



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 50<sup>th</sup> Anniversary, which was celebrated throughout 2017.

Conversations between AHLA leaders were conducted via audio interview as part of the Association's History Project. More than 60 of AHLA's Fellows and Past Presidents were interviewed. In addition, several were also videotaped. A documentary was prepared using content from the audio and video interviews and debuted on June 26 during AHLA's 2017 Annual Meeting in San Francisco, CA. This transcript is from a video interview conducted on x date.

**April 6, 2017**

**Dennis Woltering (videographer) interviewing JD Epstein:**

Dennis: Mr. Epstein, tell us how you started out in the business.

JD: Well, I really have to predate it back to 1964. In 1964, I was at the University of Illinois, and I was chairman of a student senate committee called "The Great Debates". We put on four debates a year, and in 1964, we had a debate on universal health care, or care for the aged, it was being referred to at that time. As part of my job, I went out to the airport to pick up the debaters, and one was Representative Thompson from New Jersey, and the other was Senator Tower from Texas. Having never seen either of these two individuals and assuming that Senator Tower would be a large Texan with a 10-gallon hat, I went to pick him up, they were coming in on Ozark Airlines. They came in and walked down the stairway because there was no jet ways in those days, it wasn't a jet. Thompson came down, and I thought of course that was Senator Tower. As it turned out, Thompson was much larger, taller than Senator Tower who at best was probably 5"5' and had a little Stetson on.

Anyway, that was the beginning of what later led to the Medicare Amendments of 1965, July 31 of 1965, signed by Lyndon Johnson. Tower as Republican opposed that, Thompson as a Democrat and a very liberal Democrat was in favor of insurance for the aged, insurance for the poor, which became Medicare and Medicaid. Having told that story, I had no knowledge at that time that I'd ever get into health law. I went off, finished law school, spent two years as a captain in the artillery. My last year was stationed in Chicago, had my degree from the University of Illinois Law School, but I had not yet taken the bar. I was walking the streets during the day, worked as a bartender at night, looking for a job during the day while running a bar.

On the same day in 1969, the late summer of '69, I was offered a job with the Blue Cross Association, and a position with Blue Cross of Chicago, and a position with Arthur Anderson in their tax department. Blue Cross Association was 50 dollars a month more. For 700 dollars a month, I started. They were looking for a lawyer with an accounting background to come in and take this new Medicare law, and it was really nothing at the time. It had passed July 31 of '65, gone into effect July 1 of '66 for hospitals and physicians, and July 1 of '67 I believe for nursing homes, or skilled nursing facilities as they're called.

Blue Cross had become the prime fiscal intermediary, which meant they were to administer Medicare Part A for the Social Security Administration, or the Bureau of Health Insurance under the Social Security Administration. That was their function. As that function, they subcontracted to all the Blue Cross plans in the country, and there were well over 100 Blue Cross plans at the time. Those Blue Cross plans would actually go out and audit the hospitals and the nursing

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homes for Medicare purposes, and we would oversee, we being Blue Cross Association, would oversee that. I had to become fluent right from the start in the Medicare cost reports, which are like tax returns, only the reverse. The cost you claimed in those days was the cost you got reimbursed by Medicare, so I began my career with Blue Cross Association studying the Medicare law which had just been passed, the very limited Medicare regulations which had just been issued by the Social Security Administration, and the limited program instruction which had been issued by the Bureau of Health Insurance.

Blue Cross, as the prime contractor, was given the obligation to also consult with the Bureau of Health Insurance on new changes, on writing new regulations, on writing new instructions, and that was part of my job, was to work with the Bureau of Health Insurance at the time and move the whole process forward. Commerce Clearinghouse, which everyone knows well for the tax service and their Medicare/Medicaid service, came to Blue Cross and contracted with us to do the first Commerce Clearinghouse Medicare/Medicaid guide, and I recall, it was blue. It was a blue binder, unlike most Commerce Clearinghouse binders which are black. The first Medicare/Medicaid guide was actually a blue binder, because Blue Cross' color was blue. It later morphed into the typical black Medicare/Medicaid guide by CCH.

