

S6-Ep01_DickScruggs

(Note: Parts of this transcript are machine-generated, so it's NOT letter-perfect. Thanks for your patience. We're doing our best! - dw)

Richard Scruggs: my name is Dick Scruggs. I'll live in Oxford, Mississippi, and I, uh, I'm a former lawyer and, uh, former inmate

Dan: Dick Scruggs is being modest. He is a legendary lawyer. He made a fortune in the 1980s and 1990s fighting asbestos companies on behalf of workers who were sick in his hometown on Mississippi's gulf coast, and then made a much bigger fortune-- and a huge name for himself-- as the Guy Who Beat Big Tobacco.

He shows up as a character in a movie from 1999-- here's a clip from the film:

Movie Scruggs: The governor of Mississippi is suing his own attorney general to abandon litigation against big tobacco.

Dan: Yeah, Big Tobacco was, well, BIG. And he's the guy who beat them.

Later-- this is the "former inmate" part-- he took an enormous fall.

And this story takes place in between that huge triumph and that huge fall. When he took on non-profit hospitals.

In a set of lawsuits filed around the country, Scruggs and his colleagues accused hospitals of acting like rapacious businesses instead of tax-exempt charities: Gouging patients on price, and chasing them for enormous charges they couldn't afford to pay. Sometimes SUING them. Instead of offering them, you know, charity.

If you've been listening to this show-- or you know, just seeing the news now and again-- you may be thinking those practices haven't totally gone away.

And for the most part, those lawsuits failed-- but they did have an influence. It's gonna take us a couple of episodes at least to trace it. And it's a totally wild ride-- and kind of a lesson in how change happens.

This is An Arm and a Leg, a show about the cost of health care. I'm Dan Weissmann. I'm a reporter, and I like a challenge, so my job on this show is to take one of the most enraging, terrifying, depressing parts of American life and bring you a show that is entertaining, empowering and useful.

And this story does not begin with a legendary attorney. It begins with two guys who wanted to expand their medical practice in the city of Albany, Georgia-- population seventy-some thousand. They ended up in a beef with the local hospital. Which was also one of the town's biggest employers.

Here's one of those guys-- Charles Rehberg, the practice manager-- from a documentary called "Do No Harm."

Charles Rehberg: We set out on a goal to open a surgery center and we hit obstacles with the state.

Dan: Yeah, this a medical office for surgeons, who were doing all their actual surgery at the local hospital.

They wanted to do some minor surgery on their own site. It seemed like a nice business to get into.

But state regs didn't allow stand-alone surgery centers. So these guys sued the state.

And you know who butted into that lawsuit-- against our two guys? The state's association for non-profit hospitals. They actually joined the suit as a defendant.

John Bagnato: The Alliance of Community Hospitals intervened on the premise that they would be financially harmed

Dan: That's Dr. John Bagnato, the other of our two guys. [All the tape we have of these two guys is from the documentary.]

The hospitals were saying that if the state allowed stand-alone surgery centers, it would hurt non-profit hospitals, financially-- and geez, you're gonna take money away from a bunch of do-good non-profits? Gosh, that would hurt our ability to serve the community.

Our guys not take that claim at face value. They took it as bait.

John Bagnato: because they made that claim in court, we began to investigate the hospital's financial position.

Dan: They started with the local hospital, Phoebe Putney. The place where John Bagnato actually did his surgeries.

Charles Rehberg pulled Phoebe Putney's tax returns from the Internet. Guy after my own heart. And Phoebe Putney did NOT exactly look like it was hurting for money. Here he is in the documentary:

Charles Rehberg: Phoebe was spending about \$2 million a year on travel for their executive and board members, but that included things like board retreats at the Ritz Carlton and Amelia Island.

Dan: OOOOH, yeah. In the documentary, Bagnato says the hospital chartered 1990s super-lawyer Johnny Cochran's private jet for trips to the Caymans. The CEO earned more than 700 thousand, which in Albany, Georgia, was an unREAL amount of money.

