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# BRIDAL BAZAAR

## City Lights

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### **Disability Attorney Haunts India Street**

By Justin Wolff

'Myself, Gelato Vero, and Shakespeare Pub and Grille -- all three of us got hit," explained Su-Mei Yu, owner of Saffron Chicken and Saffron Noodles & Sate on India Street. She was referring to suits filed against her and the other restaurants in late March by Theodore A. Pinnock, a local attorney who assiduously monitors compliance with the Americans with Disabilities Act. Pinnock, who has cerebral palsy, has filed hundreds of suits against local businesses, mostly restaurants, for infractions ranging from having doors that are too narrow for wheelchair access to improper placement of toilet-paper dispensers in restrooms.

Yu remembered hearing the news that she had been sued in federal court. "I was in Florida for the Easter holiday," she said, "when I got a phone message from a friend who is a lawyer. She said she was sorry about my lawsuit, but I had no idea what she was talking about. When I called the office, my assistant said that we had been served with some papers. She read them to me, and I was very upset. I didn't understand. When I got home, I read the summons. I had some vague memory of a gentleman in a wheelchair who in March was going up and down India Street, and he came into the noodle restaurant. This was about a week before I left for vacation."

The complaint, filed by Pinnock on March 21, charges that when he went to Yu's restaurant he "had difficulty" using the "entrance, interior path of travel, customer service counter, and public dining facilities" because they "failed to comply with ADA Access Guidelines." More specifically, Pinnock maintained that "the exterior hardware on the outer entrance door is inaccessible, as the hardware requires tight grasping and/or twisting of the wrist to operate"; that a screen door at the entrance is too narrow; that there is "insufficient floor space to allow for the required turning radius for a disabled person who uses a wheelchair"; that the "customer service counter is too high"; that "the restaurant fails to have any disability signage"; that the toilet-paper dispenser in the restroom "is mounted too high"; and that the "lavatory sink and faucet handles are inaccessible." All told, Pinnock found dozens of similar infractions.

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In the suit, Pinnock demanded that the barriers be removed and the hardware be fixed. He also asked for \$4000 for each offense and for restitution for general damages and attorneys' fees. Pinnock filed almost identical suits against Gelato Vero Caffe and Shakespeare Pub and Grille.

Yu told me that since her restaurants had passed inspection, "I just assumed that everything was up to code. I know vaguely about the Americans with Disabilities Act," she said, "but I'm not a lawyer. I do keep track of it, and I thought everything was fine, though I know the codes change all the time. You know, I have no objection at all to making renovations. If they had come in and asked me to buy new tables because they can't sit there comfortably, I would have had no problem. I really don't. But I'm told they're not interested.

"I had only 20 days to respond," Yu explained. "I was told that the amount would be doubled if I didn't respond. I did some research and found a lawyer who specializes in this, and when I called her she knew immediately what was going on. She said she would call Mr. Pinnock but that she didn't expect a response. Apparently he's not interested in talking, just collecting."

Yu's attorney is Mary Howell, a partner in the firm of Epsten Grinnell & Howell. She is also representing Henry Rabinowitz, who owns Gelato Vero. Howell said that she's been following Pinnock's work for a number of years. "I don't think his charges are totally grounded," she told me. "What the complaints don't address is that these are old buildings. These may be estimable goals -- and I don't think anybody in his right mind in this day and age would quibble with the goal of accessibility -- but frankly none of these owners would have rejected these requests outright. The anger that you're hearing from these owners is them wondering why they were never given a chance to act like decent human beings. Even though the owners may not be obligated under the defenses that the law has in place, they certainly would have listened and tried to collaborate on this. Instead what they got was a lawsuit. And I don't know about you -- California's reputation as the home of recreational litigation notwithstanding -- it kind of ruins everybody's day to get a lawsuit. Plus, the owners then have to pay the attorneys rather than spending money on making the changes. Not smart."

Howell explained that she suggested to Pinnock that he dismiss the complaint "without prejudice," meaning he could refile the suit at any time, "because there is no statute of limitations problem."

"And what was his reaction to that?" I asked.

"Nothing so far," Howell said. "I think it would be a good way to go. It would give us time to put a contractor in there with experience with barrier removal and path-of-travel obligations. It just seems logical to give us time to see how to do this best."

