



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.

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 22, 2017

### Joel Hamme and Tom Fox interviewing each other:

Joel: Today is February 22, 2017. My name is Joel Hamme. This is, as I said, a joint interview, and I have the privilege of interviewing and being interviewed by Tom Fox, who was the fifth president of the National Health Lawyers Association in 1984 and '85, was awarded the David J. Greenburg Service Award for lifetime work for the American Health Lawyers Association in 1992, was the first chair of a long-term care and the law program from 1976 until 1991, and is now an AHLA fellow.

This interview and numerous others of past AHLA leaders are being done in conjunction with an AHLA history project for its 50th anniversary this year.

Tom, thank you for taking the time to share your recollections and thoughts with us. Maybe we should just start with whether you have any early life or educational background or life experiences you think are relevant.

Tom: Well, no, I would say my entry into the healthcare field had nothing to do with my background and was really quite fortuitous. I was discharged from the Army in December of '69, returned from Vietnam, came back to Washington, joined the law firm of Pierson, Ball & Dowd, and at that time it was representing the American Nursing Home Association and, as a young associate, as you well know, things come in the door, nobody knows anything about them, and they find some young person that may be willing to work on it and I started doing Medicare appeals. This is the early '70s.

Joel: What type of cases were you involved in at that time?

Tom: Well, the big splash, I'd say, was in 73-74, you may recall, Nixon had put wage and price controls on the economy, all sectors of the economy. In representing the American Nursing Home Association, we had convinced them that these executive orders by the cost of living council were running afoul of the Medicare and Medicaid statutes at that time, indicating payment on a reasonable cost basis.

So, we brought an action in the US District Court here in Washington and were successful in enjoining the program nationwide as it applied to nursing homes. So, as a consequence, we had

### American Health Lawyers Association

1620 Eye Street, NW, 6th Floor • Washington, DC 20006-4010  
(202) 833-1100 • Fax (202) 833-1105 • [www.healthlawyers.org](http://www.healthlawyers.org)

a lot of attention focused on what we were doing and that, sort of, is where I began with others at Pierson, Ball & Dowd and moving forward with a healthcare practice and a career.

I recall, that was probably about the same time that I met David Greenburg, who was interested in whether or not we could do a program for nursing homes and it all sort of began with a program in Atlanta in 1976 where, my recollection is, we had a small group of lawyers that represented nursing homes. David had given us 50 dollars for soda and refreshments and this was the beginning of the meeting. We had no staff. I can't find a program that we had, we had no binders, but, we obviously had a very good time and that's how the long-term care and the law program began.

Joel: Yes, and I remember ... we'll get to this later in the interview because we'll just do a reverse part here after I get done with Tom and we'll go through the same sorts of things as to my career ... but that was my first involvement with NHLA, was attending that program in Atlanta. All of the sessions were plenary sessions. There weren't any concurrent sessions, so it was a very small number of faculty. Back in those days, as I recall ... and I wasn't on the initial faculty because I had only been practicing health law all of 3 months at that point, but David Greenburg would take the faculty out to a dinner at a very nice restaurant as his way of saying thanks for their involvement in the programs. And at that time, you chaired that first program and there was no program planning committee. You were the entire committee.

Tom: Yeah, we were it and we financed everything off of David's credit card. You know, talking of the programs and sort of thinking about the interview with you today, a couple things that may resonate with you as well. I looked back over the brochures that I had, and just to give you some senses of the program is, the next year, we went to New Orleans and we had 11 speakers and 9 programs, but, as I went through the programs, a big success occurred in 1984 and you might remember, that was the 9th program.

We finally convinced David that we could take the nursing home people to Las Vegas. David was concerned that, if we had the nursing home people and, you know, at that time, perhaps their reputation was not all that great, that we wouldn't be viewed as having an educational program. We convinced him that we could do it. I looked at the brochure. The fee was 90 dollars and we had a 20 dollar fee for law students. We had 34 faculty. We had 28 programs and, as you may recall, this is where, obviously it was input you and others that were on the programs, we started inviting the public advocates. You may remember a Nancy Coleman, a Patricia Nemore, and they would come and they would make outrageous statements about nursing homes and we would get the crowd all fired up. We really had a good time.

