



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 3, 2017**

**Dennis Woltering (videographer) interviewing Arthur Bernstein:**

Dennis: Tell me about the American Hospital Academy and how it began, in the beginning it was called the Hospital Society, right?

Arthur: Right.

Dennis: Tell us about about that.

Arthur: It started out as the Society for Hospital Attorneys and it resulted in the fact that as a general consult of the American Hospital Association I conducted a few educational programs every year. And they were on hospital law, and the people who came were mostly lawyers representing hospitals. In those days most of the hospitals were nonprofit and the lawyers were serving pro-bono so they needed some education quickly. The same people seem to be coming over and over and after a while we decided we ought to have an organization of these people.

And so I got together with Don Byerly of Yankton, South Dakota, and Carl of St. Louis and we agreed that I would pester Dr. Crosby, the head of the American Hospital Association, and they would keep bothering him with letters and phone calls and try to get the American Hospital Association to sponsor a hospital lawyers groups because they already had groups of hospital pharmacists, nurse anesthetists, dieticians, and Dr. Crosby didn't want any part of it because he didn't like lawyers. And he said "we have one lawyer and we don't get sued, our friends down the street, the American Medical Association, they've got half a dozen lawyers and they're getting sued all the time".

Well, a year went by and the three of us kept bothering Dr. Crosby and one day when we opened a brand new office in a brand new building on Farragut Square in Washington, Dr. Crosby came to visit and the building was new and not in the best of shape yet and a ceiling tile fell and hit him on the head. And it may have been pure coincidence but that day he told me "okay, create the organization of lawyers". And so I immediately got the list of all the people who have being going to our educational programs and then my boss of the Washington office said "you're not going to run this organization, you're not going to spend your time on that, you have to hire somebody to run it".

And so I interviewed a number of people and I chose David Greenberg. In spite of the fact that he was obviously a polio victim he was able to walk with the various metal work on his legs and I thought he would stick with the job. The other applicants seemed to be just transitional. And so we got together and we contacted all the people on our list and before long we had a couple of

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hundred members. And that meant we've got to have a meeting of all these people and so we arranged to have the first annual meeting at the Palmer House in Chicago.

I then left the American Hospital Association and joined Kaiser Permanente just a month or two before that first annual meeting and so David was on his own and he really administered the program himself thereafter. And at that first meeting, something like 40% of our membership showed up, so we realized we had a strong affinity. And from that grew a group of people who had the strongest comradery, conviviality. They cared about each other, they cared about their families who came to annual meetings, they didn't care anything about their politics. If there was ever any disagreement on any subject political or legal it was always done in a very cordial manner. We got to see the children growing up, we got to see people divorcing and remarrying.

It was just a delightful crowd and if we had time I could tell you about some of these remarkable people. We had connection with the Kennedy administration, we had people running for governor, we had the most diverse and admirable people. Of course you can't keep that up when you have 14,000 members, but within a few years we have two or three thousand members. Of course I was one of the many people who held office, I held every office they had. There were eight, and so the last one of course is Past President and that one you don't lose, so I'm still a Past President.

Dennis: What was Dr. Crosby's first name?

Arthur: Edwin.

Dennis: Edwin Crosby, okay. First it was called the Hospital Society and at some point it became the Academy. When did that happen?

Arthur: That was many years, fifteen years or so, that was when Larry Mcleod perhaps was President.

Dennis: Was there a reason why it changed names?

Arthur: To distinguish them from the Hospital of Pharmacists and Nurse Anesthetists. They felt they were more than a society, that they were like the Medical Academies, the Medical Professional Academies, and so it was simply an attempt to make the organization sound more academically professional.

Dennis: What was the mission? How would you describe the mission of the Academy?

Arthur: It was purely educational, officially. And it was extremely successful in doing so. In addition to this four day, annual meeting, at various interesting places around the country and in Canada, there were meetings about three or four times a year also in various places around the country, producing educational content. And we had a group of lecturers that we used both for the annual meeting and for these quarterly educational meetings. And when a specific legal topic came up that was worth having a special meeting on we did that too.

Dennis: And you had offices in D.C. near Farragut Square, huh?

Arthur: Originally, yes, but then of course the AHA headquarters, which was in Chicago, said "all of our other societies are managed in Chicago, the lawyers have to come through Chicago as well". Well David Greenberg, a polio victim, who was able to walk in Washington without crutches or walker or cane, he thought he could not manage winters in Chicago. That snow and sleet were too big of a challenge for him. And so he refused to move to Chicago and that ended his job. And he said "well, you know this organization really is too restricted in its membership, it's

lawyers who represent or work for hospitals and some of the academics who are in that field. It should be open to anybody, any lawyer in the health field, and I think I will try to create such an organization if this one isn't going to expand". And so he proceeded to do that.