That's how I began, looking at cost reports and learning what this Medicare program was all about, how they paid in the hospitals. Then I become counsel to the Blue Cross Association government programs division, and to the Blue Cross Provider Appeals board, which was the only mechanism that providers had to contest their dispute with the money that they were going to get from the Medicare program for their cost of doing business under Medicare and for the Medicare patients.

Dennis: Okay. Hold on just a second, and you're going to talk about Jack Wood in a moment. Right?

JD: Right.

JD: I was counsel to Blue Cross Association Provider Appeal committee, which was the only one functioning in that capacity that hospitals could go to to dispute decisions made typically by the Blue Cross plan, denying them allowable cost, let's say depreciation cost. In that function, I would meet with this five-person board that I would choose amongst either Blue Cross employees and American Hospital Association regional directors, so to speak, who were hospital administrators, who sat on this board.

1971, a hospital in Louisiana, say Francis Cabrini in Alexandria, Louisiana, had a dispute with Blue Cross of Louisiana. That hospital was part of the Sisters of Charity of the Incarnate Word based in Houston, Texas. The general counsel of the Sisters of Charity of the Incarnate Word was a gentleman named Jack Wood. Now, Jack Wood in a legend in his own right. Jack was truly the smartest man in the room. Jack was a summa laude graduate from Harvard Law School, a Navy officer, and was one of the first people that got into health law. He became general counsel for the Sisters of Charity of the Incarnate Word in 1965 in Houston, Texas, and so this was some six, seven years later, and he was still in that position.

He was handling this dispute because there were no outside lawyers that he could hire who knew anything about Medicare disputes. Jack came with a steamer trunk that you would take on a steamer across the ocean, full of files that he was going to use in contesting the decision. We sat down before the hearing started and talked about the issue. I said, "Give me a minute," and I called the reimbursement director in Blue Cross of Louisiana, and I said to him, "Eddie, I think we've got a bad case. We need to get this thing resolved." He agreed with me. I went back and I said, "Jack, we've decided that your position is correct. We're going to resolve this matter in

your favor, and we don't need to proceed with the hearing." I dismissed the hearing officers, and Jack and his entourage went back to Houston, Texas.

About a year later, Jack was the program chair for the American Society of Hospital Attorneys' annual meeting, which was being held at the Broadmoor in Colorado Springs in June of 1972. Shortly before that meeting, a case came out of the US Court of Claims referred to as the Coral Gables case. The case had been brought by Coral Gables' hospital because they didn't feel a judicial review right under Medicare disputes. They called the Blue Cross Association Provider Appeals committee a kangaroo court. We didn't think we were a kangaroo court, but anyway, the Court of Claims ruled in their favor, said that there should be a dispute resolution in the law, and that providers should be able to go to court. They didn't think Court of Claims was the right place, but anyway, that began a couple year discussion of how providers could get a judicial review of the decisions made by the intermediaries, Blues or Mutual of Omaha or Aetna, whoever it was.

Jack wanted at the annual meeting of American Society of Hospital Attorneys to discuss this case, and discuss where the Bureau of Health Insurance intermediaries were going to go from here. In 1972, at the annual meeting, he had a panel discussion with Tom Tierney, who was the director of the Bureau of Health Insurance, Jack Wood, and myself, JD, sort of debating Coral Gables and where it should go. Jack, who could an irascible guy, and Tom Tierney who'd had a pretty thin skin, I shouldn't say that, they're both deceased so I should not talk ill about the deceased, got into it. I mean, got into a heated discussion, at which point Tom Tierney walked offstage, walked off the podium, left Jack and I by ourselves to talk about Coral Gables and the results of Coral Gables. Tierney had denied that it would have anything to do with what would come next, and Jack said, "That's just ridiculous."

