



Thanks to the extraordinary commitment and expertise of AHLA leaders, the American Health Lawyers Association continues to thrive and serve as the essential health law resource in the nation. The Association's strong foundation reflects a history that is vibrant, meaningful and worth sharing. Finding a way to preserve AHLA's history was especially relevant in light of the Association's 50<sup>th</sup> Anniversary, which was celebrated throughout 2017.

This transcript reflects a conversation between AHLA leaders that was conducted via audio interview as part of the Association's History Project. More than 60 of AHLA's Fellows and Past Presidents were interviewed. A video documentary was also prepared and debuted on June 26 during AHLA's 2017 Annual Meeting in San Francisco, CA.

## February 16, 2017

### Joel Hamme interviewing Harvey Tettlebaum:

Harvey: Hello? Hello, hello ...

Joel: Harvey?

Harvey: Yes?

Joel: Oh good, glad you're there. So we'll just start right out.

Harvey: Okay.

Joel: Today is February 16th, 2017 and my name is Joel Hamme. I have the privilege of interviewing Harvey Tettlebaum who is a fellow of the American Health Lawyers Association. Harvey's leadership activities for AHLA include chairing its Long Term Care and the Law program and serving on its board of directors. For his many efforts on behalf of the association. Harvey was awarded a David J. Greenburg Service Award in 2013. This interview and numerous others of past AHLA leaders are being done in conjunction with the celebration of AHLA's 50th anniversary this year. Harvey, thank you for taking the time to share your recollections and thoughts about AHLA with us. Let's start with an early life or educational background, or life experiences you think are relevant.

Harvey: Well, I first got involved with AHLA when it was the National Health Lawyers Association in 1982 and it came to my attention, I think through a brochure because those were pre internet days. At least for lawyers, perhaps physicians had access to internet, but lawyers didn't. I went to my first program at that particular time and, in 82. And I think it was the Long Term Care and the Law program because my practice at that time was focused primarily on post acute care providers. It's been, ever since then, it's been a great experience.

Joel: When and how did you first become involved with health care law to begin with, obviously by 1982 you were interested enough to attend a program. Tell us how your legal career then evolved.

Harvey: My legal career really started out in academia, which I left because I found out that Henry Kissinger was correct when he said, faculty politics are so vicious because the stakes are so

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small. I joined the office of, a then, newly elected Missouri Attorney General Jack Danforth who later went on to become a United States Senator and hold other offices. Part of my responsibilities at one point in time in the Attorney General's office was to represent many of the health care licensing boards, and the then division of health. The health planning agency that was pre certificate a need, which we did not come into existence until, nationally until 1974, and in Missouri not until 1979. But there was a health planning process prior to that time and I represented that agency and as I said a lot of the licensing boards. I became very interested in the whole health care industry and the various professions that I, whose boards I was representing.

Joel: Sounds like you had a very broad background in the Attorney General's office in terms of what you were doing with respect to health care providers.

Harvey: I did, and I went on to run the, become the director of the consumer protection anti trust divisions, which involved me in investigating health care fraud among others. And also, anti trust issues involving health care providers. So by the time I left the Attorney General's office in January of 1977, I had a interesting and as you said a broad grounding in many of the health care issues of the time.

Joel: Harvey, you were on the program planning committee for the Long Term Care program and then became its co chair and eventually its chair. Talk a little bit about the program and your background with that.

Harvey: I first became the, involved as the co chair with you in 1995 of the Long Term Care and the Law program. There really wasn't a program planning committee initially. It was just you and me, Joel, and we worked with the staff to help put together the speakers and then it was broadened out later where we started having more people added and actually formed a program planning committee. I served either as co chair or chair from 1995 to 2007 and stayed on for another year as former chair on what was then, the program planning committee. I also served as chair of the Long Term Care Practice group when it was first formed in 1999 after the merger of the National Health Lawyers Association with the academy, and served in that capacity for two years.

Joel: I was going to ask you about that Harvey, so you were involved with the Long Term Care Practice group when they were known as SISLCs.

Harvey: That's right, they were the SISLCs and, was the acronym. And the, I was a, there was no Long Term Care Practice group or SISLC as it were. I'm not sure I remember exactly what the acronym stood for. But, this one was formed because National Health Lawyers Association, of course, had extensive programming for post acute care. The academy was mainly focused on acute care of hospitals and some physician care. So we formed a new practice group and I was asked by the then president of the association to be its first chair and get it off the ground.