And of course they were charging sky-high prices to uninsured patients-- most of them poor-- and then turning around and SUING those folks when they couldn't pay.

Meanwhile, they were sitting on hundreds of millions of dollars in cash and investments.

And around this time, researchers and activists and journalists were reporting that non-profit hospitals all over the country were acting the same way. Rehberg and Bagnato soaked it up.

Rehberg pulled tax returns for 34 other non-profit hospitals in the state.

John Bagnato: We've discovered that 34 hospitals were holding \$2.6 billion in cash. Now I'm not saying in assets, I'm talking about in cash. I was working late one night, three or four o'clock in the morning. I woke up at that 2.6 billion kept going around in my head

Dan: He looked up how many non-profit hospitals there were in the country. Thousands. He did some quick math. If the rest of the country was like Georgia, they'd have... 2 point 8 trillion dollars in cash?

He called Rehberg, woke him up in the middle of the night.

John Bagnato: I said, Charles, you're not going to believe this. They got \$2.8 trillion. And that's what really started it. We started looking like too crazy, man.

Dan: Here's what Rehberg did next. He took ten of the juiciest bits-- the millions in offshore assets, the 28 million in profit from the past year, a huge interest-free loan to the CEO and...

Charles Rehberg: just really kind of on a Lark, I typed it up in a document that I just called it Phoebe factoids.

Dan: Which he and Bagnato sent , anonymously, all over town-- by FAX. (Remember, it's 2003.)

John Bagnato: They went out to local businesses. We sent them to insurance agents, lawyers, uh, just pretty much anybody who had a fax machine and that we could get the number.

Dan: Yeah, that was fun. But what did it get them? It didn't get them a surgical center. They were back-channeling with state officials-- which wasn't getting them anywhere.

Charles Rehberg: everyone had an interest in what was going on and thought that there were things that needed to be looked into, but no one seemed to have jurisdiction over it.

Dan: And honestly it's not clear to me at this point, from watching that documentary: Was the surgery center even the whole point by now? Or were they just pissed? Did they even really know?

But Rehberg says they started thinking: What could shake things up? Maybe a BIG lawsuit. Maybe bigger than Albany, bigger than Georgia.

Charles Rehberg: And if you were going to get a trial lawyer, uh, who would you want?

You'd want Dickie Scruggs, the guy who took down the tobacco companies,

Dan: OH. Oh yes you would. After his victory with Big Tobacco, Scruggs had thought he would retire for a minute. And then he started looking around for other battles to fight. And he took Charles Rehberg's call.

Richard Scruggs: And the more I talked to Rehberg about it, we started looking into different systems and realized that that these practices were common among the nonprofits,. And it, it really, uh, sort of stuck in my craw and, and those of other lawyers that I had worked with on other cases.

Dan: So he was like, Let's do something about it.

Richard Scruggs: And so we put together kind of a national network of law firms to go after the bigger systems.

Dan: They ended up filing class-action lawsuits against hospitals all over the country in June 2004. Including Phoebe Putney in Albany, Georgia.

It made the news.

ABC News Anchor: just in the past three weeks, we have learned of 19 lawsuits in 12 states that have been filed, accusing hospitals of overcharging, uninsured patients, and then harassing them for payment

Dan:- Some of these hospitals really play hardball. Later that summer, Charles Rehberg found out just how hard.. He's leaving work one night, around 7:30, and a Jeep Cherokee suddenly pulls up behind his truck and blocks him in.

Charles Rehberg: These two guys, like jump out and they're calling my name.

Charles Rehberg, Charles Rehberg. Where are you? Charles Rehberg.

Where? Uh, ex FBI agents. We were retained by Phoebe and we've been investigating.

Dan: WHOA. They say they've been getting information from the D.A. that he'd been sending anonymous faxes. And he better get in their truck right now to go have some meeting, or else he's gonna get hit with a great big lawsuit.

And one of them says something pretty chilling.

Charles Rehberg: Mr. Rehberg, he said,, if you're not smart enough to do this for yourself, you should think about your wife, Wanda, and your lovely family.