Anyway, we ended our discussion, I went back to Blue Cross Association, Jack went back at being general counsel, and we had some continued discussions. Jack said, "Why don't you come down? It'll be cold in January, come down and see me in Houston and let's talk about a law firm." Of course I don't Jack Wood other than this brief conversation. My wife and I had just gotten married. By that time, I had moved from 700 dollars a month to, I think I was making like 19,000 dollars a year in 1973, which was okay money and I was still working at the bar at night because we couldn't afford to live in Chicago. We met Jack on January 9th of 1973, and the reason I remember the date at this old age is because it was Jack's birthday, and it's my wife and our anniversary, coincidentally the same day.

Jack and I talked for two days, and we decided to put a law firm together, and that I would move to Houston. I said, "Jack, I have no clients, I'm coming out of an in-house position." Jack said, "Well, I've got enough clients for us to get started. I've got the Sisters of Charity," and at the same time he was representing a number of other Catholic hospitals.

For those who don't know, at that time the largest number of connected hospitals were Catholic hospitals. There were somewhere in the neighborhood of 800 Catholic hospitals in the United States. Out of the 4,000 or so hospitals in the US, 800 were Catholic. Many of them were in systems. They truly were the first systems of health care providers in the United States, the Catholic system. There was also another religious system out of Utah, and then there was a Lutheran system, but basically the Catholics were major. The Catholic Hospital Association was probably the most important trade organization for hospitals, even more so, one would argue, than the American Hospital Association, although obviously there would be arguments about that. The Catholics were more focused on their Catholic hospitals and their issues.

Jack had started this practice, a little outside practice, so I said, "Okay, we'll start this. I'll try to come down this year." He said, "Okay." I went back and talked with the general counsel and I

said, was his name, that I'm going to leave. "I've been here for four years and I've got this opportunity, I think it's good for me." He said, "I've got one favor to ask of you first before you leave. We've just received a prior counsel request from HEW, Social Security Administration, to take our Blue Cross Provider Appeals committee rules and procedures how we operate and come up with a procedure that we can put in legislation and in regulation. I really need you to do this."

I called Jack and I said, "Jack, I really can't leave these, I've got to do this, I'm the only one here at Blue Cross Association that has been involved as the lawyer on appeals, and I feel an obligation." He understood, he said, "Fine, I'm going to go ahead and start the law firm. I've got this fellow Tom Lucksinger and a guy named David Holland who are tax lawyers, and they're willing to go leave and start what eventually became Lucksinger and Epstein."

I stayed at Blue Cross until '74, completing the prior counsel on what became the Provider Reimbursement Review Board in legislation and in regulation, based upon the Blue Cross Provider Appeal board committee. That took about six months for me to finish that, and I arrived back finally in Houston in 1974, and we began a Healthcare law boutique called Wood, Lucksinger, and Epstein.

Dennis: Okay, let me take you back. Before Medicare, you say attorneys representing hospitals typically were on the boards of hospitals and did a lot of work for free or at a very low rate. Tell us about that period.

JD: Before Medicare, the revenue stream for hospitals was very uneven. You had the insurance payments and you had a lot of charity care. You have to recall, there was no investor-owned systems prior to Medicare. There just wasn't enough money in the health care industry for the investors to go into private hospitals.

To the extent there were private hospitals, they were basically physicians' and surgeons' hospitals, hospitals that had been started by a doctor and were very small in size and one-offs. No systems or anything like that. Most of the hospitals, most of the nursing homes, and the Blue Cross system itself were tax exempt non-profit organizations, and they had local boards made up of the local community. If you had a hospital like you have here in Houston, let's say St. Luke's Hospital, St. Luke's was part of the Episcopal Diocese, and it as a charity hospital, and it was operated by the Diocese and much of its revenue came from other contributions from people, their foundation, and a lot of patients didn't pay, a lot of charity patients. Same thing with Hermann, same thing with hospitals wherever they may be, Hôtel-Dieu in New Orleans, wherever. Catholic hospitals, non-Catholic hospitals. In this case, this was an Episcopal hospital.

