



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.

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.

March 31, 2017

Dennis Woltering (videographer) interviewing Tom Fox:

Dennis: I want to ask you to start by telling us how your career in health law began.

Tom: Well, I had a brief interruption between law school and starting to practice. I spent three years with the United States Army. Then, I joined a law firm in January of 1970 here in Washington D.C. and sort of fell in to the practice of health law. In the early 70's, some may recall, Richard Nixon was the President and Richard Nixon placed wage and price controls upon the healthcare industry, to include the entire economy. We had a client, a nursing home association that was interested in bringing lawsuit to challenge these controls. I handled that lawsuit. It was successful for the nursing homes. We received a nationwide injunction to shut down Mr. Nixon's program and I got, I'd say, a fair amount of publicity as a result of that. That's, if I had to pick one event that was defining in how I got in to healthcare, that was it.

Dennis: It was a big splash for you as you describe it in your audio interview.

Tom: Yes, indeed it was.

Dennis: All right, so that was a big moment for you and for your career. You also met David Greenburg about that time who wanted a program for nursing homes, so I understand.

Tom: I think the way that came about is we received a certain amount of publicity for the lawsuit and the nursing homes. The hospitals had been unsuccessful and somehow David, at that time, he was following cases, decisions, and things such as that, picked it up and contacted me about whether or not I thought there would be any interest for doing some type of program for nursing homes or the long-term care industry. I was young, I thought, "My gosh, yes, I'm sure we could do something like that," and we did our first program in Atlanta in 1976.

Dennis: Big success?

Tom: I'd say it was a success in that, remember, I think we had maybe a total of 25 people. They were lawyers that I had met during the course of some of the litigation involving Nixon and it was successful in that it led to future programs. What it indicated is there was a real interest out there.

Dennis: You mentioned that David gave you \$50 for soda and refreshments. It sounds like sort of a symbol of what was going on back then.

American Health Lawyers Association

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

- Tom: I think it was. That was sort of the seed money that we started on and I continue to mention that because again, over the years, the receptions and that the Lawyers Association has sponsored become very elaborate, but we ... Put it this way, Dennis, we had very humble origins at the time and then the program took off after that because we started to develop an interest. We started to develop a young, good faculty and then I think the thing that I continue to mention to people, I developed the marketing skills in that I was able to persuade David, I think it was in 84, that we should take the program to Las Vegas.
- Dennis: Ah. Yeah, I was going to ask you about that.
- Tom: Yeah, and that David, up to that point, was reluctant because he didn't think that the nursing home people who didn't have the best of public image should go to Las Vegas, but we persuaded him to do it. We had a hugely successful program in Las Vegas. I say, in terms of the development of the program, I looked at the brochure here recently. I must have had a faculty of 30, probably paying back a lot of people who had stayed with me when I took them to St. Louis, when I took them to Charleston, but that was a watershed program.
- Dennis: All right. Tell us about the National Health Lawyers Association at that time. How it was financed, staffed and where the meetings were held.
- Tom: Well, at the time that I joined ...
- Dennis: I mean, back when you began.
- Tom: Back ... Okay, yeah. I probably joined in, I'd say, around 1974 and was on the board. At the time, and this ties into the program, at the time of the first long-term care program in 76, essentially David was the staff. I was the staff for the program and we operated based upon David's credit card. The organization was located in David's condominium. At that time, it was probably less than maybe 400 lawyers that belonged to the National Health Lawyer's Association, largely government lawyers. What happened is, I think in 76 with the long-term care and the law, and then Len Homer you probably interviewed, Len came along with the Medicare and Medicaid program. We started to involve lawyers in private practice. Then, staff members came along. I think the first staff member that I was involved in hiring was Jeanie Johnson. Dennis, she had an interesting background. She was a trained pianist.
- Dennis: Wow.
- Tom: Turned out to be a wonderful addition to the staff, but in terms of a healthcare background, like many of us when we started, didn't have it.
- Dennis: Mm-hmm (affirmative). Well, there was no specialty, right, when you started?
- Tom: That's true, yeah. I mean, Dennis, the thing was when you would be in a social setting and somebody would ask about your practice, you'd say you were a healthcare lawyer. Then you had to quickly say, but I don't sue doctors and hospitals and drug companies. I'm their friend.
- Dennis: Tell us about some of the conferences. I appreciate you sending pictures of those brochures. That's going to be great. That's going to be very helpful in the video. The one in New Orleans in 1984, I guess that was during the World's Fair. Tell us about that one.
- Tom: Yeah, well, the one in New Orleans that I think was 87.
- Dennis: Okay.