Dan: He didn't get in the truck, but holy crap. Dick Scruggs sent a bodyguard to watch over him. His family and Bagnato's were both fully freaked out.

Meanwhile, the cases against non-profit hospitals were starting to make their way through the courts. Except, most of them didn't go very far.

Not because they didn't have compelling stories.

A guy in Oklahoma who worked at a car-repair shop went to a local hospital for a back injury. They gave him a once-over and told him to go see a specialist somewhere else. Then charged him 35 hundred bucks for what sounds like basically a referral visit and started hounding him with collection letters and calls.

A forklift operator in Chicago took his two-year-old son to the local ER. They treated the kid's fever, sent them home two hours later-- then sent a bill for 16 hundred bucks. When Dad asked to make

monthly payments, the hospital sued him instead for the full amount. Eventually, after he had paid more than half the bill, they got a judge's OK to garnish his pay AND raid his bank account.

In Albany, Georgia, Phoebe Putney garnished the wages of a single mom who was making six bucks an hour.

That kind of stuff.

The problem was with the legal basis for the lawsuits. OK, the behavior wasn't nice. But what legal right was the hospital infringing on here?

This episode of An Arm and a Leg is produced in partnership with Kaiser Health News. That's a non-profit newsroom covering health care in America. Kaiser Health News is NOT affiliated with the big health care outfit Kaiser Permanente. We'll have some more information about Kaiser Health News at the end of this episode.

So, judges weren't buying the arguments Scruggs and his team were making-- about the actual legal basis for these lawsuits. One argument was ... really complicated. They said: The hospital's tax exemption is worth a lot of money. It's like a payment from the government. What's the government paying for? Charity care.

... and the patients had a right to sue as what Scruggs's team called a "third-party beneficiary." Here's an explanation:

Chris Robertson: if you contract with Smith to paint Jones's house Jones is the beneficiary of that contract. Why you want his house painted? I don't know, but if you did, he could actually enforce the contract on your behalf.

Dan: That's Chris Robertson. These days he's a law professor at Boston University-- and if you've been listening to this show for a while, you may recognize him as someone who knows some VERY useful stuff that he's shared with us, about our legal rights when we get a wild medical bill.

When these cases were filed, he was getting ready for his first year of law school at Harvard-- where his contract-law professor, her name's Elizabeth Warren, she's got this other job now in the U.S. Senate. Back then she was getting known for research into bankruptcy: you hear even now about how a huge portion of bankruptcies involve medical debt? That's the scholarship she was doing at the time. So she and Dick Scruggs had been talking.

So Chris Robertson shows up at law school and Elizabeth Warren starts talking about these hospital lawsuits.

Chris Robertson: , and that's one of the beautiful things about first year of law school is you get these raw materials, like the concept of a contract and the concept of a third party beneficiary.

And then you go and test them and places like the IRS and say, well, is that a contract? Is that who's the beneficiary?

Dan: He liked that a lot. And health policy was one of the interests that had brought him to law school in the first place.

Chris Robertson: and , when I asked her, you know, 10 questions about it, she said, you know, you should really go talk to these lawyers who are actually litigating in these cases.

And I said, yes, please.

Dan: With Elizabeth Warren's help, Chris gets a summer job on the Scruggs team. And by the time he shows up, summer of 2005, things aren't going so great. This third-party beneficiary stuff? The idea that tax-exempt hospitals have some kind of contract with the IRS to do charity care? Judges weren't buying it. These days, with his first year of law school many years in the past, Robertson doesn't blame them for rejecting the idea.

Chris Robertson: that's just, wrong on so many levels. You know, the IRS code is not a contract, first of all. So that was the sort of, , hand-waving, , aspirational theory that, that didn't have any legs.

Dan: The Scruggs team had another approach that he likes better, to this day: Saying that the patient and the hospital do have a contract. The hospital gives medical care, and the patient pays a price. And even if the price isn't specified, the hospital can't just charge ABSOLUTELY ANYTHING.