The boards were comprised of people who were in the local community who were the leaders of the local community, and typically in that leadership, you had lawyers, accountants, real estate agents, commercial real estate, et cetera. The leaders of that local community, whether it'd be a large town like Chicago or Houston, or whether it'd be Boise City, Oklahoma, which had a 10-bed hospital and a 100-bed nursing home, which I represented many years ago.

They didn't have any regulatory work to deal with. They didn't have any reimbursement work to deal with. They had contracts to look at or they had leases of buildings, but typical commercial types of businesses, and so a lot of the lawyers sitting on these non-profit boards would do that type of legal work pro bono, in many cases. In some cases, the law firms prohibited that individual from billing to a charity, because that's what it was. It was a charity, whether it was a Catholic charity or whether it was an Episcopal charity, or Methodist. That's what you saw prior to Medicare and the government getting involved.

The same thing with accountants. The accountants were typically a partner in their local, either a large CPA firm or a local CPA firm. They didn't have required audits. The only time they basically needed real accounting work was if they did a government financing or a bond financing. In that case, they of course would charge for it. Now there were lawyers who worked for hospitals, mainly in doing med mal litigation, but that was what the scenario looked like prior to 1965.

Dennis: Okay, we're doing this video for the history of the American Health Lawyers' Association, and we want to know if you can tell us about the beginning, how and where it all started. Start by telling us about the beginning of the American Society of Hospital Attorneys. I believe that began in 1967.

JD: Correct. It's interesting because Art Bernstein, who was one of the truly founders of the American Society of Hospital Attorneys was working, I believe, for the American Hospital Association, and I think in the DC office. There were a number of lawyers who were representing hospitals, and in some cases, employed by hospitals. There were very few of those, but there were some. They were looking for some type of organization, association. This is post the Medicare now, and all of the sudden we had this avalanche of regulations, of statutes, and things coming at them. Art, working with a couple of guys, started what was a personal membership society, because the American Hospital Association had a personal membership society, like the American Society of Risk Managers, or the American Society of Hospital Engineers, things like that. American Society of Human Resources.

The American Society of Hospital Attorneys started in 1967 as a personal membership society of the American Hospital Association, which meant to be eligible for membership at that time, you had to either be an employee of an American Hospital Association member, or contractor to an American Hospital Association member. That limited the draw in terms of who could be members. In fact at the time, when I joined Blue Cross Association and began working, and Blue Cross Association, for those who don't now, original trademark was owned by the American Hospital Association until 1972. When people think about strange bedfellows, you think about the fact that American Hospital Association and the Blue Cross Association basically were one in the same in terms of oversight, AHA owned that mark.

Most of the Blue Cross plans were formed by American Hospital Association hospital members who formed the Blue Cross plan so that the hospitals could get paid. They formed an insurance company, insurance company got subscribers, subscribers paid money to the insurance company, subscribers became patients at the hospital, and insurance companies paid American Hospitals for those patients. That's how third party payment really started back in 1929, a couple of years before all of us were born. That was the start of the American Society of Hospital Attorneys.

Art hired a guy named David Greenberg in Washington DC, and David was I believe the first executive director of the American Society of Hospital Attorneys. At some point, AHA moved its headquarters from DC to Chicago, and Blue Cross as well went to Chicago, in fact was based in the AHA building on Lakeshore Drive in Chicago. David did not desire to go to Chicago with the American Society of Hospital Attorneys, and they parted ways, and the American Society of Hospital Attorneys went to Chicago and has remained in Chicago until the time it merged with an organization that David formed called the National Health Lawyers' Association, NHLA, which became a competing organization to the American Society of Hospital Attorneys, although in some ways because its membership was much more diverse than the American Society of Hospital Attorneys because David saw that there was a need for others to have type of association, lawyers who were with health plans, lawyers who were in the government, lawyers

who represent nursing homes who were not members of the American Society of Hospital Attorneys.