To move forward then, looking at, and I know one of the things that AHLA is looking for is milestones. I mean, we had lots of good legal things happening at the time, you know, statutes, but I guess the success was Las Vegas. Our next big success, again, I looked at the program. This was '87. We went to New Orleans and we capitalized on Mardi Gras. I looked in the brochure and we listed all the parades, the times that they were occurring, where you could go to see them. We had activities for spouses. I actually recruited my wife to take spouses on visits to historical and cultural sites in New Orleans significantly there. We had 62 faculty and that's also where we had our first concurrent sessions. -

Joel: [crosstalk 00:09:39]

- Tom: Last one to mention was, in '88, we went to Orlando and, again, just looking at things. I mean, at that point, I think our programs had pretty much become a family affair. We had visits to Sea World and things such as that. So, that was kind of what I say the major milestones in the program as we attempted to move it forward.
- Joel: The nursing home people really did like to party, so places like Las Vegas, New Orleans, and to a lesser degree Orlando, were very popular. I suspect that in Las Vegas, the gambling debts were more than the cost of the program for most of these folks. But, if I remember correctly, the long-term care program was one of the first programs that AHLA or NHLA had.
- Tom: Right. At the time, they had an annual program, the annual meeting, annual program and then Robert Bromhers did a tax program. Then, in '76, after meeting with David and convincing him to help us get something going on nursing homes, that was the first new program and then it was followed, I think in a year or two ... Len Homer was involved in developing the Medicare and Medicaid program. David was really a visionary. I learned from interviewing some others that he had been on the staff of the American Society of Hospital Attorneys and that he was interested in seeing this develop. It was his vision and his commitment, you may recall the office at the time was his apartment, and essentially, his apartment and, quite frankly, his credit card.-
- Joel: He was the staff.
- Tom: He was the staff, yeah. He was it until, I think, several years later. Then we hired some other people.
- Joel: Obviously, David was a pivotal figure in the history of the AHLA since he was present at the creation of the academy and also instrumental in establishing NHLA. A lot of members of today's AHLA, especially the younger ones, are folks who never really had any interaction with David or any recollection of him when he was the exec. Tell us a little bit about him and what you think his legacy was.
- Tom: Well, I think his legacy was to move the, at that time, the National Health Lawyers Association forward. David was, as you said, would take the faculty out to dinner. I guess some of the color about David is, the first staff person was Jeannie Johnson, who was a music major. Her specialty was the piano. The other staff person at that time, which frequently happened with David, was one or more relatives would show up on the staff and we had a lovely young woman by the name of Elise who was part of the staff at the time. It was, quite frankly, David's commitment to moving forward with these programs and again, his commitment was really to the educational content of the program and having the vision to see that healthcare was developing, there were lawyers who are now starting to call themselves healthcare lawyers, and that was a real niche that could start to be filled.
- Joel: Yes, I remember, back in the time, just about when AHLA was starting, that if you told somebody you were a healthcare lawyer, they thought you were an ambulance chaser, that you did malpractice work. You had to explain that, no, there was such a thing as Medicare and Medicaid and that you represented institutional providers on issues that affected them. Tom, you've talked about chairing the long-term care and law program and how you got to know David Greenburg. When did you become a member of NHLA's board of directors and who else was on the board at that time and what sorts of things were happening early in the days of NHLA?

Tom: Yeah, let me piece together a little bit of history for you there and I may be a bit off on dates, but, you know. We had the first long-term care and the law program in '76, the success '77. I think I joined the board around 1978. The board, at the time, as well as the association, was largely composed of what we referred to as the HMO guys. These were Alan Bloom, Joe Murphy, Michael Tichon, a number of lawyers who were with the government and I think both Len Homer and I joined the board around the same time.