In mid-April I asked Pinnock why he didn't first send a letter to the defendants asking them to improve their access. In an e-mail Pinnock responded that "civil actions are necessary to compel access

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compliance because empirical research on the effectiveness of...the Americans with Disabilities Act indicates that [it] has failed to achieve full and equal access simply by the executive branch of the Federal Government funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals with disabilities give actual notice of potential access problems to places of public accommodation without a federal civil rights action, the public accommodations do not remove the access barriers."

In July 2000, Pinnock outlined his position for the *Union-Tribune*. "We used to write letters," he said, "but the letters don't work. Normally, after we file a lawsuit the case gets settled."

It's statements like these that cause many in the local restaurant community to believe that Pinnock and other disability attorneys care more about getting cash settlements than about compelling public businesses to make changes to their buildings. Patricia Walsh, the director of the San Diego chapter of the California Restaurant Association, said, "California restaurants, in general, are really being targeted by these suits, a lot of which are drive-by. If they have a problem with signage or parking, they'll file a suit. Everyone's inundated with them. And quite frequently these suits are ill-founded."

One local restaurateur who is familiar with the India Street cases -- but who wished not to be named out of fear of retribution -- told me, "These guys go around suing everybody. This is what made Clint Eastwood so mad, and he went to Washington to say so. I can't say that it's all one-sided. I mean, some places need to make changes, but this is what attorneys do; they look for settlements. Going to court is too much work. So Su-Mei's table might be a half-inch off, but some of these places are old. They should have a chance to make changes."

This is precisely what Eastwood argued before a congressional committee after a woman named Diane zum Brunnen filed a federal complaint in 1997 alleging that his Carmel Mission Ranch and Inn was inaccessible to the disabled. Though a jury in U.S. District Court in San Jose ruled after only a five-hour deliberation that Eastwood was not liable for damages, the actor/director fought hard to change the law. Under the current law, a complainant's attorneys in such cases can collect their legal fees from the other side if they win. This is why so many businesses often settle out of court rather than fight.

Since Congress passed the Americans with Disabilities Act in 1990, the disabled community has filed thousands of lawsuits against businesses, most of which have been settled out of court. The majority of the lawsuits have rightfully served as a last resort to force business owners to put in place legally mandated equal-access provisions. No doubt, the strength of the law has opened doors to the disabled across this country. What Eastwood asked for, and what U.S. Representative Mark Foley (Florida) proposed in a House Resolution in August 2001, was a 90-day reprieve for small businesses after being charged with violations. If the resolution becomes law, it would require that plaintiffs notify businesses of their infractions and then wait 90 days before initiating legal proceedings. The plaintiffs must check to make sure the accessibility issues have not been corrected before filing suit.

When he proposed the resolution, Foley told the *Miami Herald*, "There's a flaw in the law. There's a flaw in the system. This is a scam. This is not right."

But Foley's resolution has repeatedly stalled in the Senate, so many small businesses continue to settle these complaints. According to Pinnock, 95 percent of those people he sues settle out of court; he told me that since 1992, only six cases have gone to trial. Pinnock maintains, however, that when defendants settle, they usually agree to fix the barriers in their businesses in addition to paying out reparations. So, by Pinnock's account, his suits almost always result in improved accessibility for the disabled in San Diego. Bill Adams, a partner in the downtown firm Norton and Adams, represents many restaurant owners in these kinds of suits. He is currently representing the owners of the Shakespeare Pub and Grille. "Mr. Pinnock is a good attorney and an honest person," Adams told me. "He does a good job on these cases. This is a law, and he believes in it. In some communities these people are heroes. Instead of having the government monitor compliance, they do it themselves.

"My issues are with the law, which has created the impression that old businesses are grandfathered, or protected, when in fact they aren't. Usually what drives settlement is not liability so much as attorney's fees in defending these cases.

"There are other problems with the law. First of all, the fines are ridiculously high, and it's very technical, making it harder for older restaurants to catch up. The odds are stacked against the 'mom and pops'. What," Adams asked, "could be more reasonable than a waiting period?"

"The problem right now is that the law is so profitable for the plaintiffs -- and it's very profitable, believe me -- that attorneys are tripping over themselves to sue. I have clients who are being sued two or three times before they have time to make repairs from the previous suit. And it's not like the plaintiffs say, 'Oh sorry, we didn't know you were in the middle of repairs.' They say, 'Tough. Give me the money.' "

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