- Tom: Yeah, I'll tell you about that. Here's where, again, I guess I started to develop some marketing skills. Having been successful in 84 in going to Las Vegas, we went to New Orleans in 87 and I concluded that the success of the program would be enhanced if we tied it in to Mardi Gras. Indeed, we did and if you've looked at the brochure, you'll notice under the cover page, we had two events. One is that we were going to have events for lawyers who wish to bring their spouses and I recruited my wife to head that up. That she arranged with several of the tour groups in New Orleans that she would take the spouses on the tour. The second thing you'll notice in that brochure, is we list the location of all the parades and the times. That was, again, another hugely successful program tied in to the venue that we had selected. Then, we went back to New Orleans a number of years.
- Dennis: Orlando, I think that was 1988.
- Tom: That was Orlando in the ... Okay, what's occurring at this point is that our faculty and our attendees are maturing. They've gotten married, they've had children, and they have young children. We find that Orlando is exceedingly popular and that what we find is occurring is now these young lawyers back in 76 that I had met, they're married, they have two and three children, this is a good opportunity for them to come to the program, but also to bring the wife and the children. Then, over the years, Orlando became another favorite spot.
- Dennis: Mm-hmm (affirmative), became a family affair in a way.
- Tom: It did, indeed. Again, thinking about the interview this morning, I went back and looked over the brochures and some of the information that we had, and we had a faculty and we had attendees that year after year in large groups. We had three families from Michigan, can't remember their names, but every year that I can remember of the 15 years that I did the program, they would bring a contingency of up to 10 to 15 people. The owners of the nursing home, they would bring their administrator, they would bring, generally, maybe their chief nurse, and then they would bring their family members. It was like one of those things, once I saw their registration came in, we had covered expenses. Then, we could be optimistic.
- Dennis: In your joint interview with Joel Hamme, he says, "The nursing home people really liked to party." What was your take on that?
- Tom: Oh, indeed. As I say, the Las Vegas demonstrated that and then we would have the receptions. I can remember the one that we had in New Orleans during the Mardi Gras time, going down Bourbon Street, probably a go cup in my hand and probably I could identify 15 to 20 people walking in some proximity with me and to include, many times, the government lawyers that we had who were speakers on the program. Yeah, that me to think, yeah, we had a core group and family affair and good times for everybody.
- Dennis: You describe David Greenburg as a visionary. Tell us why and give us some examples if you can think of any.
- Tom: Well, I guess the best example personally was coming to me and seeing that he thought there was something here for the long-term care and essentially, even though the beginnings were meager and the investment was small, as I said, it was largely invested on David's credit card. Then, with Len Homer and Medicare and Medicaid, I mean, that was again, we, you know, making investments in these programs.
- I'll tell you, the other thing with David, David worried continuously that we'd run out of program content, that you can't milk this thing forever and again, I think I did. Len probably did as well, but the United States coverage has been very good to us and each year, if you look at the

programs as I did this morning, I looked back, I never had to hunt for topics. That Congress changed the law, or that there were new regulations, or there was something such as this, and bottom line, we never ran out of content.

Dennis: You say at some point lawyers started calling themselves healthcare lawyers. That strikes me as a pivotal moment. Tell me more about that.

Tom: Well, I think it probably, I'd say, occurred in the, maybe the late 80's and for example, at the law firm at that time, I was there, Johan was there, we had three other lawyers that were practicing healthcare. Some of the other people that you've interviewed, the firms were starting to indicate that this was a practice and this was a practice that could sustain lawyers full-time, and a number of lawyers. I think that's when we all started to say well, I'm a healthcare lawyer. The other one was, you talk to well I'm a litigator. Well, I was a litigator, but I was more healthcare lawyer and we wanted to be recognized as healthcare lawyers because we thought it was a fascinating specialty.

I mean, in those days, easy to recruit associates because you exposed them to an area of law that was changing, that it was exciting. We were bringing lawsuits of a novel nature. At one point, I brought a lawsuit challenging, in the Reagan administration, the Baby Doe regulations and, I mean, this was very exciting stuff to bring a young associate in and say we're going to go in to Federal Court tomorrow morning and file this injunction. I want you to work half the night to put it together and you didn't get opposition to things such as that.

Dennis: What was the Baby Doe?

Tom: The Reagan Administration at that time had, the Office of Civil Rights, had come out with a regulation that indicated in situations where families with children with severe birth defects might make a decision to terminate life sustaining measures that the Reagan Administration had come up with regulations that would, essentially, at least the way we argue the case, would put the husband and wife, the physician, and in some instances, a government official in to the decision-making process. The pediatric community, American Academy of Pediatrics, was prepared and financed a lawsuit to challenge that and we were successful.

I'll give you one aside on that. Up to that point, the litigation that I had engaged in was essentially economic or financial and so, when they came to us to institute this litigation, I said to them, "Well, what's the economic interest here?" They said, "We have none. We want to do this to protect the privacy of the decision-making process." They provided me with experts from all the major universities, pediatric experts. Dennis if you're a litigator is the unlimited budget and it was we'll provide you, we'll fly in for you any of these experts that you need. Great experience.

Dennis: You introduced a motion at some point, it appears around 1978, to limit the term of officers to one year and that appears to have been a big deal.

