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Listening to the Webinar, *continued*

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Listening to the Webinar, *continued*



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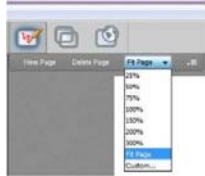


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Customize Your View

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Customize Your View *continued*

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 2. Email webinars@ada-audio.org; or
 3. Call 877-232-1990 (V/TTY)

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The anatomy & myth of the
ADA drive-by lawsuit



July 17, 2013



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Housekeeping Matters:

- Protocol:
 - Really, none ...
 - Ask questions at any time!
 - I'm serious!
 - Please ask questions.



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Webcast Goals:

- Goal 1: Define "drive-by" ADA lawsuits.
- Goal 2: Explore how to enforce Title III rights through available remedies and avoid the label of "drive-by" lawsuits.
- Goal 3: Explore defenses against this type of "drive-by" lawsuit.
 - But not necessarily in that order ...

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Centering myself in the argument:



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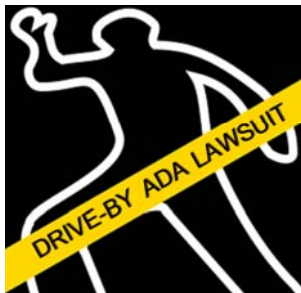
My problem with “drive-by” ADA lawsuits



- Typically pro-plaintiff
- I believe small businesses are the backbone of our economy
- I think the label “drive-by” ADA lawsuit is a strategically weighted phrase / propaganda
- Sometimes, these efforts look like “drive-by” lawsuits
- Shady and shoddy legal advocacy chill needed litigation efforts
- Most businesses are motivated by lawsuits more than threats of same

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What are “drive-by” ADA lawsuits?



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What are “drive-by” ADA lawsuits?



- Are about money, not access and civil rights?
- Extortion?
- Increasingly common?
- Are ruining the reputation of the ADA and disability rights advocates?
- Frivolous?
- Target small businesses & minority / foreign born business owners?
- Plaintiffs are “tourists” with out-of-state lawyers?
- Brought by “fake” disability rights groups & professional plaintiffs?

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My problem with the label “drive by” ADA lawsuit:



- Drive-by ADA lawsuit? → Effective legal advocacy?
- Pro-choice? → Pro-abortion?
- Terrorist? → Freedom fighter?
- Progressive? → Moonbat?
- Wino? → Freedom loving oenophile?

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ADA Grandfather Clause?



- I want everyone out there to repeat after me:
- There ain't no such thing as a grandfather clause under the ADA.

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What are “drive-by” ADA lawsuits, REALLY?



- Title III cases.
- Do target small businesses.
- Are slowly becoming more common across the country --- including outside of FL & CA.
- Have damaged the ADA’s reputation.
- Few cases are *entirely* frivolous.
- Some cases have revealed at least negligent, cookie-cutter legal filings.
- Some litigants & their attorneys appear little interested in improving access.

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What are “drive-by” ADA lawsuits, REALLY?



- Many so-called ADA lawsuits are brought under state law, & in state courts.
- Most commonly in California, Hawaii, & Florida.
- Q: Why?
- A: State law, for the most part.



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Example: California



- Unruh Civil Rights Act (Cal. Civ. Code § 51(f))
- California Disabled Persons Act (Cal. Civ. Code §§ 52(a))



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Example: Florida



- Florida Civil Rights Act (ss. 760.07, 760-08, & 760.11(5))



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What if it were not disability at issue?



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Persistent plaintiff Jarek Molski + attorney Tom Frankovich: Crusaders or Con men?



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Aftermath of Molski + Frankovich and others?



- Jarek Molski appears to have not filed any new lawsuits
- Frankovich, despite disciplinary action from the bar, still practices ADA plaintiff's law, profitably.
- California, has continued to develop CASp program & passed SB 1608 & SB-1186
- **Thousands more California business owners are paying attention to accessibility**

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Block v. Squeeze Inn



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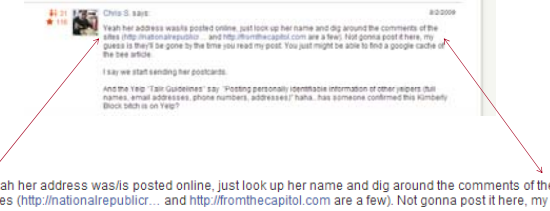
Block v. Squeeze Inn



I hope someone kicks this piece of trash in the mouth.

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Block v. Squeeze Inn



Yeah her address was/is posted online, just look up her name and dig around the comments of the sites (<http://nationalrepublic...> and <http://fromthecapitol.com> are a few). Not gonna post it here, my

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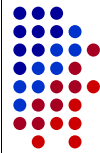
Aftermath of Block v. Squeeze Inn



- Block withdrew lawsuit
- Block sold her home
- Squeeze Inn owner did shutter original location, but reopened down the street.

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Defenses to “drive-by” ADA lawsuits?



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Defenses:



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Small Businesses - The best Defense is a good Defense:



- Learn the ADA!
- Establish ADA compliance of facility and practices of customer service
 - Survey site
 - Ensure communication is accessible and effective --- including website
- Maintain accessible features of site
- Rinse, repeat!

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Defenses:



General Standing Requirements:

- Plaintiff must suffer a personalized and concrete injury-in-fact of a legally cognizable interest (harm).
- The injury must be traceable to the defendant's conduct.
- It must be likely, rather than speculative, that the injury is redressable through a favorable court decision.
- Must show a likelihood of future harm

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Standing – Likelihood of Future Harm

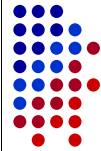


Requires likely, rather than speculative plans to return. The Analysis involves **four factors**:

1. Proximity of the business to the plaintiff's home,
2. Plaintiff's past patronage of the defendant's business,
3. Definiteness of the plaintiff's plans to return, and
4. Frequency of travel near the business.

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Defenses to label of “drive-by” ADA lawsuits?



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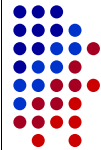
Advocates: The best Offense is a good Offense:



- Learn the ADA!
- Be specific in your allegations, and accurate.
- If ACCESS is the goal, try asking first, suing second.
- Partner with the business community.
- Be willing to settle, ready to win in court.

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Your thoughts?



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Slide #	Title	Author	URL	Note
5	Webcasting behind the scenes URL:	Jon Juan	http://farm4.staticflickr.com/3588/387195729_28b294643_b.jpg	DESCRIPTION: image of webcast camera, light and teleprompter set-up with altered text: "Hello, my name is Aaron. Welcome to the"
13	Florida road sign	nordque	http://farm5.staticflickr.com/4060/4485222407_aed80603a_o.jpg	Florida road sign in foreground directing bikers and bikers to move to side of road as vehicle approach, but with a line of flagpoles adjacent to shoulder of road in background
28	The Squeesburger with the cheese skirt	Steve S aka x3v3l33	http://farm3.staticflickr.com/2791/144450082_8a993c8e28_o.jpg	Image of cheese burger and fries

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Thank you for Participating In Today's Session

Please join us for the next session in this series:
September 18, 2013

"The Litigation Landscape: Five Years After the Passage of the ADA Amendments Act"

Barry Taylor and Rachel Weisburg, Equip for Equality



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Session Evaluation

Your feedback is important to us

You will receive an email following the session with a link to the on-line evaluation



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