



Thanks to the extraordinary commitment and expertise of AHLA leaders, the American Health Lawyers Association continues to thrive and serve as the essential health law resource in the nation. The Association's strong foundation reflects a history that is vibrant, meaningful and worth sharing. Finding a way to preserve AHLA's history was especially relevant in light of the Association's 50th Anniversary, which was celebrated throughout 2017.

This transcript reflects a conversation between AHLA leaders that was conducted via audio interview as part of the Association's History Project. More than 60 of AHLA's Fellows and Past Presidents were interviewed. A video documentary was also prepared and debuted on June 26 during AHLA's 2017 Annual Meeting in San Francisco, CA.

February 20, 2017

Tom Fox interviewing Jack Schroder:

- Tom: Today's date is February 20 and my name is Tom. I am a past president of the American Health Lawyers Association and this morning I've got the pleasure of interviewing Jack. Jack was a pioneer in the development of the health law. He's been very active in the American Health Lawyers Association and he's famous and of course I must say, for other things, among other things, the case law updates which he was part of at the annual meeting were something that was not to be missed. Jack, I want to thank you for taking the time to share your recollections and thoughts with us today. I will begin with the first question. When did you first become involved in health law?
- Jack: Well, first of all, I'm glad to participate Tom and happy birthday AHLA. I actually first became involved in health law the very first day I walked in my law firm's office. My first assignment was to study and summarize every case in Georgia Appellate Courts that deal with the issue of hospital liability. After a month, I was the state's expert on hospital liability simply because of that first, initial assignment and from there, it grew into, it started out being litigation, medical malpractice defense and then grew into basically everything else in health care law. There weren't a whole lot of us around back then.
- Tom: Jack, roughly when was this? I don't want to ask you your age.
- Jack: Oh yeah. It was 1973.
- Tom: Okay. Jack, at the time I mean, if I remember, a lot of the work particularly among the health law attorneys in the hospital area, sort of just related to the hospitals, what staff privileges and things of that nature.
- Jack: Yeah. Well, other than you used to say you were a health care lawyer if you did medical malpractice defense. Obviously, with the passage of a lot of federal regulations and laws, it expanded to where you had to know a lot more than just how to defend a malpractice suit. Actually, the kind of things, other than litigation, I first got involved in were issues of traditional issues, informed consent, Jehovah's Witnesses, things like that. Privacy was not a big deal. There was no HIPAA. There were no Medicare appeals to speak of. It was just sort of the simple, traditional, old kind of issues. Medical staff was one of them for sure. Some of my first cases in addition to malpractice were medical staff disputes.

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- Tom: Jack, you were what, right out of law school at the time when this [crosstalk 00:06:30]?
- Jack: Yeah, right out of law school.
- Tom: That's good information for these young attorneys as to how some of these careers begin. I assume at the time you also probably had no idea what you were going to become involved in.
- Jack: That's right. It really changed for me when my firm also represented the Georgia Hospital Association and the partner in charge of that client, nobody specialized in any single thing back then. He was also a bankruptcy lawyer and so just goes to show you how serendipitous it can be. He got involved representing the trustee in what was at that time, the largest of that kind of bankruptcy case ever filed. He got totally enveloped in this bankruptcy case and didn't have time to do the hospital association and other hospital work so I was doing litigation and so he, since I was involved with, had something to do with health care, he said hey Schroeder, come in here and start working on some of these things.
- My first big assignment was, there was a medical malpractice insurance crisis. All the insurance companies in Georgia pulled out and refused to defend or insure hospitals. This was in about 1975 and so the insurance commissioner had to step in and set up what was then called a JUA, joint underwriting association where, sort of like a high risk pool, all the insurance companies licensed in Georgia had to participate. Here I was, a litigator suddenly negotiating statutory and language to set up a insurance fund. From there, it just started hitting all sorts of different kinds of issues.
- Tom: Jack, the practice in the firm at the time, what was the size of I guess, those who designated themselves as healthcare lawyers?
- Jack: Well, you got to remember, when I joined my firm, the largest law firm in Atlanta was 40 lawyers. That was considered just huge. I think I was number 28 in my firm. I mean, we were considered a medium size firm. Like I said, there was no health law department but there were about, there were maybe two or three of us that dealt with healthcare issues at the time. None of it was full time. I had garden variety litigation cases. The other lawyer who was very involved was a tax lawyer so she had a lot of tax issues, totally unrelated to health care. Then that changed.
- Tom: Then from the liability and the litigation I mean, how'd your career go forward? Did you get into regulatory?
- Jack: Yeah. Once I got into the Georgia Hospital Association, I got into legislative lobbying. I got into regulatory work just doing general questions from hospitals and it just sort of took off. In fact, I had to give up the litigation, the medical malpractice litigation cause I was getting too busy with the non-litigation issues. From there, it, when you end up, because I represented the hospital association, I was involved in drafting a lot of the legislation. When you draft the legislation and word gets out that you were the one that caused all those crazy problems, you're the one that gets the phone calls from the hospitals and it sort of grew from there.
- Tom: You know one of the things that the association is trying to do is, for this annual meeting, is identify what's been described as milestones that led to the growth in the practice of health law. Given your involvement, I'll say if you had to pick three and I'm limiting you to three, I'm sure you could pick more, what three would you identify?

