



The
**PAUL G.
HEARNE
AWARD**
for Disability Rights

Thank you for this award.

I also want to thank the sponsors of this event: Starbucks, Wal-Mart and Lexis-Nexis. I was just speaking with Paula Boggs from Starbucks, who was telling me that one of her colleagues is on the board of Disability Rights Advocates, a former Hearne awardee. Wal-Mart is notable for consistently having an accessible website for what I suspect is the best of reasons—an increase in market share to include the blind at minimal cost. And, except for a recent hiccup that is being addressed, Lexis-Nexis has been very good about accessible digital content.

To be honored with my comrade-in-arms, my mentor, my friend Marc Maurer is both exciting and humbling.

To learn that some of those who I respect and love most worked behind the scenes, not to mention behind my back, in support of our receiving this award is a vote of confidence I earnestly hope I deserve.

My professional association with the National Federation of the Blind began twenty-five years ago, despite my woeful lack of understanding of all aspects, legal and otherwise, of disability rights. I had little better than a “Jerry’s Kids” perspective on disability, but NFB had me read for two days about disability rights before they talked to me, by which time I had begun to understand.

A dozen years or so later, when Marc Maurer thought I had learned a bit, he handed me an assignment a lawyer could only dream of—to change the path of our technology developers from the exclusion of the blind, whether out of indifference or ignorance, to ensuring that the blind would have equal and independent access to all the educational, social and competitive benefits these digital technologies could offer. Dr. Maurer gave me the quotidian example that in a new house, the thermostat, the stove and the washer and dryer would now be digital and no longer something he could do for himself. I pointed out to Dr. Maurer the absence of any federal laws creating liabilities for technology developers. He thought that would be no great barrier for creative legal minds and he has been right. I asked him where he wanted me to start. “Sue Microsoft,” he said. I cleared my throat and asked if for the first round, we could start a bit smaller. He thought a minute, then said “Fine, sue AOL.” Well, we did, and AOL has been accessible ever since.

We have had our successes. When we began there were no ATM's in the United States equipped with voice guidance—although there was one here in Toronto owned by the Royal Bank of Canada. Now most ATMs in the United States have an earphone jack and are accessible.

So, too, most voting machines are now independently accessible, again with voice guidance.

Following our lawsuits against AOL and Target, we are seeing more and more websites voluntarily becoming accessible. These website owners are finding that they are increasing their market share at little cost. Many were surprised to find that the tools and the

answers existed, that they did not need any technological innovation to make their websites accessible and that the site ended up being better for those without disabilities as well.

First, litigation focuses attention or as we used to say in the 70's, raises consciousness. Then it becomes possible just to write a letter and sit down in a friendly way and help companies create accessible websites, as we have done in just the past year with eBay, Travelocity, Ticketmaster and many others.

The great battle, though, is for equal access to digital information, especially instructional materials. Not being able to see is a bother. Being denied equal access to the information used in education and in the workplace, however, is a severe handicap – and an unnecessary one. Digital information is zeros and ones: it can be rendered in a visual format, an audible format or a tactile one. We have had our successes here as well, but we have further to go than we have yet traveled.

But we need the ABA to lead more than it has in this area—particularly where it is highly relevant to its mission. As we filed lawsuits and complaints with the Department of Justice about the use of the inaccessible Kindle in educational programs—complaints that were successfully resolved—I was receiving emails from the ABA that its CLE materials were now available on the Kindle. If the ABA says to its vendors we won't use inaccessible technology to educate our members, at least when there is an accessible choice, the ABA's vendors will make their technology accessible. It is a simple economic truth that simply waiting for others to do the right thing for its own

sake is not nearly as effective as making it clear that it's in their interest to do so.

The core technology for access to the web—screen access software-- has been available for more than twenty years and the standards for how to make a website accessible were promulgated over a dozen years ago by the Worldwide Web Consortium and nearly as long ago by the Access Board pursuant to Section 508 of the Rehabilitation Act. Yet this year the ABA proposed that the Department of Justice defer issuing regulations under Title III of the ADA that would have given public accommodations guidance on their obligations to have accessible websites—something already required for every local, state and federal entity and every entity receiving federal funds. More study, said the ABA—not enough is known. I am certain that those who made that public statement on the ABA's behalf were speaking only of their own ignorance, not what was widely known and easily available in the world. Had they spoken to those in the disability community, we could have rounded out their education on this matter. And at the end of the day, education is the death of prejudice—lawsuits merely get people to pay attention so that you can educate them.

Those of us who have been involved in civil rights all our lives have heard this caution before—wait longer for your rights, wait longer to have the same access as everyone else. In the battle for racial justice and gender equality, the ABA has wisely learned to ignore that siren song. It is time for the ABA to realize that here, too, that there is no virtue in delaying the fight for justice.

I am not ungrateful for this award, far from it. Nor am I unaware of the good that the ABA has done in so many areas. But there is more you should do and I hope that starting today we can do so as partners.

Thank you.