Chris Robertson: under basic contract law core contract law, that's called an open price contract and it has to be a reasonable price charged.

Dan: And not only were these prices high-- they were often many times higher than what the hospital charged insurance companies for the VERY SAME SERVICES. Which doesn't seem reasonable.

Chris Robertson: I've thought then, and I think now that that approach, you know, has some teeth to it.

Dan: Except, judges didn't buy that either. Not as the basis of a class action. He's had time to think about why.

Chris Robertson: Something we teach in law school to all our students is that if you want a judge to do something for you, you have to make it easy for the judge to do it for you. And so if you say that, judge, this price isn't reasonable, his next or her next question is, okay. What, what a reasonable price would be. And at that point, the heads start exploding to figure out, well, what is the right price to charge for this particular surgery and not just the surgery, but it turns out that's 50 lines of charges, right?

There's a price for the bandage and a price for the anesthetics, both the service and the actual product. And so it turns into almost like a fractal problem. The closer you look, the more complicated it gets.

Dan: And THAT is not really making it easier for the judge. Especially if you want the judge to consider a whole CLASS of plaintiffs-- EVERYBODY who might have been charged an unfair price by this hospital. How are you supposed to figure out a fair resolution?

Chris ends up helping fight some rear-guard actions. Because some of these hospitals? After they get the cases dismissed, they go after Scruggs and his team for legal fees. Which is an unusual move-- kind of a "screw you."

Chris Robertson: the hospitals wanted the attorneys to feel the sting, teach them a lesson. So they wouldn't, uh, audaciously come back against them on things like this. we're the ones, that own the city. And you should have to pay for even calling us to account.

Oh, Phoebe Putney also sued Charles Rehberg and John Bagnato for 66 million dollars for sending those faxes. Then, the local D.A.s office ARRESTED our two guys -- remember how those two "ex-FBI" goons said they'd been working with the D.A.? -- on charges that [totally fell apart in court](#).

And Scruggs and his team did win some victories, eventually. Some hospital systems eventually settled. Those hospitals-- and others-- also agreed to actually give charity care going forward, and they spelled out who would be eligible and for how much.

Some of them agreed to give money back to patients. The hospital in Chicago that went after the forklift operator, raided his bank account? They agreed to pay up to 3 million dollars in rebates.

One with Catholic Healthcare West was said to be worth more than 200 million dollars.

Which does sound like a lot, but remember: Little Phoebe Putney Health in Albany, Georgia, was sitting on more than 200 million dollars in cash when our two guys started poking around. And clearing more than 20 million a year.

For Dick Scruggs, it was no tobacco settlement.

Even without paying the other side's attorney fees, Scruggs figures he lost more than ten million bucks financing these cases. It left him with plenty of millions left-- that tobacco settlement was huge-- but it gave him something to reflect on. It's the kind of reflection he hadn't maybe done so much before.

Richard Scruggs: Orson Welles I think is famously quoted there there's no confidence like ignorance. And so, uh, you know, we just didn't know any better with, uh, S with tobacco and we didn't know any better in other litigations, although they weren't all as successful as tobacco.

Dan: For sure. Dick Scruggs found his next crusade a little more than a year after filing those first suits, or you could say it found him. Hurricane Katrina tore through Mississippi, where he lived. It wrecked his house, and lots of other houses. Insurance companies were trying to get out of paying people for the damages, and Scruggs went into battle against them.

In the aftermath, he lost big. A relatively minor legal dispute with one of the lawyers he'd worked with took a weird, weird turn. Dick Scruggs ended up pleading guilty to conspiring to bribe a judge.

There are people who say he was the victim of a set up. There's been a lot written about the case-- including a whole book. Reading about it, I got the impression that the legal world of Mississippi is just

really swampy. Things happen kind of routinely that may or may not be illegal but they're definitely messy. I asked Scruggs what he thought of that impression.

Richard Scruggs: I have my, my share of the blame to bear and, and my demise. Uh, but I had a lot of help that a, I was getting to from forces that. Uh, you know, it really kind of balled down to being too big for my britches. we, thought we were invincible, at least I did.