This was a big event, certainly, bringing in outsiders, but the big event and what I think was a very significant change is, up to that point, Jim Doherty had been the president and then Jim was going to step down in '78 and Charlie Wescott would become president. Now, at that point, Charlie thought, like Jim, that the presidency was for life and lo and behold, along came this big smooth-talking, tall Texan by the name of Jamie Clemens, who became the president the next year.

We were at a meeting in Baltimore of the board and Jamie, as the president, offered ... or the incoming president, I should say ... offered what would be in line with succession after, perhaps, Charlie passed away, introduced the motion that, henceforth, the term of all the officers would be limited to one year. You can imagine that created quite a bit of discussion, confusion, turmoil with the board, but Jamie, as I recall, had been involved in the Texas legislature. He was very smooth and, lo and behold, the motion prevailed and from then coming forward, the association had the one year in presidency and then you move on, which I think served the association very well, beginning in the younger people. I think it was a good move.

Joel: It certainly, I think, contributed to, even though I guess, over the years there have been perceptions that NHLA or the academy and AHLA are somewhat clubby and cliquy. I think the fact that you have term limits means that people cycle onto and off of the board. Some of them become leaders of the association presidents, but you are there for a limited period of time and it helps to make sure that the pool of people does not become stagnant and inbred. I think that's a very important, and obviously what Jamie did was a very important landmark in terms of how the association evolved.

Tom: Yeah, and as I say, I'm very proud to be identified with that and perhaps that's a good segue into you and the program which was started back in '76 then gets the transition, which I think was after 16 I was there. I have the good fortune of being able to transition it to you, so maybe let's just focus on some of your thoughts on how you moved that forward and to even higher levels.

Joel: Well, just as a little bit of background, after I graduated from law school, I did two years of clerkships. One with a state trial judge and then the other with a federal appeals court judge and I found those to be very helpful in terms of honing writing skills and reasoning skills and working with people who had been devoted to law for a long time. I also had a little stint in there where I was also doing military service. Then, after the second clerkship, I came to Washington and came to Pierson, Ball & Dowd where you were then a young partner.

I think the very first extended memo that I did was a healthcare antitrust memo that related to ... there were groups of nursing homes in various states who were dissatisfied with their Medicaid rates and they got together in a room as state associations are prone to do and decided that they should boycott, withdraw from the Medicaid program or refuse to take Medicaid patients. This caused antitrust issues and they were sued. Those led to consent decrease and so we had done elaborate work on antitrust, that's probably about the last piece of antitrust work I did. I never constituted a threat to Art Lerner or other folks in NHLA who

were the real, true antitrust experts. That led to you asking me to attend that very first long-term care program in Atlanta. As you said, at that time, there was no program planning committee other than you, I sort of helped, I think, I hope, served as a sounding board for a lot of the issues and an ex officio or informal planning committee member at the time without getting any sort of formal recognition of that.

Then, when you left as program chair in 1991, I became chair and then co-chair with Harvey Tettlebaum from 1992 to 2001. There were a number of things, I think, that happened during that period of time and one of them was that they did create a formal program planning committee. First, it was with Harvey and then there were others appointed to that as well, including Debbie Randall.

Secondly, the program expanded, as you indicated ... Initially, it really involved nursing home matters and legal issues of significance to them and it was decided at some point, and the staff was very helpful in terms of doing this, that we should move beyond, not just nursing homes, but also other post-acute providers such as home health, hospice, and assisted living. That was sort of a difficult decision that, you look back on it now and it seems like, obviously, it was the right thing to do, but at the time, it was a little bit troublesome in the sense that you wanted to ensure that the new offerings that you were giving in terms of faculty and topics would actually draw new attendees to the program because there was some fear that, perhaps, these other types of post-acute providers had their own programs and wouldn't necessarily attend yours, so you wanted to expand the program without sacrificing your core audience who might become disenchanted with, "Look, this used to be our program and now half of it isn't our program anymore."

So, there was a little bit of a tightrope walk to do at that time, but I think that we were able to successfully navigate that and the program has really gone and grown from there.

