



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 7, 2017

Joel Hamme interviewing Richard Shackelford:

Joel: It's February 7, 2017. This is Joel Hamme. I'm interviewing Richard Shackelford, who was President of the American Health Lawyers Association in 2010 and '11, and is now an Emeritus Fellow. This interview and numerous others of past AHLA leaders are being conducted in conjunction with an AHLA history project for its 50th anniversary this year.

Richard, thank you very much for taking the time to share your recollections and thoughts with us. Let's start with any childhood or educational background information you think is relevant.

Richard: Well, I was born in Atlanta, Georgia, but actually grew up in a small town because my father's business was relocated out there. Attended the University of Georgia, both undergraduate and law school. I am a double dog, as we say in the South.

Joel: When did you first become involved with healthcare law?

Richard: Not until I started practicing law and actually not for a year or so after I started practicing law. I did not set out to be a healthcare lawyer when I went to law school or when I graduated from law school.

Joel: What did you think you were going to do?

Richard: I wanted to be a litigator. At the right time, I applied to some of the Atlanta law firms. I was interested in more of a mid-sized firm. Of course, I wound up most of my career, a large, international law firm, but I started out in a mid-sized firm in Atlanta. That's where I was more comfortable coming out of law school.

I wanted to do litigation and mostly business litigation. That's what I signed on to do as a first year associate. That's what I started off in my practice doing.

Joel: Tell us about how your career evolved in terms of becoming involved in health law and then specializing in it?

Richard: It was in terms of the firm that I chose. I got an offer from this firm. I was looking at some others, but I liked this particular firm. That firm was a little bit unique in Atlanta at the time. This is in the summer/fall of 1980. There were essentially, I didn't really realize it at the time, but I

American Health Lawyers Association

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

learned that later that there were three healthcare practices in the City of Atlanta at that point in time.

There were three firms that actually did healthcare, of course, very different landscape today, but that's the way it looked at that point in time. It was just simply a coincidence that I wound up at that firm because that was just one of many things that that firm did and I did not go there for that reason.

I started there doing business litigation as I said, and after about a year or so, the healthcare partners at that firm had some healthcare-related matters that needed a litigator. They really didn't have one in their group. They asked me if I would start to help them out on some things. This would be things like certificate of need matters that would have an administrative litigation component, medical staff hearings and the like.

I started doing some of those matters for them. I really enjoyed it and within probably nine months to a year, I made the decision I really wanted to do this full time and became part of that practice group at the firm and started doing healthcare law exclusively after about 18 months into my professional career.

Joel: When and how did you first become active in the American Health Lawyers Association?

Richard: Really, from day one in terms of one of its predecessor organizations. The head of our practice group, the most senior lawyer, and one of my most important mentors is Robert Miller, Bob Miller. He, at that point, was very involved and was on the board of the American Academy of Healthcare Attorneys, AAHA. All of the lawyers at that firm, because of Bob's involvement, were encouraged to participate and we all did. We all went to the annual meetings of that organization.

Another mentor of mine, Glen Reed, was the next most senior lawyer there. He started to get active in the organization. I started going to those meetings and, of course, later on, as we all know, that became one of the two organizations that led to the current AHLA.

I should say that Bob became president of the American Academy of Healthcare Attorneys in the mid-'80s. He was already deep into the leadership track at that point in time.

Joel: Then later, Glen did too?

Richard: Then later, Glen became president, actually the merged entity. Glen was the second president of the merged AHLA.

Joel: Basically, you had at least three of you out of your small firm that became president of AHLA or its antecedent organization?

Richard: That is correct.

Joel: You mentioned Bob Miller and Glen Reed as being mentors of yours, were there other folks over time at AHLA who were role models for you?

Richard: Sure. At that point, I was observing some of the more senior members in leadership even before, of course, I went on the Board. I was involved in a practice group, but saw people like

Doug Hastings and Dick [Callort 00:08:58] who were already involved at the board level. Got to know them in the early days, beyond people like, of course, Bob, and Glen. There were other folks, later in time, but at that point, I probably knew them the best.

Joel: Mm-hmm (affirmative). Do you recall your first time you spoke or wrote for the Academy?

Richard: Years ago. I'm just trying to remember. It would have been in the '90s. I remember being very nervous. I had spoken at state level conferences certainly by that point in time. I had been doing some speaking, but not at a national conference, so you're always a bit nervous when you do it the first time. That became, and we can talk about that later, but a very important part of the development of my career later in time as well.