Dennis: You and Jack Wood wrote a series of publications about health law, but before I ask you about that, you said that in a way the society became a kind of referral agency for you guys. Tell me about that.

JD: Well, when I talked about the lawyers for the hospitals before Medicare, and they joined the American Society of Hospital Attorneys early on, a lot of these. A lot of these lawyers were attorneys for one hospital or one system, and they were, like I said, on the board of that hospital or on the board of that system. They kept handling some of the little medical staff matters that might come up. They can do a contract, but all of the sudden the hospital files a cost report and there's millions of dollars at stake here in reimbursement from the government. They don't know, they haven't read the Medicare law, they haven't read the Medicare regulations, they haven't read the Medicare general instructions. They're not going to be able to handle that case, to take it up through the the provider reimbursement review board, or even at the Blue Cross Provider Appeals committee.

They begin looking for outside counsel, so that when they would go to the annual meeting of the American Society of Hospital Attorneys, Jack and I would make presentations after we started the firm, and even Jack as I indicated in 1972 before the firm was started, presentations about Medicare laws and regulations, and payment, which was the key. Payment became the key, the government would make the payment. They began looking for lawyers to hire to represent the hospital in this dispute with the government over the Medicare payment.

Jack and I and especially I when it came to Part A, these types of appeals, Jack went off and became the Part B guru, which was the physician payment. He dealt mainly with, through the years, payments to physicians, medical staff, wrote a lot of medical staff bylaws, a lot of contracts. Jack had what we used to call the automatic, or I can't even remember what the name of it was but, contract he did over and over and over again for hospital-based physicians, hospital-based radiologists, hospital-based pathologists, hospital-based anesthesiologists, all these contracts were basically the same contract. It was funny because we started seeing our contracts come back at us through the years. Jack one year got angry about it and put an error in his contract, did it on purpose. That error ended up in a lot of contracts. Jack got so mad that people were copying his contracts.

Anyway, we would go to these meetings and I would meet, and we would begin a fellowship with people. Good example, there was a gentleman who's just deceased named Tom Feeler who was general counsel for Richardson Medical Center, outside of Dallas, Texas. Tom and I became friends, and sure enough, Richardson Medical Center had a Medicare dispute, and so Tom picks up the phone and calls me. He says, "JD, we've got this big disallowance from Medicare. Can you handle this?" Of course the answer was yes. That's how our relationships began with many people within the American Society of Hospital Attorneys who were these lawyers that I talked about earlier, who were on these boards who really weren't going to specialize in Medicare reimbursement.

Dennis: Another thing that happened is that you and Jack Wood wrote publications about health law, and I'm wondering if you have copies that we could get shots of.

JD: I may be able to find them.

Dennis: The question is, so this gave you a kind of a platform.

- JD: Yes, and we wrote topics in health care financing for what was the Aspen Health System publishing company out of Rockville, Maryland. They contracted with us to do both seminars, which we did, as well as write publications on Medicare and Medicare appeals and medical staff bylaws and things like that, which we did for Aspen for many many years, and did some for other publications and did some for various different articles for the society and for preparation for speeches at the society.
- Dennis: The Association really played a key role in the development, really, of your firm.
- JD: Tremendous networking for our firm, because we were a specialty. We were one of the early health law boutiques, having started in 1973. You had a couple in California, the Sherwin Memel firm and the Carl Weisberg and those folks, and you had shortly thereafter Ober, Kaler and Grimes in Baltimore, but for the most part, there were very few of us in the 1970s doing this type of work.
- Dennis: I want to ask you about David Greenberg. He was a key figure in the beginning of the society, and then in the NHLA, as you pointed out, he founded that.
- JD: Yes.
- Dennis: He was always looking for revenue, you say.
- JD: Yes.
- Dennis: Tell us about that that concern of his.
- JD: He always felt that the society had a pot of gold, being a personal membership society of the AHA, American Hospital Association. We of course at the society, we were always fighting with the American Hospital Association over money. We thought they were charging us too much for overhead, charging us too much for our employees, and not giving us our revenue when we earned it. David on the other hand didn't have that, and he was always fighting for revenue.
- He was competing with us, and so at one point David was talking with, it may have been me, I don't even remember the occasion, talking about doing a joint program that they felt would be a great revenue source for both the NHLA and the American Society. We came up with the Medicare/Medicaid Conference, which still is going on to this. We did it as joint program. NHLA, the chair for them was Lynn Homer from Ober Kaler, and the American Society of Hospital Attorneys and the chair for the society was myself, JD. Lynn and I chaired that conference for 21 consecutive years, and it became the most profitable conference of all conferences, for either the NHLA or the society, including, it was more profitable than the annual meetings in terms of active profit returned to the two entities.
- Dennis: Huge success.
- JD: Huge success, and of course the society always figured David was cooking the books and that we weren't getting our share of the revenue, and David was always figuring that there was a way that he could keep a little more money, but it all worked out in the end.
- Dennis: From another source, I'm not sure who told me this but, one reason David wanted to join with the society was because he felt, if it lost money, the society could pick up the tab. Was that a factor?