And, you know, just kept pushing the boundary until, until, uh, until I fell over the edge

Dan: Dick Scruggs served about six years in federal prison. While he was there, he taught other inmates to read, helped dozens of them get high-school equivalency degrees. When he got out, his boats and his millions were waiting for him, but he couldn't practice law anymore.

He started a non-profit called Second Chance Mississippi that supports adult education programs.

Here's how everything else shook out. Charles Rehberg sued an investigator for the Albany prosecutor's office for lying to a grand jury. The case eventually went to the Supreme Court.

Around the time the Supreme Court ruled in that case, Phoebe Putney Health bought the other hospital in town-- the one John Bagnato was doing his surgeries in, after his beef with Phoebe Putney meant he couldn't practice there anymore. He moved to Macon and started a practice there.

And these cases? They had an afterlife. In June 2005, when a lot of them were being dismissed, U.S. Senator Charles Grassley sent a letter to ten hospital systems, demanding a bunch of information about their charity care policies, how much cash they were sitting on, how much their CEOs got paid-- whether they were really acting like non-profits.

Most of the names on that list were big ones. The Cleveland Clinic. Mayo Clinic. But one was in a small city in Georgia-- kind of an Easter Egg, a tip of the hat, I think: Grassley's way of showing that he was paying attention to Scruggs, and to Bagnato and Rehberg: Phoebe Putney Health.

And Grassley didn't stop with that letter. Not by a long shot. That's our story for next time.

And as I mentioned, we'll be on this fairly wild ride for a few episodes. It's all about how change actually happens. Early this year, we profiled a guy named Jared Walker, who went super-viral on TikTok, showing people how to apply for charity care-- because it is now the law that non-profit hospitals have charity care policies.

Some of them make it easy... and some of them seem to act like it's still 2004 in Albany, Georgia, if you know what I mean.

So that process of change? It's still going. By the time we're done with this ride, we'll be in the present day, and looking to the future.

And here's a way you might be able to get involved right now.

Researchers at the Innovation for Justice program at the University of Arizona are looking at hospitals' debt collection practices, and how laws or regulations could do a better job protecting people. And they are looking to talk to some people who have been sued over medical bills. If that's

you, or someone you know, here's a link to get in touch: bit.ly/talkmeddebt. It's a 30-minute interview. They're not gonna release your name or anything to ANYBODY, it's all anonymous. And there might be a gift card in it for you. That's bit, dot el why, slash talk. med. debt. I'll post a link wherever you're listening to this.

Thanks and I'll catch you in two weeks. Till then, take care of yourself.

Till next time, take care of yourself.

This episode of An Arm and a Leg was produced by me, Dan Weissmann, and edited by Marian Wang. Our *amazing* intern Emily Pisacreta provided additional reporting.

Big thanks to Kindling Group for allowing us to use audio from their documentary *Do No Harm*. You can learn more about their work at kindlinggroup.org.

Daisy Rosario is our consulting managing producer. Audio wizardry for this episode is from T.H. Ponders, with special thanks to Adam Raymonda. Our music is from Dave Winer and Blue Dot Sessions.

This season of AnArm and a Leg is a co-production with Kaiser Health News. That's a nonprofit news service about healthcare in America, an editorially independent program of the Kaiser Family Foundation. Kaiser Health News is not affiliated with Kaiser Permanente, the big healthcare outfit. They share an ancestor. This guy, Henry J Kaiser. He had his hands in a lot of different stuff.

Really different. He paved roads. Built a big chunk of the U.S. cargo fleet for World War II. Made cars-- including the Jeep. Made aluminum foil.

When he died more than 50 years ago. He left half his money to the foundation that later created Kaiser Health News. You can learn more about him and kaiser health news at [arm and a leg show dot com slash kaiser](https://armandalegshow.com/kaiser).

Diane Webber is national editor for broadcast and Taunya English is senior editor for broadcast innovation at Kaiser Health News. They are editorial liaisons to this show.

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