Joel: Talk a little bit about, obviously, you must have done a fair amount of speaking and writing for AHLA, but at some point, you got into some leadership positions. Could you talk a little about some of the leadership positions that you held prior to going onto the Board of Directors?

Richard: Yeah. I got involved with the HMOs and Health Plans Practice Group back in the mid-90's and became a vice-chair for that practice group, back in those days. I think I was four years in that practice group in leadership. I was active in some of the practice groups, the Fraud and Abuse Practice Group, and that practice group as a member, but in terms of leadership, I got involved in the HMOs and Health Plans.

Advanced up through those ranks and ultimately chaired that practice group, I believe, in '99 and 2000 or 2000 and 2001. Somewhere along in there.

Joel: How was your practice working so that you became involved in the Payers Plan Practice Group?

Richard: That was again the way things developed in my practice. We'll probably talk about the False Claims Act, defense, and government investigations piece of my practice, which became the more important part of my practice later in time. I had been doing some class action litigation in the healthcare context and class actions that had been filed against health systems and also against health insurance companies.

In that regard, in terms of the health insurance companies, I got to be fairly conversant back in those days about a risk of preemption and state regulation of insurance. This would have been in the late '90s, early 2000's. There's also a move afoot around the country for health systems to get involved and putting together their own health plans, provider sponsored health plans.

I got involved in helping with that effort. I got pretty deep into the whole insurance area. That was my foray into the Payers and Health Plans Practice Group.

Joel: In a sense, your initial specialty in that area, even though it was not your long term specialty, or the one for which you really became noted over time, was really in the payers' plans area and then you evolved into fraud and abuse?

Richard: Correct. The fraud and abuse had been a part of my practice even before that for a long time, but it really took off. In the late '90s is when that really took off.

Joel: You basically cut your teeth at AHLA on the payers' plans?

Richard: Correct.

Joel: Were there particular achievements of that practice group at the time you were in the leadership of it that you remember or recall?

Richard: Well, I remember we had a good group. Joel Michaels was a great leader. He was the chair of that group during my tenure in leadership. I essentially succeeded him as I recall. We had some other good folks in leadership as well.

I know back in those days, it was a real effort to get people from the insurance industry, the lawyers, the in-house lawyers and so forth, the people who really practiced in a real deep way, in that area, to get them more involved in AHILA.

We spent a lot of time with member engagement and trying to get those lawyers who frankly had not been all that active in AHILA to get them more active at AHILA. It was a challenge, but I think we made some real progress. Joel had a lot to do with that. That's what I remember the most about it. We made some decent progress during that time period.

Joel: That sort of thing is so helpful toward what AHILA calls the new blood facet of its work of people coming into leadership, transitioning through leadership, and then having people come in and replace them, who have also had some background with the AHILA's institutional culture.

Richard: Right.

Joel: Talk a little bit, if you would Richard, about getting on the board of AHILA. Was there anything in particular that you recall as you got onto the board or just being nominated for the board?

Richard: I just remember how excited I was when I got the invitation. I got a call from Doug Hastings to tell me that I had been selected to be on the AHILA Board. The meeting where I was going to join the Board was in San Francisco.

I just remember being out there, waiting outside the door, I guess for the final votes to be taken or whatever was occurring back in those days, but I remember we had to wait outside. Then, we were welcomed inside, the folks in my class, as we came in to the applause of the existing Board.

Of course, I had never been before that body at all. It was ... You walk into that room and you have this huge table that wraps around this big major conference room. All these people with microphones in front of them and with staff and board members is more than 30 people in the room. I remember being a bit overwhelmed by it all.

Joel: Did you know anybody who was in your class at the Board before going onto the Board?

Richard: No. As I recall, no. We became close as members of the class, but I don't believe that we really knew each other prior to then.

Joel: Did you know anybody else who was on the Board who was still on the Board at the time you went on?