- Jack: Well, I think the fraud and abuse law was a biggie and spawned specialists in that area. I think certificate of need was a big issue that got healthcare lawyers into a lot of administrative litigation and court litigation that otherwise never would have been there. Then, I think the third area and it was generically, I'd call it, cost controls by different payers not just Medicare and Medicaid but the private insurers as well. That led to a total change in the healthcare landscape where people ... Hospitals started competing against each other because it was based on cost. That led to PPOs and PHOs and MeSHs and managed care networks and it, overall, competition was probably the biggest contributor of all to the growth in the healthcare practice.
- Tom: You mentioned certificate of need and boy, I haven't heard that mentioned for some time. Maybe just, let's spend just a few moments on that and maybe give us a little bit that we can, you can share with some of I guess, the younger people who probably wonder what that's all about.
- Jack: Well, it started with a federal law that was called Section 1122 of Title 42. Section 1122 was a Medicare law that said Medicare will not, nor Medicaid, won't reimburse a hospital for a capital expenditure that it made like building a new wing, would not allow you to work that into your cost control, your cost report unless you got prior governmental approval from the federal government and a state agency aligned with the federal government. They had to rule that that expenditure was reasonable in light of the need that was out there and that it would be utilized appropriately, sounded like wonderful stuff. Then they passed a law in 1974 that required the states to adopt laws called certificate of need laws where any capital expenditure, any new service, just about anything a hospital wanted to do to remain competitive, had to be approved by a state agency.
- That of course, as you can imagine, with hospitals, hospitals had never had to confront that before. It became evident that the first one across the finish line to get the certificate of need, was going to be able to block out everybody else so that you would have a competitive advantage. That's what it turned into. Certificate of need ended up being a wonderful boon for lawyers. I don't know if it did all that good for improving quality of care or for lowering costs.
- Tom: Jack, if I recall, I mean, this pitted a lot of the big companies against one another in these battles. Isn't that correct?
- Jack: Oh, yeah. It was a lawyers paradise when you think about it. It led to tremendous conflicts of interest. If you were a lawyer that represented half the hospitals in the state, you were in trouble.
- Tom: Yeah, I recall [crosstalk 00:14:32].
- Jack: You had to walk through the landmine of conflicts.
- Tom: Jack, you also mentioned fraud and abuse. That's probably another one that was great for our respective practices, would you agree?
- Jack: Oh, yeah. Yeah. A funny little story, I remember an annual meeting. Back then, it was just, before the merger it was on the American Society of Hospital Attorneys at that time. There was a concurrent session on this new law that had just been expanded by Congress called the Anti-Kickback Statute. Nobody had heard of it and the person giving the seminar stood up and talked, looked at the actual language and as you know, it is worded so broadly, it could mean almost

anything. He stood up there and said if you take this language literally, it could apply to some general contract between a hospital and a physician, paying the physician for services he's performing. All these lawyers sitting in there, oh no, it could never be interpreted that broadly. Nobody would ever say anything like that. Well, low and behold that guy was right. It has gone beyond anybody's imagination in my view.

Tom: Jack, you made mention of the American Society of Hospital Lawyers and I guess you were involved with that organization at the time. Is that where you started?

Jack: Yeah. I sorta started cause it was dedicated mostly to hospitals and I was a hospital lawyer. I was a member of NHLA, the National Health Lawyers Association, as well. Most of my, I think, most of my activities were devoted to the hospital side.

Tom: That, and then they merged if I'm correct, in what, 1977 with the.

Jack: No, '97. 1997

Tom: 1997, yeah.

Jack: I happened to be on the board of the AAHA at the time and participated in a lot of the decisions and negotiations. I think it's been a very good thing that it happened.

Tom: Share a little bit of that with us because again, that's history behind AHLA.