Joel: I think the, if I recall correctly, the acronym SISLC stood for substantive, or specialty, special interest-

Harvey: Special interest.

Joel: Substantive Law Committee.

Harvey: Committee, right. Something like that.

Joel: So, that was a, sort of a mouth full and they decided to go to practice groups thereafter. But, they were a legacy of the American Academy of Hospital Attorneys, because they had had SISLCs or specialty groups as well. And then, that lagged over into the NHLA days. One of the things I think should be pointed out, is that during your time on the Long Term Care program planning committee, the program actually broadened itself considerably from just nursing homes to other areas of post acute care as well. I don't know whether you would like to comment on that or not.

Harvey: Sure. As we saw the home health, home care, and hospice industries growing, it became obvious that we needed to meet the educational needs of the lawyers serving those clients. They were providing those services, so we expanded to program offering so that it was no longer just Long Term Care and the Law, but it really became a post acute care program. We began to offer programming in hospice and home health care and the issues surrounding them. At the same time, of course, reimbursement for those particular services began to expand at the federal level, which contributed to the expansion of those industries and professions.

Joel: When did you become a member, at some point you became a member of the association board. When was that? How long did you serve on the board? And what were, sort of, some of the key things that were happening during the time you were on the board of AHLA?

Harvey: I was elected to the board in 1992 and served until 1999. Probably the most significant thing that happened while I was on the board was the merger with the academy. We began talks with the academy probably in 1996 as I recall, and they continued on until there was actually, two organizations actually began to come together in 1997. But I was, because there were two boards, separate boards, one for the academy and one for the National Health Lawyers Association. When we combined those boards it was unwieldy, terribly large, and so we began a period of attrition of where there were no vacancies really filled on these boards, but board members went off as their terms expired.

We were actually, our class of six board members that came on in 1992 was the one class that really had no officers at all. We were at the time under National Health Lawyers. You sort of started off, if you were going to eventually become president, you started off as one of the lesser offices and then you worked your way up and stayed on the board. Finally, finally you'd become president. That just wasn't working very well with this huge board, so our class, the nut class of 92, we all agreed that we would just not seek any offices. So we, when we left when our terms were up in 1999, June 30th 1999, we just went off the board. And there were others who had gone off the board prior to our time. So, the board got back down to a manageable size.

Joel: So, basically the board went on a crash diet as to its own membership.

Harvey: Yes.

Joel: And, I'm assuming, although I don't really know this for a fact, that people who were already in the preexisting leaderships then, sort of, were merged together from the academy side and the NHLA side. So, there was probably a long tail there of people who had already been promised a leadership position beyond the board. And so, that probably was occurring while people were transitioning off. Is that how it happened?

Harvey: I think that's- Yeah, I think that's correct and, of course, any time two organizations, which have similar interests but different cultures merge. You have to make political accommodations in

order to make sure that the succeeding organization, in this case the American Health Lawyers Association actually prospered. In order to do that we made sure that persons who had been in leadership positions or promised leadership positions in the academy were able to become leaders and become president of the combined American Health Lawyers Association. That went on for a number of years until we finally, until the legacy boards, all the members of the legacy boards were termed out. The interesting thing when the two organizations, just for me personally, when the two organizations merged was ... The academy board had Jerry Sill who was general council on, Missouri Hospital Association, their board. He worked in Jefferson City, Missouri. And although I don't live in Jefferson City, I worked in Jefferson City. So, kind of a joke among us that Jefferson City, Missouri had two members of the American Health Lawyers Association board for a couple of years after the merger.

Joel: Yeah, the quirky things like that, even when I got on the board in 2001, people were still semi identified, when I got on there were 6 of us who came on as the new class and they were sort of, still recognized by whether they had come out of the academy or whether they had come out of NHLA. So, even in the early years after the transition had occurred, people were still to some degree identifying with the culture or background of having been with one association or the other. After you transitioned off of the Long Term Care program, I understand that you became a fellow and you have been one of the most active of the fellows, Harvey. If you would describe for us some of the work that you've done with the fellows I think that would be helpful to people listening in.

Harvey: Yeah, I became a fellow once I no longer had a leadership position and became eligible for the fellows program. During my time, in addition to serving as chair for a couple years of the fellows coordinating committee, I continued on to serve as a member of the fellows coordinating committee ex officio because I became the liaison to the AHLA board public interest committee. It was one of the ideas, that during my presidency I felt it was important that fellows be available to the AHLA committees that wanted them to serve as liaisons. So, public interest was one that welcomed a fellow and I had previously served during my tenure on the board of directors on the public interest committee for 6 years. So, I was quite familiar with the work.