Dennis: And he created the National Health Lawyers Association?

Arthur: Yes, he did.

Dennis: Describe David Greenberg for us. I mean what kind of a guy was he? It sounds like, talking to some of you folks, that he was kind of a character.

Arthur: David was different from most people, aside from the fact that he suffered from polio. He was, in a sense, an innocent. And that resulted from the fact that he was afflicted by polio when his family, who are ardent Zionists, moved to Palestine, now known as Israel, just before World War II. There was an epidemic of polio there at that time and he was afflicted when he was in his early teens. Well the war broke out and they couldn't come back to the states for the care that he needed, but Mrs. Greenberg, being a loyal American, started entertaining American soldiers who were stationed in Palestine and in Egypt so they could get good American meals.

And one of the soldiers who came was an officer, a medical officer in the US ARMY. He came and he saw David Greenberg completely paralyzed and immobilized and the doctor was absolutely shocked. He said "when I get out of this army and go back, I'm going to do my best to work on treating and curing this horrible polio". And so Dr. Albert Sabin went back to the University of Cincinnati Medical School and he did. He created the live polio vaccine that did wipe out polio throughout the world until very recently. It broke out in a few places. But that was the stimulus of David, to eliminating the disease that ruined his life.

When David Greenberg got back to the United States after World War II ended, he was indeed treated here and he was fitted with his mechanisms and taught to walk. But they discovered and he discovered, he had never been to high school, he had not been to school at all in his teens and now he was about twenty years of age. So an arrangement was made with an academic institution in Milton, Massachusetts to condense the four year high school curriculum down to one year. And so he went there and he spent a year and he got his high education and that allowed him to go on to college and get the rest of his education.

Dennis: And you were mentioning that he thought the American Academy of Hospital Lawyers was too limited?

Arthur: Yes.

Dennis: Tell me about that. So he started the National Health Lawyers Association.

Arthur: Right because he thought anybody interested in health law ought to be eligible to join this organization and take advantage of the education that it provided. He had some friends who assisted him and they were successful. And because they existed, the problems had that the Academy has with the American Hospital Association meant that there was another organization we might merge with, and that indeed is ultimately what occurred after a number of years of contemplating and meeting with people. And so when the two were organized, that really gave them a mass market, and that explains this huge membership that exists now, as compared with the two or three thousand that we had in the society that we thought was quite an achievement.

Dennis: Tell me about Jack Wood.

Arthur: Jack Wood was an unusual person. He was tall, he was not very smiley, he was a dedicated lawyer. He liked to do things by the rules. And in the very first meeting that we arranged in Chicago, he sat in the first row and Don Byerly of Yankton, South Dakota, who was a man who lost the use of his legs when he was twelve and never the less became a lawyer and a judge and helped us create the society. When we started that first meeting in Chicago, Jack Wood immediately got up and asked Don Bylerly "why are you presiding, under what authority are you conducting this meeting?" and I went over to Jack Wood and I said "We're going to have a recess right now, come one with me". And I took him in to the men's bathroom and I said "Jack, it has taken us many years to get going. Please let us at least get started. We'll have bylaws and all the other things you want very soon". So he sat down very quietly, Byerly conducted the meeting, we got going, and Jack ultimately I guess became President under the bylaws that we had adopted.

Dennis: You had, at these annual meetings of the Academy, you had what some people call "proms"?

Arthur: Well, the finale always was a dinner-dance and our four day annual meeting ended with a very high quality dance. We always had an orchestra and very fine food and the women, you know we did have women on the board we had women lawyers, but most of the members were men and they had female wives, and the wives were really involved in the social events. Culminating in the dinner-dance, and they selected the flowers and how things were arranged on the table. As a matter of fact, even the food. So there was one event, though, that was really quite memorable.

The afternoon before the dinner-dance was a free afternoon, and people were expected to go out and enjoy the city or resort that we were at. Well this particular one was at the Del Coronado in San Diego. And John Divine was, like me, an ex President, but thought of himself of a fine athlete. And somebody told him that the Del Coronado was not too far from the Mexican border, you could actually swim there. And he thought "well, I'm a macho swimmer, I'll do it". And so he jumped in the water and he swam a while and he caught in either coral or other sharp objects and he horribly tore up his forehead, lots of bleeding and he had to be sewn up at the emergency room. And he came back with his head completely wrapped in a white bandage, he looked like a Sikh.