JD: Yeah. That was no question in his mind. We don't get in David's mind, but David would have thought that way. Also, I think there were people, even at that early stage, who were thinking, "Maybe this might be an avenue to an eventual merger." I think it really was more than just the fact that it was the successful program it was. I think there were people, undercurrents that maybe this working together, we could do other things together, and maybe I would eventually lead because the competition wasn't good.

Dennis: Right. You mentioned a couple of terms in your audio interview I don't understand. One is PRB and the other is PO. What do those mean?

JD: PRRB, which is the Provider Reimbursement Review Board. That's the body that hears disputes between ... Pardon me. Can I just get water? Between hospitals, nursing homes or home health agencies, and the government. That is the legislation that I stayed at Blue Cross Association to write before I joined Jack in '74.

I think probably was the PPO which is a Preferred Provider Organization. It's sort of a derivative of the HMOs, the health maintenance organizations. It's a little less restrictive type of thing. Things we put together through the years, Preferred Provider Organizations, the networks that you have to pull together of providers, of hospitals and nursing home and doctors, same thing with a HMO.

Dennis: Okay. Now, a pretty dramatic thing happened at one point in the evolution of health law. The office of Inspector General came along and led to new concerns and issues about kickbacks, penalties, and that kind of thing. Tell us about that.

JD: They had a reorganization of HEW in 1976, '77, and created what became the Health and Human Services, HHS, and under that the office of Inspector General of HHS, and about the same time there was a modification in the statute dealing with kickbacks, that is prohibition against kickbacks. It had been a misdemeanor prior to that period of time, and it became a felony. All of the sudden, reimbursement disputes between the government and hospitals, nursing homes, home health agencies, became subject more to government scrutiny under this kickback statute. Now that it was a felony, the normal typical Medicare rules and regulations of reimbursement. Created a whole new genre of health law and lawyers dealing with false claims, dealing with kickback statute. Later came the what is referred to as the Stark Law, or the physician anti-referral law.

All these things created more and more scrutiny of hospitals and nursing homes and home health agencies than had been in the past. In the past you filed a cost report if you were a hospital or a nursing home or a home health agency. If the government disagreed with how you categorized a cost, they would disallow it, and you would be able to appeal that disallowance to the Provider Reimbursement Review Board, and eventually into the courts under this new statute in 1974. Now, they might argue, "Not only wasn't this an allowable cost, but you intentionally filed this wrongly know that it was not proper cause, and therefore it can be subject to a fraudulent claim and a felony. All of the sudden, things that were just common, in my opinion, reimbursement disputes of the early '70s, even to this day in some cases, get morphed into maybe allegations of fraudulent activity. Whether it's under a false claims act, or whether it's under a kickback statute.