I was able to continue, that was one idea that we had, and there were other liaisons, liaison positions, that for a while were created and can continue to be created. We also did a lot of work to assist the law schools, which were experiencing, during that period of time, a real diminution in admissions. The concern by those AHLA members who were also law school faculty, that the curriculum was no longer relevant to the needs of the law firms that were hiring their graduates. We put together and we worked on it. I was pleased to work on and share one of the committees that put together a curriculum outline for the law schools, which was eventually published and presented to the law schools as part of both the fellows and the public interest effort of AHLA to give them a [inaudible 00:17:14] better idea of the kinds of courses that would better prepare their graduates for private practice.

Joel: And, have you gone back into academia at all, you said you started out there. Have you taught courses at law schools more recently?

Harvey: A couple years ago, I taught a course at Washington University Law School in St. Louis, which is the law school from which I was graduated. One of their professors who taught health care courses had, health law courses, had asked me to come and to lecture. I'm not sure I did a very good job, since I haven't been invited back, but it was an interesting experience and one that I would do again if I were invited. I haven't really sought it out at this particular point in time.

Joel: Looking back on your considerable work with and for AHLA over the past 35 years since you first got involved, are there particular achievements of which you are especially proud?

Harvey: Well, I think that it's really the programs that I started when I was, actually when I became, right before I became a fellow and then continued on with the fellows. One of the initiatives that I felt was important was, at the annual meeting for us to offer a broader, more public interest program that wasn't so much focused on the nuts and bolts of practice, but would really talk about the policy issues. I was, I presented several of those programs over the years at the AHLA annual meeting and encouraged others to do likewise. That, I think, was part of my legacy.

These programs were very well received and got the very good reviews by the members who attended those programs. So, hopefully that will continue and that will continue as a part of my legacy. But over the years I've noticed that the programs have changed, the offerings have changed, there are new programs. It's much different than the first time I ever spoke, which was in San Francisco and Baltimore in 1987 on a program that experimentally was offered in both cities on succeeding weeks. It was a, the title of the program was Utilization Control and Long Term Care. We offered that program in both cities and it was a, I would say it was probably a miserable failure in the terms of attendance but at least we knew we never wanted to do that again. But that was my first opportunity to speak so I was real excited about it. And then, I've gone on and actually every year thereafter, since 8, speak at some in person AHLA, well first NHLA, and then later AHLA in person program. Either annual meeting or long term care and the law or fraud and compliance. Those are the three programs at which I normally and regularly spoke in an addition to the medicare medicaid program on occasion.

Joel: Harvey, you may hold the AHLA Cal Ripken award for consecutive annual appearances in one form or another as a speaker. Given your perspective, tell us a little bit about the evolution of AHLA over time. I know you mentioned the programs and I will be talking with Tom Fox not too long in the future here, and one of the things we talked about was how programs would start and some would succeed and some didn't. And if there was experimentation on the NHLA side, how the faculty was usually about 10 people, all the sessions were [inaudible 00:21:30]. There were no concurrent sessions. Initially there were no binders and when there were binders the outlines were pretty insubstantial. They'd be 3 or 4 pages, not necessarily have a lot of slides or appendices. So you do see those things changing over time. But what's your particular perspective on how AHLA itself has changed?

Harvey: Well, I think in 2 or 3 ways. First of all, the organization has grown in size, which I think is important. Because size does matter when it comes to organizations like AHLA, especially one that is a 501(c)(3) as opposed as a 501(c)(6) like the American Bar Association. And as we've grown in size, we've grown in importance, and the programs have become, I think from the time I first joined, they've become more sophisticated as you indicated. The program material has become much more professional. The standards were raised tremendously. The AHLA grew, or as NHLA grew and with the merger, with the academy, it became highly competitive for people to speak at these programs. Which meant that, as competition tends to do, that you were getting higher and higher quality speakers and higher quality materials. The offering of the organization in terms of published materials expanded substantially.

And the public interest mission of the association expanded substantially with many more offerings of programs and publications that really were designed to help the public in general, not just the members of the association. The staff grew. The quality of the staff continued to

improve as well. And AHLA, at least certainly as the successor of NHLA, has always had an incredibly dedicated staff of people who spend countless hours.