Tom: Yeah, that was really Jamie Clements who was a past officer. Jamie Clements, very good fellow from Texas. Yeah, I think, I mean, up to that point the ... I mean, I think what it was is the organization needed to have new blood moving up and wow, it had been I think generally assumed that once you were in one of these positions, you were in there for life. Again, I was young at the time. Len Homer was young, okay, but Jamie was one who probably could have stayed in there forever. He was highly popular, very competent, and he was the one who led that initiative, which I think was really a great move for the association.

Dennis: Tell me why.

- Tom: Because it brought in the new blood, brought in the young people, the young people that we have today. I think the board grew. It allowed people like, that you subsequently interviewed, Joel Hamme to move up within the organization. A year was, at that point, the organization was getting a staff that could handle these things and so, as an officer, as a president, you sort of looked on it, okay, I've got a year. What are one or two initiatives that I can do within the year to make a difference? Then, I'll become a past president and then, I'll help these young people in what they want to do.
- Dennis: As you know, we want to focus on some of the milestones in the association history. What do you think were the most important ones?
- Tom: Well, procedurally, I'd say that was a big one. I think another was opening up the membership to non-lawyers and creating an opportunity there for non-lawyers. Again, not necessarily a milestone, but I'd say the continual focus of the organization was on the educational component of the programs and whether you'd call it a milestone or whether you'd call it something that we consistently did, I mean, that to me helped define the organization. I mean, we went in to things like publications and things such as that nature, but never lost the focus that we're here to educate lawyers in the healthcare field.
- Dennis: The development of the public interest sector was sort of a key moment in the association evolution, wasn't it? When did that happen and what did that entail?
- Tom: Okay, I'll give you the back story on that one because I happened to be involved in it with Sandy Teplitsky and Alice Gosfield, but the back story was, at this point the association is becoming financially quite successful and developing a large reserve. Okay? Now remember, David is a very prudent guy and the more reserve we had, the happier David would be. Some of us on the board started seeing this large reserve and thinking there's something we ought to do to try to give back to the community, free of charge, the rewards that we are reaping here and I, along with Alice and Sandy, started this ... We had a committee to look in to the public interest part of this and to see if we could develop something.
- As I recall, we came up with the idea that we developed a brochure on living wills and made that available to people. Again, at this time, living wills was something that really didn't get much attention. The investment was okay, the associations would cover the cost of this brochure, printing it up, and giving it away. Then, it's gone on to do a number of things of that nature.
- Dennis: How would you say the practice of health law has changed from the time when you began?
- Tom: I have to think of how ... Well, I would say perhaps some of the opportunities that maybe I'd say I had aren't necessarily as readily available. In other words, the breaking of new ground. Now, the issues, payment issues, licensure issues, certification issues, continue to be there, but the ability to maybe have a ground-breaking lawsuit or something that precedent setting maybe are not there. The other thing is, again, in a large law firm, trying to assimilate these lawyers in is somewhat of a challenge given the cost of lawyers, the fees, the things such as that, but again, I think the opportunities are still there. I guess I'd say I'm glad I was there when I was there as opposed to starting out as a young associate today.
- Dennis: Joel mentioned that you dealt with nursing homes with fraud and abuse issues and nursing homes were a big target.
- Tom: Huge. Nursing homes face that in terms of ... I mean, the fraud and abuse issue was whether or not improper inducements were being provided to get the private pay patients in to the nursing home. Whether inducements were made to physicians who acted as medical directors because,

at that time, the nursing home patient population was to a large degree Medicare and Medicaid. They weren't the most favorable of payers, but if you could get the private pay patient, again, you cover the rent and that was a very large issue for nursing homes. Again, at this point, starting in the 60's when we did, I mean, nursing home, that was a new government program. Not much known about it, and again, nursing homes those early years didn't have the best of reputations. I mean, now, it's become very sophisticated, very modern, very nice surroundings, and a very good reputation in terms of what they serve in the healthcare.

Dennis: You say inducements and kickbacks, is that the idea? The same thing?

Tom: Yeah.

Dennis: Okay.

Tom: Well, the idea was okay, you're a local nursing home in a community and the question would be is why are you paying this prominent physician \$150,000 a year to be your medical director? Didn't take much to figure out what the rationale was.

Dennis: Okay, on this 50th anniversary of the American Health Lawyers Association, what is your advice to young lawyers and how do you see the future of this specialty?

Tom: I think the future will continue to grow and to mature. I think the opportunities are still there. As I said, I think they're, perhaps it takes a little more effort to find. The advice I'd give to the young lawyers here is to love the law, learn the law. While we're told in these day and age, well you have to teach them how to market, my view is I'll teach them how to do research, I'll teach them how to write, and in that context, I'll teach them how you dig a little bit harder and that's why you win your case and that's the way you're going to be successful.

Dennis: All right. Those are all the questions I have. If you were interviewing Tom, what would you ask him?

Tom: Oh, I think we've covered it all, Dennis, and to my pleasure.