Hyde and California streets, owner Hussein Kajouee knows how it feels to be sued by a Frankovich client. "Once they get hold of you, they don't let you go," quips the affable 63-year-old Iranian immigrant, who bought the bar, at the foot of Nob Hill, 14 years ago.

The man who sued him, quadriplegic Marshall Loskot, visited the bar only once — in February 2004. He was there barely long enough to go to the restroom, which he quickly deemed too cramped for his wheelchair and unable to pass ADA muster.

Two years and \$34,000 later, Kajouee settled, deciding against chancing that a jury would accept his argument that replacing the restroom in a century-old building wasn't "readily achievable" (in other words, that it would cost too much), an exception to ADA compliance for older structures carved out under the law.

Had he lost at trial, besides a judgment, he would have also faced paying Loskot's legal fees as well as his own.

"I had to move on," he says.

As it turns out, that February day was a big one for Loskot, who operates a demonstration herb farm and teaches disabled people how to garden in the rural community of Platina, not far from Redding. He swept into San Francisco for less than 24 hours and netted no fewer than four ADA claims. Besides the lawsuit against Kajouee's bar, he brought nearly identical claims (including the same alleged injuries) against two restaurants and a hotel.

A review of court records shows Loskot claimed to have had not one, but two lunches — one at the Washington Square Bar & Grill in North Beach; the other at the Golden Horse Restaurant, a Chinese place next door to the Hyde Out.

He sued both.

For dinner, he went to La Barca in Cow Hollow, a restaurant he had sued several months earlier during another trip to the city. Afterward, he retired to a hotel in Petaluma, which he also ended up suing.

Loskot, 53, says that he has "no idea" how many ADA lawsuits he has filed over the years. "I'm not an activist," he insists. "I don't go looking for violations. These are just problems I run across."

But Kajouee's lawyer, Mark Gibson, who has represented numerous people sued by Frankovich clients, offers a different view. "He's just another one of Frankovich's horses," Gibson says. "[Frankovich] puts him out to race a few weeks every year."

Indeed, records show that Loskot has been the plaintiff in at least 92 such lawsuits since 2000, averaging one a month during the last 7 1/2 years. (As for the two lunches on the same day, he says simply, "I'm someone who likes to eat.")

Paralyzed from a car crash in 1990, the former heavy-equipment mechanic turned certified chef and organic gardener was no stranger to controversy before linking up with Frankovich seven years ago. He and his wife, who has Crohn's disease, were a cause célèbre within the medical marijuana movement for a time in the '90s after being arrested during a pot bust at the Santa Rosa home of their supplier. They each were fined and drew suspended sentences in 1997. Afterward, Loskot became a member of the Hawaiian

Cannabis Ministry (its motto: "We use cannabis religiously and you can, too") and says he hasn't been "hassled" since.

"There's a special place in hell reserved for that man," proclaims Larry Juanarena, 75, the former owner of Pat and Larry's, a mom-and-pop steakhouse in Willows, Calif., that he and his wife, Pat, operated for a quarter-century before selling last year. Loskot sued the restaurant in 2005, ironically only a few weeks after Juanarena completed a remodel intended to make the eatery accessible to the disabled. Having settled for \$11,000, he considers himself luckier than most, but still bristles at the memory.

"What Loskot and others like him do is nothing less than legalized extortion," Juanarena says.

Loskot couldn't disagree more.

He says he's doing his bit to make the world better for the disabled, one lawsuit at a time. And while he acknowledges that Frankovich makes far more in fees than the "\$3,000 to \$4,000" Loskot claims to usually take away from such lawsuits, he has nothing but praise for the lawyer.

"These actions have to be handled just right or they can easily be thrown out of court," he says. "He's very proficient. I couldn't do what he does. He deserves everything he gets."

Frankovich is also nothing if not cautious. Following several death threats a few years ago, he upgraded security at his office. A sign in front warns off casual visitors, noting that admittance is by appointment only. Although he shrugs off the threats, it didn't keep him from acquiring a concealed weapon permit.

But these days, his worries are primarily judicial. An appeals court ruling on the Rafeedie reprimand is expected at any time and the state bar investigation continues to hang over him. Even if he dodges the disciplinary bullet, defense lawyers may not have him to kick them around much longer. He admits to considering hanging up his legal spurs to devote more time to the ranch.

"I'd like to stick it out for maybe two or three more years, because I've got some important cases I'd like to see through the appeals process," he says. "With me, it's these disabled people I represent who keep me going."

Ironically, few, if any, of them have ever been to his law office.

Nineteen steps above the street and without an elevator, the yellow three-story building that has served as the nerve center for countless ADA lawsuits is itself inaccessible to the disabled. The man who's built a career tormenting the law's non-compliers as scofflaws — and making them pay — must arrange off-site meetings to confer face-to-face with anyone in a wheelchair.

Besides ruining the architecture, putting in an elevator could cost a small **fortune**. According to the law, he says, it isn't "readily achievable."

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