And the leadership, I think the whole role of the leaders and the whole leadership structure of the organization has changed over time. When I first joined, I would say it was a fairly clubby organization. I think the academy was the same way, although the academy was much more closely aligned with its parent organization, American Hospital Association. But it was still, there was a, it was mainly male. It was mainly white. There wasn't a lot of diversity and as women began to enter the profession in greater and greater numbers we began to see greater gender diversity and then we began to see greater racial diversity. Which, of course, is good and helps to broaden the perspective of the individuals and the programs and the organization.

So, it's a much different organization. It's a much younger organization. It's a much more diverse organization. It's an organization that provides a much broader array of services and products to the public. But down, the one thing that really hasn't changed since the beginning when I joined is that it still is an organization, which is known for its collegiality. And that is one of the things that attracted me and kept me involved in the organization is that it's an incredibly collegial organization. People constantly helping each other. I still get calls frequently from younger attorneys across the country who maybe have read something I wrote or attended a program and came up, saw one of the papers I had written, asking me about something and I always take time and I do the same thing with my colleagues.

Never have I ever, in all the years I've practiced, which is going on, it's now 49 years. In the time I've spent as a member of the organization have I ever had anybody say, I don't have time to talk with you, or we don't have time to help you. And that's reflected once the internet came in, that's reflected now on the online offerings and the various blogs and posts that the organization has. It's just unbelievably collegial and non competitive, collaborative, cooperative, with just a tremendous amount of coordination that goes on among the members of the organization as well as the leadership. So that's something I think has been a hallmark of the organization since the beginning and when you layer on the diversity that's occurred, the growing membership, and the sophistication of the organization, it's probably stronger and better than it's ever been before.

Joel: And I think one of the themes that comes through in a lot of our interviews is that one of the enduring strengths of AHLA over time and of its predecessor organizations was that people who are nationally recognized, practitioners who are the preeminent experts in particular areas of health law have always been willing to share their expertise with other people, including folks who [inaudible 00:27:14] competitors. And there has never been a willingness to stint on that in order to have trade secrets or to refuse to speak because it might help people who would compete against them in the market place. So, I do think you've hit the nail right on the head in terms of that collegiality and that spirit of cooperation. Harvey, are there particular individuals in the association's leadership over the years whom you considered to be mentors to you as you came up through the organization?

Harvey: Oh I think certainly Tom Fox. Tom was our predecessors chair in the Long Term Care and the Law program and Tom certainly served as a mentor. To some extent you served as a mentor Joel, to me.

Joel: I think that was a mutual relationship, I'd say.

Harvey: Well, yes it may very well have been but you had areas of expertise that I was not, didn't have the depth and you were willing to share that expertise. Sandy Teplitzky, I think, former president of the organization certainly worked with him a lot on fraud and compliance issues. Alice Gosfield, on physician issues. She certainly was a mentor to me on those kinds of issues. So, those are some of the folks that I worked with, and of course my original mentor was David Greenburg who, when I first joined was just unbelievably welcoming to me, to the organization. He assisted me in becoming involved, assisted me in becoming a speaker, assisted me in getting on the board and taking a leadership position. I know David did that with a lot of other folks. Perhaps with you as well. But he is, he was truly a mentor to many of us and I will ever be grateful for David. And as you mentioned, I received the award that has his name and that is one of the greatest honors I've ever received in my profession.

Joel: Well thank you Harvey. There are a lot of members, and hopefully some who will be listening to this who never knew David Greenburg and I think it's important to his legacy that there be some discussion about him as you've just talked. And what he was like in terms of having been involved in both the academy and NHLA and then as it transitioned into AHLA later after he had already retired. So, I wanted to ask a question as to conversely are there any particular people who have been in AHLA's leadership who you feel like you have mentored.

Harvey: Well, I think, hopefully there have been some that I've mentored. Folks in my own law firm of course, who I got active in AHLA as soon as they joined. I've mentored those individuals, hopefully there's some other folks. I'm not sure who regards me as a mentor, perhaps that question is best asked of some of the folks that came after me in terms of the board members. One of them of course, was my partner who has since retired, Barbara Miltenberger, who went on to serve on the program planning committee for Long Term Care and the Law and also served as chair of the Long Term Care Practice Group. She was in the same office with me, not only in the same firm, so she either voluntarily or involuntarily got mentored by me almost every single day. So, she's one person who certainly comes to mind. But there're others I know that I work with, Ellen [inaudible 00:31:16], Ed [inaudible 00:31:17]. He's always claimed I mentored him. Chris [inaudible 00:31:22], who is, I think now chair of the Long Term Care and the Law program, whose practice is in Nashville. Those are some of the folks that come to mind.