Anti-kickback Statute was important because unlike most other industries, it became almost illegal to hire marketing people to try to bring you patients, because the way you pay that marketing person might be in violation of the Anti-Kickback Statute. While it might be an allowable cost in the old days and even today an allowable cause, if the payment method to that marketing agent didn't meet the requirements of the Anti-Kickback Statute, it could be a felony.

Now even more lawyers get involved as hospitals before they did a contract, we said, "All right, you need to look at this contract, make sure it doesn't violate the Anti-Kickback statute."

Dennis: This criminalized some aspects of what had been normal procedure.

JD: That's correct. Maximum reimbursement was always a goal during the '70s and up to 1983. You wanted to make sure, and there were consultants and there were accountants who would help you legally maximize the amount of money you would get from the federal government. If you go back and look at tax law, the same thing under the tax laws is that there are accountants and consultants who will assist you in legally minimizing your tax payments. Now you've got a statute, which maximization of reimbursement might be viewed by some as a violation of the statute, intentionally violating the statute by the way you claim your cost.

Dennis: What were the penalties?

JD: Penalties were five years in federal prison per count and 25,000 dollars per count. That's filing a false claim, filing a false cost report, claiming cost within a cost report you knew not to be appropriate cost. These all could end up with jail time and substantial penalties.

Dennis: Exclusion from participation in Medicare.

JD: That was the big hammer. For those of us in the industry, we call it extortion because, "Either you settle with us or we're going to exclude you from in the Medicare program." Today, 50% of hospitals' revenue comes from government payment, so exclusion from Medicare program, Medicaid program, is a death knell for a hospital.

Dennis: That law, that statute really increased the practice of health law.

JD: That really began ... Prior to that law, the creation of the OIG, the felonization of Anti-Kickback, you had a professionalism that was growing with the industry. Lawyers, accountants, appraisal experts, that type of person, because these were things that hospitals now needed that they hadn't needed before Medicare paid. You didn't need a plant ledger, for example, in the old days. Now because Medicare paid depreciation expense up until 1983, interest in depreciation. You had to have a plant ledger, you had to be able to know all your assets and what that value are. Without having that, you couldn't get that reimbursement. Hospital appraisal experts became a new industry. Now with the creation of the OIG and the felonization of the Anti-Kickback, compliance became a key word.

Dennis: When was that? What was the date?

JD: 1976, 1977. From that date forward, then in '83 I believe it was, the physician had a referral law known as Stark. All this brought in a whole new area of compliance, and an industry of compliance. You now have HCCA, which is the compliance association, and you have in almost every hospital of any size and scope, you have compliance officers. In large physician practice group, you will have compliance officers. This is just part of now the general business of doing business in healthcare.

I might add that while not all compliance officers are attorneys, many are. This gave a new avenue of people who were graduating from law school and had an interest in health law going into compliance, become compliance officers of various health care entities.

Dennis: On this anniversary video, as you look back, what do you consider your most important contribution to health law?

JD: Again, as I said off the cuff I think to you, is the hundreds, literally hundreds, maybe even thousands, of young lawyers who I helped to mentor or I helped teach when I taught 25 years of health law at the University of Houston Law School. I think that just seeing these people and seeing how successful they've been, and I suppose the way I got there was because I always felt we needed to be at the cutting edge, the law firm, the practice of law. I wanted to be out there and I wanted to know what the next thing was coming out of the government, because the government became the ruler. It is truly the golden rule. The government's got the gold, and they rule.

You wanted to look ahead, see what was coming, and we always prided ourself, whether it was my early law firm, a later law firm, or just colleagues of mine in and outside of my own law firm, always prided ourselves on being ahead of the curve, hopefully trying to know what the government was going to do next, and be able to react to it. Take the new law, take the new regulations and apply them to the facts you have and create ways that you could operate within those laws and regulations.

Dennis: Did the Association play a role in that?