Tom: Mm-hmm (affirmative)

You know, I was looking at some of the material that NHLA has put together for the interviews and one of the things that they're looking to do with these interviews is identify what they call milestones. I mean, I recall the early days. David was always worried that, where would we get program content for a new year and I think we were always blessed by Congress or the administrations that they would come up with something and, indeed they did. Let me ask you. Let's assume that you've got 3 picks, what would you consider to be the 3 milestones of legislation or regulatory matters that moved the, what I call the healthcare practice, forward?

Joel: Well, I think in terms of healthcare, and one of the things I was doing for the 50th anniversary was trying to compile a list of the very top things that had happened. A lot of them were legislative as you said, but there were other regulatory developments as well. I think Medicare and the enactment of Medicare and Medicaid in the Social Security Act amendments in 1975 is probably a little beyond the 50 year mark, but it's clearly the most significant thing that happened. The Affordable Care Act is obviously another one, but in terms of the long-term care program, one of the things that I remember as being a landmark, there have been numerous nursing home reform movements over the years, but one of the very first, which was very significant was the 1987 Nursing Home Reform Provisions, which I guess were in the Social Security Act Amendments of 1987.

As I recall, at the 1988 program, the 2 of us did a very extended, lengthy synopsis of all the provisions of that act and I remember people coming up to us afterwards and asking for copies. Back in those days, you didn't do Power Points, you did projector slides that were in a carousel and I remember people coming up and asking for copies of our slides that they could use and so they could understand this act. So, I think those are some of the key things both in terms of healthcare overall, but also a little bit as to long-term care, which you and I were so involved with over the years.

Tom: Let me test your memory on two things for, perhaps our listening audience ... I was looking at the programs we had. Couple famous statutes, which we referred to, one being 249 and then the other was the Boren amendment. What do you recall about those-

Joel: [crosstalk 00:25:31]

Well, those were obviously for us and for the long-term care industry and also the hospitals. Those were very significant in terms of requiring the states to pay rates that sort of mirror Medicare's reasonable cost on the Medicaid side or something that was reasonable cost related or that related to what the actual allowable cost that they were incurring. So, a large part of our practice became representing associations in states where they were dissatisfied with their Medicaid rates and ending up challenging the legitimacy under section 249, which was very short lived, Congress repealed it after a short period of time.

Then, the Boren amendment came into effect. It was somewhat similar in language and for years, we did work around the country, as did a number of other firms in terms of trying to invalidate Medicaid rate methodologies, rate freezes, rate cuts when states got into budget problems. I think we worked just about every region of the country over that time and perhaps, one of the things that can be said about our careers is that, we were successful enough that all of that, the states banded together to go to Congress to insist that the Boren amendment be repealed. So, I guess we were major irritants to the state and it's an offhand compliment to the work that we and other people, other lawyers who represent providers did that they states felt that they, apparently couldn't win in court, so they went to Congress and got Congress to repeal the Boren amendment.

Tom: Yeah, I think we probably made Senator Boren famous or infamous and I don't know whether we lead to his then career leaving Congress to become what is the Chancellor of the University of Oklahoma. Well then, you became president in what year?

Joel: Well, I became president in 2008 and 2009. I was, as you said, I was the chair of the long-term care program until 2001 and then I went on the board and that was right before 9/11 and Doug Hastings was president at the time and obviously had some major challenges and I was just a new board member at that point, but Doug had to sort of help AHLA navigate through 9/11 because, as you'll recall, a lot of people ... there was a lot of trepidation about traveling, flying, etc, and that had an impact in terms of attendance at the programs. I remember Doug doing a very good job of keeping peoples eye on the ball in terms of AHLA's operations at the time.

So, as I got on the board, one of the things I did was I was on the practice groups committee and ultimately came to chair that and one of the big developments was that the association, which had been renowned, and still is, for its in-person programs, began to do a series of webinars. That, later, became very important, and I'll get to that in a second, during the time that I was president.

We also worked on a reserve policy at that time and during, I think, Dick Cowart's presidency, which was a couple years before me, about 3-4 years before me, there was the creation of a diversity council to try to ensure that we were tapping into minorities. One of the things that we did do after a couple of years on the diversity council was to change the charter, to modify it to assure that it encompassed not just African Americans, but also other minority groups such as Hispanics, Asian Americans, and folks who were disabled. So, those were some of the things I was involved in that I was particularly proud of.