- Richard: I'm trying to remember as to whether I knew Jim Sheehan through some work-related things because he was on the Board when I came on. I'm not recalling that I did, Joel.
- Joel: That's not especially unusual. I know I knew one person in my own class, but a lot of the others who were in my class I knew by name and reputation, because most people get on the Board, they've got a national reputation. I didn't know them personally. Your experience isn't entirely unique.
- Once you were on the Board but prior to becoming President-elect designate, what things did you do, what committees were you assigned to, and what specific developments did you feel were particularly notable in terms of what you had gotten your hands onto?
- Richard: Yeah. I was involved early on with public interest. I was also involved on programs. You move around, of course, while you're on the Board for the various committees. I was on a number of committees. I was on Practice Groups. I think I was on just about every committee there was, I think.
- I spent the most time on Public Interest and Programs. I just enjoyed them both. Public Interest, we had just a lot of activity going on at that time period. Elisabeth Belmont was really taking a leadership role in Public Interest and certainly motivating me and others to work hard.
- We did a lot of things in terms of colloquialisms and development of all these various physician papers and guidebooks. I got very involved in that even toward the end of my tenure on the Board with development of various guidebooks in the Public Interest area, but always enjoyed Programs too.
- Joel: Were there particular Public Interest publications where you had the laboring oar on those?
- Richard: Yeah. I was involved ... I'm trying to remember we had so many, but I was involved heavily with some of the ones relating to Emergency Preparedness. Worked closely with Elisabeth and others on those. I headed up a couple myself. One was on disability. In fact, I'm trying to remember what the other one was. We had so many, but we had multiple ones relating to Emergency Preparedness.
- We also got involved heavily on the whole issue of Avian Flu. I was very much involved in putting on a program that we did in that area as well.
- Joel: The Public Interest Committee back at that time had a solid reputation for anticipating legal developments or catastrophes and putting out publications on them before they actually occurred so that they were really quite useful to people in the legal community and people in healthcare operations once these events actually unfolded.
- Richard: Indeed.
- Joel: After being elected to the Board leadership and getting into the presidential track, that's a four year process, as most people who are on the Board know, were there particular association accomplishments of which you were especially proud? How were you involved in those?

Richard: Let me think back. The Board is always so busy doing so many things. We had a couple of efforts, as I can remember, that occupied some of our time when I was involved in leadership, one of which was ...

Frankly, at that point, we had come out of the recession, as you well remember, Joel. Like everybody, the Board had its challenges financially, but we'd come out pretty dog-gone well. We held our own, as you know, and you had a lot to do with that and others before and after you.

We had a pretty good year by the time I came along. Financially, we were strong. We needed to figure out how do we make sure we're being proper stewards of the reserves that we hold. One thing that we did is develop a reserves policy to give some guidance about how we use those funds.

The other thing that happened during my tenure from my annual meeting, which was in Seattle. That was the meeting that I served as chair of the Programs Committee for. We had largely planned the meeting, as we always traditionally do, in December, at a meeting that takes place in D.C., where a lot of the planning takes place. It's an all-day meeting.

Of course, there's a lot of follow-up and conference calls after that, but essentially it's done by the time you get into late February and early March, you're already at the point of inviting speakers and really taking care of last minute details of the program.

Well, of course, we all know what happened in March 2010. That was when the Affordable Care Act passed. We literally, as a Programs Committee, had to not entirely redo the program, but we certainly retooled it. One of the things I really insisted upon in terms of, at least my input as chair of the Committee, is that all programs where feasible and logical and rational, have some sort of Affordable Care Act component.

That required a lot of work by the Committee and work by our speakers to gear up for this law that no one had even read yet and we all know its size and how massive it was. It happened. I will tell you, as you will remember, at that meeting, there was a lot of content, even at that early stage, about the Affordable Care Act and that's a real credit to the organization to be able to pull that off.

Joel: I think one of the things I recall from that period of time because I was at the very end of my tenure on the Board, is that AHLA was actually very facile, very agile, about they put on the Program, I think in April or May, with your assistance, as I recall. You actually recommended some speakers on some of the Constitutional issues that were raised by the Affordable Care Act.

We had a conference in Arlington, out near the Pentagon, even before the annual meeting. That served as a prelude for a lot of the topics and subjects that then you were able to fit into the annual meeting in Seattle that year.

Richard: Your memory's even better than mine, for sure, because I'd forgotten that. You're exactly right. I remember we geared up for that interim program in Arlington. Staff and committee pulled that together.

I was involved in those efforts and a lot of people did a lot of work. Not me, a lot of other folks. That interim meeting was well-attended. I remember opening the meeting and noting it was a completely full room. Then, we continued that momentum in Seattle.