Jack: Yeah, sure. Well, our two main issues from our side, were the fact that we wanted to preserve our culture and our collegiality. We were a lot smaller than NHLA at the time. We perceived that the collegiality that we enjoyed might be reduced if we merged and became a much larger entity. We actually put into the merger agreement some requirements such as we even went down detail about the, what the annual meeting had to have in it, even to the extent of having Tuesday afternoons free and a prom on Wednesday night which was a fancy, dress up dance. We were so concerned about the collegiality and the culture that we put those kinds of things into the agreement. Of course, many of those things, they were time limited. You had to do it for three or five years and after that they phased a lot of that out.

Tom: You know, Jack, I'd, the prom thing's interesting I guess, cause I was going to say what happened to that? Sounded like a great idea.

Jack: Well, it was. I think it got to be a cost issue quite frankly, and a sit down dinner with a band and all that kind of stuff just got too expensive.

Tom: Yeah. Well, I'd say certainly as a society, lawyers certainly knew how to do things right.

Jack: We had fun.

Tom: Yeah. Let me go to annual meeting and the case law updates that I know you did so well. I did attend one annual meeting and had the pleasure of that and I just marveled at the time that you took that went into something like that. Then I also recall you added a nice touch, maybe some humor and things such as that so let's spend a few minutes on that.

Jack: Well, I think both organizations had had a year in review speech during their annual meetings. I happened to be the first speaker at the first annual meeting of the merged entity. The year in review was always the first program. In fact, back then it was on Sunday night before the real stuff got started on Monday morning. Kelly Clark and I we're doing it and back then it was mainly based on a huge compendium of cases that the AHLA staff would prepare. We would just simply go through this compendium and highlight what we thought were the most important cases. I must tell you, it was a pretty dry presentation because everybody had all this big, thick book and was going through it and it got pretty boring.

Then, I'll never forget, somebody on the program committee, Mark Kadzizski actually, on the program committee, walked up and said "Jack, can we spice this up a little bit and maybe add something? PowerPoints?" I went oh, sure. I didn't even know what a PowerPoint was. Then the next year we did it, we would basically have PowerPoints that would refer to the page in the compendium but that would have a couple of pithy quotes from the cases or something on the Powerpoint. We added a little bit of humor and from there, it became totally based on the Powerpoints. The compendium disappeared. The staff stopped preparing them and the year in review just became whatever the speakers thought were the important developments rather than this huge book that covered everything.

I spend about an hour a day preparing all this, reading the cases, doing the Powerpoint slides, preparing the oral comments. Since I'm retired now, been doing it almost twenty years, I've been retired about ten years, it keeps me out of trouble with my wife. It gives me something to do so I find [crosstalk 00:21:21].

Tom: I guess you are still involved in doing it. I mean.

Jack: I'm still doing it, yeah.

Tom: You are. Now see [crosstalk 00:21:27].

Jack: In fact, I spent two and a half hours this morning working on it.

Tom: Boy, that's great. Well, what I can say is I certainly had the pleasure of hearing you when you were at your prime and continuing because it was just, it was very informative but at the time that I heard as I say, on just one occasion, very entertaining to be able to, you'd pick out something from a case and the rulings and things such as that and it just, as I say, was quite a pleasant experience.

Jack: Well, good. I hope everybody enjoys it.

Tom: Well, look that's ... Yeah, I, well I certainly did and I've heard, I've heard many others, I mean as I say, I think you're synonymous with it and now I'm even more to hear that you're continuing. Well Jack as a, being retired and as a sage and leader and pioneer, any advice for the current leaders of the American Health Law Association?

Jack: I would just say don't ever be static, keep ready, be ready to adjust to change. Don't be a Kodak as they say.

Tom: Yeah. Well, what about the young lawyers today? I'm sure that you get the question how do I get into health law? Any advice that you'd have for them?

Jack: Well, whether they want to get into health law, I think one thing I enjoyed that attracted me to it especially as I got into it. As I realized and maybe it was just because I was on the hospital side. When you think about it, a hospital is like a little city. It has it's own series of restaurants, it's own lodging, it's own police force, it's own drugstores, everything that a city has and it's 24/7, 365. Everything that a city has, the hospital has it's own little component. You get into so many different issues that are really not necessarily related to healthcare. It's something different every day and that's what made it enjoyable. I would encourage lawyers to just kind of get in and start swatting at the issues and be willing to be diversified because you're going to run into a lot of different kinds of issues that may not even relate to healthcare.

Tom: Well, Jack your career is certainly, I'd say a model for anyone to follow and I certainly applaud your continuing efforts with the American Health Lawyers Association. I want to thank you for the interview today. It certainly has been my pleasure. It's been refreshing. It's also stimulated some thinking on things that perhaps I had forgotten and I'm sure we'll meet in San Francisco.