Then, in 2008 and 2009, I became president, which was a little bit like being Herbert Hoover in one sense, which was, I became president right around the time that the great recession went into effect. That had major implications for AHLA because law firms were obviously strapped at the time and they were trying to save money by limiting things like association memberships, travel to programs, and those sorts of things. I remember working closely with Peter Leibold and the staff and with the other leaders of AHLA at the time, which was my predecessor Elizabeth Cerder-Belmont, my successor Elizabeth Thompson, and Rich Shackelford who later became president to create incentives for the staff, in terms of their bonuses, to make sure that we continued to do well at operations.

One of the things I was really proud of was the fact that, during that year, AHLA actually made money at operations, so its programs continued to be successful. One of the things we were able to do was, the webinars became wildly profitable and around that time is when we got to the point where AHLA was doing at least one, if not more webinars per week and a lot of the firms were using the webinars in lieu of programs for their younger members, so there was a fair amount of money coming into the association through the use of the webinars.

So, those are a couple of the things that I thought were highlights at the time that I was president.

Tom: Yeah. I mean, those were great moves. In particular, if I recall being told, the board, the process became much more formalized, much more organized, as I'm sure you may have heard is during the early years, the boards were usually a session where Robert Bromberg would order the most expensive wine on the restaurant's list and we all would drink a lot and tell a lot of stories, but in terms of having any particular organized process, we didn't. So, it was a good evolution you were involved in moving the association forward. The other thing you mentioned was the public interest sector and the development of that.

I recall in the '80s, we were starting to accumulate quite a bit of a surplus in the association and the board was starting to say, "Well, we need to do something with that," and, of course, David, being quite conservative was, "Well, you never know what will happen. The world will end tomorrow. We have to preserve our money." With Sandy Teplitzky and Alice Gosfield, we were involved in, sort of, starting the thinking of what was the public interest part of NHLA, which you and others really moved forward.

Joel: Yeah, it's very interesting that you mention that, Tom, because, about the time that I got onto the board ... There were actually some folks who were on the board at the time who wondered whether public interest was really something that AHLA should be involved with. It's real hard to conceive of that now, but the public interest had become a little bit of a backwater.

A lot of the folks from my generation of the leadership remember that Elizabeth Belmont, who was my immediate successor as president was extraordinarily involved in doing public interest

documents that always seemed to be very prescient in terms of, she'd do some kind of an emergency preparedness thing or life-limiting conditions and she'd usually get some publication out about the time that it became an issue of national significance. So, she really got a lot of the credit for doing that. One of the other things that's really cropped up during that time too, and I think Dick Cowart was involved, and this was really the use of sponsorships to help fund the program, the cost of the program, cost of things like the past presidents and the board dinner. So, those are things that happened.

I know the reserve policy probably emanated out of the time that you were still in the leadership and we continued to sort of work on that and refine it. As is inevitable in these sort of things, there was a lot of, as you said, discussion on term limits. Well, we had a lot of discussion and debate about what the reserve policy should be, how large ... how much money should you accumulate, what should the money be used for? So, those things became very important and they continue, I'm sure, to be modified and refined over time.

Tom: Yeah. Look, I see we've probably well exceeded our limit, so ... Any-

Joel: I think, since we've got a joint interview here, we're in pretty good shape-

Tom: Right. All right.

Joel: Are there any particular things that you look back on in terms of your presidency or the evolution of AHLA about the culture? Particular strengths of the-

Tom: Well, no, I guess ... The good people we met over the years, the commitment that we get from our speakers, from the people that attended and I truly do think that we advanced the knowledge about the healthcare law and long-term care in particular. You know, I'm pleased to have been identified with that in the early years, but I'm equally pleased to see that you and Harvey and others moved that forward. So, kind of just proud to have been a part of that and see how nicely the association has evolved, and you?