JD: Major role. First from the American Society of Hospital Attorneys, NHLA, then American Health Lawyers' Association, their education programs without a doubt were the best and continue to be the best. They were a real foundation for the practice of health law in this country. I will tell you, I in those years, the American Society of Hospital Attorneys, I spoke at every convention, both the annual meetings and of course later the Medicare/Medicaid conference which I chaired and spoke at et cetera, but it was interesting because being a speaker made you be a student. You had to know and you had to learn and make sure what you were putting out there from that podium was the most accurate and up-to-date information there was. It was really a two-way road here, both as the speaker as well as listening to others who spoke on those, but there's no question that the American Society of Hospital Attorneys annual meeting and then the Medicare/Medicaid conference and other programs I did were always the leaders in education, and the same thing can be said today for the American Health Lawyers' Association.

Dennis: Preparing you for the future for dealing with the changes in health law.

JD: Absolutely, because they brought in, and I think people so underestimate the face-to-face that we were able to develop in the Medicare/Medicaid conference with the government bureaucracy and the employees of the government who would come and make presentations at that Medicare/Medicaid conference in Baltimore. They would come there and say things and do things and interact with you that were so beneficial for advising your clients on what the government expected, what they were doing, what their next thing they were going to do.

Dennis: What would you, on this 50th anniversary, what would you identify as the milestones in the evolution of the Association?

JD: Well, there's no question that the event of the American Society of Hospital Attorneys morphing into NHLA was Medicare, was Public Law 89-97. In my opinion, it transformed the industry. It took a cottage industry and made it into an industry that is today one-fifth of the GDP. You start there. Everything starts in my opinion with the Medicare Public Law 89-97, July 31, 1965.

From there, I think the evolution is just what's happened with all of the regulations, the jump on tonight. I guess we're in a world today where regulations are bad, or overregulation is bad, and we all hear that talk everyday. Clearly, this is the most heavily regulated industry in the United States, and it created an industry including the American Health Lawyers' Association and all its members. Without that, we wouldn't be here, in my opinion.

Dennis: Looking forward, how do you see the future of health law and the role of the American Lawyers' Association? What role should it play in the future of health law?

JD: Hopefully we will continue to be consulted from time to time by government bureaucracy, and that our attorneys will play a role, whether they be in politics or whether they be in the bureaucracy itself, whether they be some of the great leaders of the American Health Lawyers' Association, a guy like Lou Morris who was a longtime public servant, and was the general counsel for the OIG, now I understand has a private practice. Haven't talked to Lou lately, but we have members like that who will play a role in what comes forward. I think that's key to it. We're going to have an American health system, in my opinion, is still second to none. It's still the best in the world. I think we'll continue to be unique in the way it's done. I think the American Health Lawyers' Association will have to morph with the times and make sure that we're in the front of all that's going on, politically and else-wise. I think the Affordable Care Act will be, if not repealed, it will be significantly modified. I think there will be a role for attorneys in doing that modification as we are right now.

I think there's always going to be that, and as I said, the regulation in this industry, I think back to a quip I always use, and probably my father didn't say this to me but I will say my father told me, "You always vote Democratic so you can live like Republican." The Democrats will regulate. Now we've got the Republicans in power, but you've still got the same bureaucracy and you still have regulations, and health care will never be deregulated. It will always be, in my opinion, the most heavily regulated industry, and it will need the American Health Lawyers' Association and its members for many many years to come.

Dennis: Okay, those are my questions. If you were asking the questions, what would you be asking JD, on this 50th anniversary of the American Health Lawyers' Association?

JD: Would you do it again? The answer is absolutely yes. It's been a wonderful ride, it's been a great ride. I said to somebody in 2010, when they passed the Affordable Care Act. I said, "You are so lucky because right now is another time when this whole industry is going to change, and there's going to be so much need for your services as we go down this road," and I think that is true. The need became so apparent after the passage of Medicare, Medicaid, et cetera, that it created this industry, and this only will further the industry. It's a wonderful thing. It's a wonderful industry to be in, in my opinion. Helping the providers in all the ways they have to deal with the regulatory environment that they're in.

Dennis: All right. Very good. Thank you, sir.

JD: You're welcome.