- Joel: Richard, if there were particular takeaways or key takeaways from the year you served as AHLA President, what would you say they were? I know you've talked a little bit about the Affordable Care Act and the reserve policy. Were there other things that you were particularly proud of as accomplishments?
- Richard: Well, we certainly talked about diversity. We worked on that and our subsequent boards have done that. We worked on membership. I know we crossed the 10,000 member threshold, I want to say either shortly before my time or shortly after my time. It was somewhere in that timeframe. Of course, we thought that was an incredible accomplishment. Of course, the organization has well-blown past that milestone now.
- I would say that the quality of the programs that were done during that time period, I think stood the test of time. AHLA, it's a tough audience because the expectations are high because the quality being so high over the years. I think we at least met that standard. I like to think that we did.
- Joel: That segues nicely into what my next question was, which was, give us some of your thoughts and impressions about AHLA as an organization and what the benefits of membership and maybe even more importantly, active involvement are?
- Richard: Look, there is no doubt that it is the place to be for education regarding healthcare law. I know both the predecessor organizations had their strengths, both AAHA and NHLA had slightly different focuses. Both were strong, but boy, the two together created just an absolutely powerhouse, I think, of educational content and a place for people to come and discuss healthcare topics.
- I always advise young lawyers, if they have any interest in health law, even students, if I get the chance, which I do on occasion, to speak to law students about healthcare. I always say, "You learn by doing, no question about it. Experience is critical. You want to be able to get education that you can't get through just doing. The place to get it is AHLA."
- As a career path, I think health law is a great career path, but if you're going to stay up, stay current with what's going on, there's only one place to do that and that's AHLA.
- I always, even as a retired lawyer, I still get all the emails. I'm a member, so I still get all of the content that comes to you for free and I continue to be amazed about the amount of content and quality content that AHLA puts out just on a continuous basis.
- Joel: You've talked about some of AHLA's particular strengths as an educational organization. Do you have any thoughts about how it manages to retain those strengths while it's adapting to an ever-changing legal environment?
- Richard: Well, what I believe and will always believe, is that you cannot let the quality just diminish. I know we want to increase membership, that's important, inclusion of everyone, and get more people involved. In fact, that's the strength of the organization, but we also have to be mindful of the quality of our programs.
- I think that's what is always going to set AHLA, differentiate yet in the marketplace, is the quality of those programs. It's also the collegiality, I think, is also something. It sounds trite, but I think

it's true and maybe it's a function of the type of people who are attracted to healthcare law and working in the healthcare industry.

I've found it to be a very collegial place. I think both the quality educational programs and the collegiality is something that have always been the strengths of the organization. If I'm ever asked ... If anything, we always want to double down on those two strengths and never let them slip.

Joel: What specific challenges, Richard, do you see as AHLA confronts and moves into its second half century?

Richard: Well, the way content is delivered. I think the quality of the programs and certainly the collegiality of the organization are both enhanced by having in-person programs. These days, as busy as we are, and as easy as it is to communicate remotely without the need to have people together in the same location, I worry about that.

I think again, having people together helps maintain the absolute fabric of the organization. I think that's a challenge. That was starting to happen even during my time in leadership, when we started to worry about that. I think it's even a bigger issue today.

Of course, organizations are very careful with their dollars. Any time there's a financial downturn, that can affect the willingness of organizations to let their people participate at the same level maybe they did during better times. Those will continue to be challenges.

I think just trying to keep up with the increasing pace of change. I mean, things have always changed, I think, more rapidly in healthcare as compared to other industries, but I think these days the change is literally like at light speed. We don't know what's going to happen with Affordable Care Act. AHLA will have to be there on top of that and I'm confident that it will. It's a challenge to stay current with all that's happened.

Joel: "To remain nimble," as Peter [Leibold 00:30:35] would have said. I asked earlier about who your AHLA mentors were. You mentioned various people including Bob Miller and Glen Reed and Joel Michaels and Doug Hastings and Elisabeth Belmont. Were there particular individuals for whom you have acted as a mentor in terms of AHLA involvement and then subsequently leadership?

Richard: Look, when I mentioned those names, it's always the worry about not including everybody. I actually talked about some of the people that were mentors to me early on. I had mentors later when I got involved in AHLA including yourself, and Al Adelman, and Elizabeth Carter Thompson, Almeta Cooper. I mean, the list goes on-and-on-and-on. [Dinetia Newman 00:31:26]. I don't want to forget those people either. Anthea Daniels and others. I think I mentioned Joel Michaels.