Well, he met me and found me in a wheelchair with a big white cast on my foot. What happened to me? Well, I had agreed to play tennis even though I'd broken something in my knee tens years before and wasn't able to play. But I thought after ten years I think I can do it. So I played, and after ten minutes I pulled a ligament in my ankle and couldn't walk, went to the emergency room, got in to a soft cast, which meant I couldn't walk I had to be in the wheelchair. So I had to go to the dinner-dance in the wheelchair with my cast showing. John Divine saw me and said "you know I can still walk, I can push you". So he pushed me in there, and you had a thousand people rolling on the floor with laughter. This is what happens to past Presidents of this organization. And I wish I had a picture to show you because it is hysterically funny.

Dennis: Women were active. Now you said it was mostly men, but women were active, especially for that time, professionally, as health care lawyers. Tell me why do you think that took place. Why women were able to have such prominent roles.

Arthur: The women who had prominent roles in the society and the Academy were prominent women. Kay Felt of Detroit was a hospital attorney, probably the best known and most accomplished in Detroit. But she did have one failure: she never was able to convince us to have an annual meeting in Detroit, even though she would show us movies of what a great place it is.

The other woman who was on the board for many years was Sister Celestine, she was a nun, and she was a lawyer. And she represented the Sisters of Charity, which had a chain of hospitals. And of course she didn't go to the dance but she came to all of our events and was very well received, she like everybody. And when she retired she invited three of us to her retirement home for retired nuns and priests just off the Gettysburg battlefield. And so we enjoyed both the battlefields and visiting with Sister Celestine.

Dennis: When you ran the San Francisco meeting someplace around 1980s, the earth shook.

Arthur: It certainly did. You know most of the people who can to that San Francisco annual meeting, which I was conducting as President Elect, had never experienced an earthquake. And we had two, two days in a row. By San Francisco standards they were really quite mild and didn't scare the locals much. But for the people sitting there at our annual meeting and watching chandeliers wave like pendulums, they were beginning to get up and start rushing out. But you know an earthquake takes only a few seconds and they calmed down, and we went on.

Dennis: What would you describe as the big milestones in health care law during your career?

Arthur: Well, I missed out on the biggest, and that was the Affordable Care Act. It was adopted long after I retired. I guess Medicare was the most important thing in my era and I think maybe I arranged to adopt a few words in to that act, I'm not sure. But Medicare got the government's foot in the door towards national health insurance. And we had, as a matter the San Francisco program that I ran was dedicated to national health insurance and that was because Jimmy Carter, who was President at the time, was working on such a plan. And he had a young doctor doing this on his staff, and so I invited that young doctor to address our annual meeting and he agreed and he came and he told what they were going to do, and while we never compensated any of our speakers, we always gave them a gift.

At that time I had just been in Hong Kong and discovered I could buy digital watches, which were brand new and were a hot item, now you can get them for a dollar and a half, but I was able to get a couple of dozen of them to compensate our speakers for a mere fourteen dollars each. We gave them to everybody and I sent one to the doctor at the White House. And he sent it back, and he said "it's unethical for us folks at the White House to keep this gift and we also refuse to be compensated for our travel expenses". I wonder if those are still the rules in the White House.

Dennis: One wonders. Looking back, tell me how different health law was when you began compared to the way it is now.

Arthur: Well I had mentioned that most of the hospitals were non profit. If they had lawyers, they often didn't have to pay them. And a lot of them didn't even carry malpractice insurance. I remember asking Sister Celestine why they take that chance, and she said "well, we know that God will protect us". I think they have learned differently since. So it was a simple kind of specialty and there were only one or two books on the subject at that time. When we started our annual meetings, we, the speakers, would produce written materials about the subject that we're talking about. And they began producing inch-thick materials for us, and so we had to have a tote bag for people to carry them home. And, shall I show you the tote bag?

Dennis: Not right now.

Arthur: Okay. Well, as years went by, the materials stack got larger. And as I recall, the last time I went to a convention I had to carry four tote bags home with me --

Dennis: Go ahead.

Arthur: We were an educational organization that remedied the original problem of not much written material to guide people, but there was plenty. So here we have one of the tote bags and as you can see, it says "American Society for Hospital Attorneys of the American Hospital Association" we dropped that American Hospital Association after a while. And we also didn't give any money to the officers, but when they finally retired, as I did, I got a paperweight, and it says "In appreciation for dedicated services to the board of directors of the American Society of Hospital Attorneys, Arthur H. Arthur, June 1974-June 1982, so eight years on the board.

Dennis: So you talk about the wild and funny moments with John Divine and you mentioned that romances, at some times, developed.

Arthur: Oh yes. As I may have mentioned, we got to know all the spouses and some of the children, and we also got to know who wasn't getting along with who. And there were indeed divorces and there were new spouses that came on. And there were people who actually met and married. Our Canadian member, Lauren Resowski, met a young woman hospital attorney, American, at our meeting in Tampa, and she was in the process of getting a divorce. And so the timing was right and they got together, they married, they had children, and they remained in the health law field.