Joel: Yeah, you know, I think that one of the enduring legacies of the association, going back to the days of the academy and NHLA is the fact that it has had the ability to attract the country's leading healthcare lawyers in these whole various specialty areas; Medicare reimbursement, Medicaid reimbursement, antitrust, tax, health information technology, et cetera, et cetera, so that you really have the leading lights in the country who are speaking, writing, and getting into the AHLA leadership.

I think that's extraordinary in the sense that you would think that there's a lot of competition between these people and to some degree there is, but the association has had extraordinary collegiality, a willingness of people who are in the leadership, who are on the speaking circuit, on the writing circuit to share their expertise and experiences, including with individuals who actually compete against them in the everyday legal marketplace, so I think that exceptional quality, the fact that you're getting the best of the best to provide in person programs, to provide publications, has been something that's marked AHLA over the years in the fact that it is really, sort of a meritocracy or tries to be. That it strives for that is extremely important.

Tom: Yeah, you mention about the growths of the practices. I mean, I hear now that law firms indicate they have healthcare practices of 30 or 40 lawyers and I recall the time that we, and others, were starting on this. If you had maybe 2 people in the firm, that was it. I interviewed Jack

Schroeder the other day and Jack told the story of how when he started, he was it, and it was a story somewhat similar to mine, as a matter came in the door, there wasn't anybody else available to work on it. It had to do with hospital liability in Georgia and Jack became the man to research it and his career moved forward from that. All great stories, which I would expect what the association is doing here will capture. -

Joel: [crosstalk 00:39:14]

Tom: Look, I think we'll-

Go ahead, yeah.

Joel: I think one of the things that does contrast older folks like us who became healthcare specialists with a lot of younger people is, as you said, there was a certain serendipity to your getting involved in healthcare, my getting involved in healthcare, Jack Schroeder's getting involved in healthcare and back in those days, something would come in. As you say, it comes in over the transom and somebody has to do it and you become an expert that way.

There was no ... I hadn't planned to become a healthcare lawyer. I didn't take any courses in law school because they didn't have them at that time, in healthcare law, the most you had was administrative law. Nowadays, by contrast, there are kids who come out who almost have a healthcare specialization when they end up at the firm. I don't think that's a bad thing, but it's a very different thing from those early days.

Tom: Yeah. I mean, as you frequently get the question with the younger people, how they get into healthcare and we can tell the stories, as you say, of how it just, one would say by happenstance, but I still think there are great opportunities for, in the area, one of the exciting things is not just understanding the law, but the new programs that get created. One of the ways is, you understand the program and then how the law applies to the program and I think there are opportunities there for the younger people as they move forward.

Joel: Yeah, I absolutely agree. I think that, in terms of younger folks, who often seek advice from those of us who have been through the mill, so to speak, it's sort of important to find something you're passionate about that you look forward to doing every day. I know you were always enthusiastic about your work and getting and staying involved in things like AHLA.

Inevitably, there are going to be stumbles, there are obstacles, there are disappointments, you don't win every case. I'm always suspicious of anybody who says they have a perfect batting average. Those stumbles, those disappointments are often the stuff of which ultimate success is made, so getting involved, staying involved, devoting yourself to something like AHLA, I think is very important, but if ... Regardless of the association itself, if you want to be successful in a particular area, you just have to really continue to plug away and learn it and master it and become the preeminent expert in it.

Tom: No, I totally agree. I think it comes down to what you and I have always sort of ... A love of the law and, you know, the importance of, as you say, mastering a subject. I mean, who would have ever thought we became masters of 249 and the Boren amendment, so maybe on my tombstone what you'd put, "Well, he was a master of 249." Okay.

Joel: Well, Tom, thank you very much for taking your time-

Tom: Yeah, thank you. I'm sure we could go on for hours, and again, it's always a pleasure to talk to you and reminisce and to also have an opportunity to thank you for what you've contributed, so-

Have a good day.

Joel: [crosstalk 00:42:39]

I just want to say, we all have mentors and you were my mentor, along with some other folks who were on the board when I came through and it's always been great working with you, collaborating with you and others who were very important to my legal career. So, thanks again.