In terms of what I was able to do hopefully with some of the younger folks who came on the Board, I hope I was a mentor to some of those folks. I'm thinking of people like, even some of our subsequent presidents.

Kristen Rosati and Lois Grinnell and others. Jim Boswell in my law firm, for example, who is now on the AHLA Board. I hope there are a number of those folks out there that would say that, but you'd have to ask them.

Joel: I'm sure there are, probably even more than you've mentioned. Richard, what would you tell or advise younger people ... You've mentioned already that you got involved in healthcare, and this was also true of me, as a matter of serendipity, was coincidental more than intentional.

What would you tell or advise younger people who are interested in the legal profession generally and health law, in particular, other than what you've already told us about AHLA or other things in terms of if you're interested in law, if you're interested in health law, what should you do?

Richard: What should you do?

Joel: Yeah. What advice would you give them in terms of not just involvement in membership in AHLA, but just in terms of their practice?

Richard: Well, I guess what I would say is, make sure what you're doing is something that you enjoy. That's one of the benefits I think of health law as a practice because at some of the law firms that really specialize in it, and I know more about that, I mean in-house is an area, and I'll attend to that in a second.

In terms of the law firm experience, in most places that I'm familiar with around the country, you can do just about whatever you want because the beauty of it is, you can do transactions. You can be a litigator. You can be a regulatory lawyer. You can be a government investigations, false claims act, defense lawyer, which is pretty much what I did. You can focus on compliance. You can be in a courtroom or not. You can do deals or not. You can do ...

That's the beauty of representing an entire industry like that. I think that's one thing about it, I think that I tell young people. Make sure that what you're doing is something that you enjoy. I always encourage them, and Bob Miller was that way with me, when I was a young lawyer. He made me do position contracts. He made me to PRRB appeals and do medical staff hearings and understand, give some stark advice, and learn about the anti-kickback statute.

I did a lot of things. Over time, you naturally figure out what you most enjoy, where you think your practice is best-suited and you start to specialize over time. We all do that. I think that's natural and that's a good thing. I could encourage young lawyers early on to sample it all.

Joel: That's very good advice. I think nowadays, so often people get involved in practices, particularly, I think, at bigger firms, where they are pigeonholed relatively early on in a specific area and don't have the luxury of something that I think is probably not a luxury.

It's probably more essential to really get involved in a variety of different topics in healthcare because there are so many specialty areas within healthcare, but it always is helpful to at least have some kind of a knowledge about those as you inevitably will have clients asking you about issues that you're not an expert on, but that you need to know enough about to refer them to the right people.

Richard: I think you've got to have at least good knowledge from a regulatory perspective. You need to have at least a basic grasp of the fundamental regulatory laws that apply to healthcare.

I'm never going to be an expert in HIPAA, don't want to be an expert in HIPAA, but I know the basics. By being forced to draft contracts as a young lawyer, I learned when I had to litigate

those contracts, it made me a lot more sensitive about the language that needs to be very carefully put in these documents.

I think it's good for those lawyers who draft those documents to do some litigation, to learn what happens when things don't go well and all of a sudden, that language is put under a spotlight. I totally agree that I think younger lawyers should try to get experience in as many areas as they can.

Joel: Richard, I know you're now retired from the practice of law, but is there any way in which you are keeping yourself involved in things through AHLA?

Richard: Well, I'm still a very active member of AHLA. I get the content. I continue to go at least to the annual meeting. I may go to other meetings, but I will always go to the annual meeting. I sit on a couple of boards in the healthcare space, one of which is a Health Systems Board. I'm on the Audit and Compliance Committee of that Board.

I need to stay involved in AHLA to help me stay current, to be a good board member and fiduciary of my health system.

Joel: It sounds like you still have your oar in the water there, Richard. Thank you again for taking the time for this interview. Do you have any final or concluding thoughts?

Richard: No. I enjoyed it. I always enjoy talking about AHLA. It's always nice to go down Memory Lane. You asked me about some things I hadn't thought about in a while. It was a lot of fun.

Joel: Good. Thank you very much again. We'll be chatting soon. Again, very helpful to have your thoughts on all of this.