Oh I might mention that when we started the meeting in Montreal, that being in Quebec where the rules are "all meetings have to start in French" and I as President at the time had to start the meeting in French. Well I had one year of high school French and I thought I could put together the opening sentences, I consulted with Lauren Resowski who as a Canadian was bilingual, and so we started that meeting in French, and then I immediately turned it over to him to complete the legal requirements in Quebec of doing it in French and then we got rid of that obligation and conducted the rest of the meeting in English.

Dennis: What's your advice for young attorneys?

Arthur: That's a hard thing for me to say. I didn't really have a very successful career, and so I'm not going to suggest that anybody follow what I did, I worked for three non profit organizations in the health field. All of whom paid very low. And so the people that I dealt with in this organization, partners and big law firms all around the country, they were out of my league financially. Right now is probably a good time to be in the health law field because we are going to have all sorts of problems with whatever comes out of Congress in this term. There'll be a lot of contractual problems as well.

But, it won't be what it was in the very early days when it was a unique kind of law because it really isn't anymore, it's just a form of business law about the health law business. But I'm hardly the one to give advice on how to succeed in this field.

Dennis: It sounds like in the early days it was a much more innocent time. You said the lawyers, a lot of their work was pro bono, I guess that's because they were on the boards of these non profit hospitals and that kind of thing? Expand on that for us a little bit.

Arthur: Yes it was a public duty. The Catholic hospitals got Catholic lawyers to do pro bono work and the community hospitals had lots of volunteers and the government owned hospitals of course had government lawyers. So it was hardly like it is now, where most of the lawyers are from law firms and are charging the usual fees.

- Dennis: How would you characterize, on this 50th anniversary, how would you characterize or describe the history of this American Health Lawyers Association?
- Arthur: I suppose you can say "only in America". It probably has occurred with other fields, I think that there was something unusual. I would guess that if you had a group of lawyers from the hardware business it's unlikely that they would have gotten so chummy with each other and their families would look forward to meeting with them every year and entertaining each other. I rather doubt that. There was something special. And that was, in part, because a lot of them were doing this as a charitable contribution. So they were dealing with other people who are not just in it for the money.
- Dennis: Now, you talked about David Greenberg a little bit. I understand that when he started the National Health Lawyers Association, a lot of the meetings were like in his apartment and that kind of thing, I don't know if you're familiar with that aspect, but what do you know about all of that?
- Arthur: Only from what he told me I know he had that apartment near George Washington University and apparently that's where they met in the planning of the new organization.
- Dennis: And so, finally, what do you see as the future of health law and the AHLA? What do you see in the future for those entities?
- Arthur: Well, it's so large now it's hard to believe it could even grow larger, but it's obviously the prime source of information about health law. If you want to be educated in that field, join that organization and you go to their educational meetings. Also, now if you want a job they've got an employment service. It's really doing things that we didn't anticipate in the early days, so it's an all purpose organization in the field.
- Dennis: And you say health law, you mentioned a moment ago, getting more complicated, I guess providing more opportunities for work.
- Arthur: Yes, but it's hard to predict how many lawyers will be needed to do that work, and I certainly can't predict that.
- Dennis: All right, that's all I have, but you know, if you have anything you'd like to add, I'd love to hear it.
- Arthur: I can certainly tell you about John Divine and Kennedy story. When I was still with the American Hospital Association I was asked if I would talk to a lawyer from Ann Arbor, Michigan, who had just become the lawyer for the local hospital and knew nothing about hospital law. And he wanted me to inform him.

So John Divine came and we spent a lot of time, I told him whatever I knew, and he was very grateful. Well, soon thereafter we created the society and of course he immediately joined and when the social events became a part of the program his wife participated. Well his wife was Kennedy, she was the daughter of the brother of ambassador Joseph Kennedy. She grew up in Boston and she grew up with all of her cousins, Jack, Bobby, Ted, and all the girls. She looked exactly like the Kennedy girls, and she sounded like them, and she sure knew about how to create dinners and other social events.

John was a Republican and he married in to the Kennedys, and he remained a Republican as far as I know for the rest of his life. And he nevertheless was close to the Kennedys, and I asked him once when Ted Kennedy was contemplating running for President, I asked him "John do you think your cousin Teddy is really going to run?" and John said "I sure hope not", "oh really, why

not?", "I can't stand to go to another one of those funerals". And that the ended the conversation ever on that subject.

Dennis: All right, you'll be at the 50th anniversary conference?

Arthur: I may go to the past President's dinner as soon as they decide where it's going to be. Apparently it's not going to be at the same hotel as the other events and I'm waiting for confirmation.

Dennis: Thank you very much.