Joel: As AHLA reaches age 50 here, what challenges do you see for it as an organization and what advice, if any, would you give them about addressing those challenges?

Harvey: Well, the first challenge I think is the consolidation that's going on in the legal marketplace. [inaudible 00:31:51] going on almost everywhere else is, partially as a result of a recession that started in 2008, 2009. Because of the rule that we've had that you cannot have the same folks speak together on an in person program and no more than three people from a firm can speak at any program. Two or three, I can't remember, which it is right now. That has allowed for a much broader opportunity for persons to be able to speak and to write and to participate but as the marketplace consolidates, I think it's going to present a challenge to an organization like AHLA because with the consolidation, especially the larger law firms have experienced a change in the way law is practiced. A change in the economics of the practice of law. So, the amount of generosity of those firms, that in the past has been the financial strength of the organization may diminish. Hopefully not, but it may diminish. When you have fewer law firms because of a consolidation, of course that means you have fewer independent givers. So we will see what happens and hopefully the budgets will still recognize the importance of the AHLA and training the attorneys for these organizations.

The other challenge, of course it goes along with it, is that the costs of the organization are continue to increase. As the organization has broadened, what it offers, the costs of running the organization are that much greater. And so, it's kept its very loyal staff. You have to reward those people for their good work, which means you're paying them more. So the costs go up, personnel costs are going to go up. There are going to be some fiscal challenges I think the organization is going to have. Whether it can continue to expand its membership, I think certainly as long as health care continues to expand, as long as the health care continues to play such an important role in our economy. I think I read somewhere, where it's now 20 percent of the GDP is spent on health care.

There will be clients out there that are going to need health lawyers and so there will continue to be more potential members of the organization. I think that's going to continue to be a challenge because at some point it's likely that the health care market place will discontinue expanding at the current rate. The need for, the number of health lawyers that currently practice in the legal marketplace may diminish and it may have an effect on the membership in the organization. So, I think those are some of the challenges that the organization is going to face down the road.

Joel: What would you tell younger people who are interested in the legal profession generally and health law in particular in terms of advice?

Harvey: I think the advice is, first of all, to make sure you take advantage of all the offerings that are available in law school. If that's, if you think even at that stage as you enter law school that you have an interest in health law, there are of course some law schools, like the one in my state, St. Louis University, that have really specialized in health law and offer those kinds of, many more courses than other law schools like my Alma Mater. Take advantage of those and it isn't just health law courses, it's courses in administrative law because you need to understand the regulatory marketplace because healthcare is so highly regulated. Now with all the expansion of the white collar criminal area, take criminal law courses.

It's really, quite frankly the curriculum in law schools, it would behoove someone interested in health law to take as many of those kinds of courses as possible because you don't know when you get out into private practice or public practice. You don't know exactly where your opportunities are going to be to specialize. So, the broader your educational background, your didactic offerings, the better able you are to take advantage of those opportunities and once you get out, either into the public sector or into the private sector or working for corporations or whatever. You will find that the opportunities will come to you. Few people have the advantage that I had of leaving government, starting my own law firm with a concept in mind to become a boutique health care regulatory firm is what I was able to build before I merged with my current firm, Husch Blackwell. You just don't have that luxury anymore. It's just too expensive and too sophisticated.

So, you're going to be in a larger organization and the opportunities are going to present themselves and you have to be ready for them and you have to recognize that even if it isn't an area, which you think you have some interest, it's an area where you should dedicate yourself to get the expertise because it will serve you well down the road. Eventually if you're going to be successful, you're going to have to narrow your area of interest and practice because it's just too complex today to try to be the kind of generalist that I started out being in the health care marketplace when medicare and medicaid, TRICARE, VA, and those, all those other government programs were just not anywhere near as large or sophisticated as they are now.

Joel: Harvey, thank you for taking the time for this interview. Do you have any concluding thoughts?

Harvey: Well, I think it's fantastic that the organization is celebrating its 50th anniversary and I'm just grateful that I'm around to celebrate with the organization at its annual meeting in San Francisco and encourage everyone to come and to join the celebration.

Joel: And we look forward to seeing you in San Francisco in June. Thanks again Harvey very much for this. [crosstalk 00:38:54]

Harvey: I look forward to seeing you Joe.

Joel: Thanks again.

Harvey: Thanks again. Bye bye.